

SEANAD ÉIREANN

—
Dé Céadaoin, 21 Feabhra 2007.
Wednesday, 21 February 2007.
 —

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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Paidir.
Prayer.
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Business of Seanad.

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

The need for the Minister for Education and Science to outline the progress made and the future plans for the extension to Wilson's hospital school, Multyfarnham, County Westmeath.

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 that are targeted at the area of special needs including autism, ADHD and Asperger's syndrome in the Dublin north county area and if the needs of the children are being resourced properly.

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

An gear gá atá ann go gceintíonn an tAire Oideachais agus Eolaíochta go gcuirfear tús le togáil Gaelscoil Cloch na Coillte, Contae Chorcaí, chomh luath agus is féidir, ós rud é go bhfuil an Gaelscoil ar siúl ó 1994 ar aghaidh agus go bhfuil 240 daltaí ann atá lonnaithe i seomraí réamh-déanta atáthar ag íoc €330,000 cíós orthu.

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 to 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 Browne of the following matter:

The need for the Minister for the Environment, Heritage and Local Government to clarify if he is aware of the huge historical importance of Brownhill dolmen, Hacketstown Road, County Carlow and if he has any plans to improve the facilities for visitors at the site.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and I have selected those by Senators O'Rourke, Morrissey and Ryan and they will be taken at the conclusion of business. Senators Dooley and Browne may give notice on another day of the matters they wish to raise.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, Electricity Regulation (Amendment) (Single Electricity Market) Bill 2006 — Second Stage, to be taken on the conclusion of the Order of Business, and to conclude not later than 1.30 p.m. Spokespersons have 15 minutes and other Senators ten minutes, and the Minister is to be called upon to reply not later than ten minutes before the conclusion of Second Stage; No. 2, Statements on Health Service Reform, to be taken at 2.30 p.m. and to conclude not later than 5 p.m. Spokespersons have 15 minutes and other Senators ten minutes, and the Minister is to be called upon to reply not later than ten minutes before the conclusion of the statements; No. 3, Mental Capacity and Guardianship Bill 2007, Order for Second Stage and Second Stage, to be taken from 5 p.m. until 7 p.m. There will be a sos from 1.30 p.m. to 2.30 p.m.

Mr. B. Hayes: Last week in the House I put forward a suggestion to the Leader, in the context of the proposed referendum on children's rights, that the Government consider agreeing a wording with all political parties in both Houses before the election, so that we could hold the referendum in the autumn or winter. The Leader regarded the suggestion as eminently sensible and I noted the generosity of her remarks at the time. It has emerged in the past 24 hours that the Government seems intent on holding the referendum, come what may. The leaders of Fine Gael and the Labour Party have told the Government they have no difficulty with a referendum on the same day as the general election on the principal issue of providing absolute legal protection for children in light of the CC case. However other issues, such as those involving the more fundamental review of rights for children under the Constitution, need to be dealt with in a more careful way.

I ask the Government, even at this late stage, to stop playing politics with our Constitution.

Senators: Hear, hear.

Mr. B. Hayes: There is a view that this referendum is being called for the basest of political motives.

Dr. Mansergh: That view is rubbish.

Mr. Finucane: It is true and the Senator knows it.

Mr. B. Hayes: I ask the Government to deal with this issue sensibly.

Dr. Mansergh: That is exactly what it is doing.

Mr. B. Hayes: We have too much experience of legislation being rushed for political motives, dating from the early 1980s when people on all sides of the House were bullied and pressurised into taking up positions they later regretted. I urge the Government to listen to and heed the advice of legal opinion, and of Members of both Houses, and pull back from holding the referendum at this stage. If we are to have a referendum, let it be on the same day as the general election because otherwise it will become entangled in that election campaign and the difficulties, particularly on the latter issue, will have to be sorted out at a later stage. From the Leader's discussions with the Government, is it likely that the 28th Amendment of the Constitution Bill 2007 will be taken in this session? I would be grateful if she could answer that question.

Yesterday we saw a Government U-turn on a commitment to the people of Cork in respect of Cork Airport. There was a second U-turn yesterday, where the same Minister for Transport, Deputy Cullen, broke his commitment to the people of Dublin along the M50. I was given an absolute commitment two years ago in this House that we would not have multi-point tolling along the M50. The Taoiseach himself said it in the other House.

Dr. Mansergh: The Minister denied it on "Morning Ireland" this morning.

Mr. B. Hayes: Why is it the case, Senator Mansergh, that the company that won the contract to introduce barrier-free tolling on the M50 is tasked with looking at multi-point tolling? The Government will not decide before the election but it will do it afterwards. That is the U-turn we have exposed and will continue to expose.

An Cathaoirleach: On the Order of Business questions should be addressed to the Chair and not to a particular Senator on any side. That will only cause interruptions.

Mr. Quinn: We can gather by the tone of proceedings that an election is in the offing.

Ms O'Rourke: I hope so.

Mr. McCarthy: The Senator can contest it himself.

Mr. Quinn: We look forward to it but perhaps without the same sprightly and innovative proposals that come from those seeking to evacuate this House to go to a different House following that election.

The pharmaceutical regulation Bill is to be introduced at some point. Some years ago I pointed out that doctors in Britain find it difficult to prescribe non-branded, generic drugs that are dramatically cheaper than branded drugs. The figures published yesterday in Britain indicate that £500 million sterling extra is spent because doctors, influenced by advertisers, prescribe branded drugs. We should highlight this matter to ensure that we take the steps necessary to make dramatic savings in health care costs. The Bill should be brought to the House as soon as possible.

Mr. McCarthy: I support Senator Brian Hayes's comments on the children's rights referendum. This referendum could have been organised over the last ten years to allow for debate. The opportunity existed to reach consensus on an all-party basis, which is essential if we are talking about the legal protection of children and constitutional rights for them. That opportunity still exists with the leaders of the Labour Party and Fine Gael, as Senator Hayes pointed out this morning. It could be lost, however, if the referendum is rushed. There is no reason why it cannot be postponed until after the election if we cannot reach agreement. If that is the case, it would be provident to wait until there is all-party agreement because we should not politicise this. The children's rights referendum should not be held in a climate where domestic political issues take precedence in terms of the debate and direction of the election.

The Polish Prime Minister addressed the Forum on Europe yesterday.

Dr. Mansergh: It was the Polish President.

An Cathaoirleach: The remarks of the Polish Prime Minister—

Dr. Mansergh: President.

An Cathaoirleach: —are not relevant to the Order of Business.

Mr. Norris: I have already dealt with that.

Mr. McCarthy: In a broader sense, remarks—

An Cathaoirleach: We have no control of remarks made, they are completely irrelevant to the Order of Business.

Mr. McCarthy: I accept the ruling but the remarks were unhelpful to say the least.

Mr. B. Hayes: It was public comment.

An Cathaoirleach: If we discuss every public comment on the Order of Business we will be here until the evening.

Mr. B. Hayes: It is a current issue.

Mr. McCarthy: The remarks were made in the Forum on Europe and that forum has been widely debated in this House and we recognise its merits in ensuring the success of the second Nice treaty referendum. It is opportune, right and proper that we, as legislators, display our intolerance of such comments.

Dr. Mansergh: When the distinguished speaker addressed the forum, he spoke about combating an avalanche of lies and my reaction to that is: "Welcome to democracy".

An Cathaoirleach: We cannot discuss what happened at the Forum on Europe yesterday.

Dr. Mansergh: We have had some examples of that this morning. The Taoiseach made it absolutely clear that he is not trying to rush any referendum and that he wants to achieve maximum consensus.

Mr. B. Hayes: The Senator should read the front page of *The Irish Times*.

Dr. Mansergh: The Minister for Transport was unequivocal on the radio this morning about single point tolling.

Mr. McCarthy: He could not be found for two years. He was hiding.

Dr. Mansergh: I wish to raise another matter.

Mr. Cummins: Just as well.

Dr. Mansergh: All of us subscribe, although we may have differences of interpretation, to pluralism, which means that we object to any form of theocracy or religious ascendancy but equally to any form of secular totalitarianism. In this country we have a tradition going back 25 years of respect for people's consciences so that when one is talking about pregnancy advisory services, people should not be forced to engage in references that are against their conscience. I deplore attempts in Britain to force Catholic adoption agencies to act against their conscience. Given the Irish input into the Catholic church in Britain, representations should be made. We are talking about principles of civil and religious liberty that go back at least to the Glorious Revolution, which is fundamental to representative democracy. I worry that trend might spread to here. We

must respect not just civil liberty but religious liberty as well.

Mr. Norris: Rubbish. So we support religion in England if it is Irish? That is a very good idea.

Mr. Finucane: Late last year a committee of departmental and other experts was established to investigate electromagnetic fields and health concerns related to mobile phone masts and it is due to report in June. Yesterday Senator Scanlan mentioned An Bord Pleanála and this week in Kilmeady in County Limerick, where the council had turned down a mobile phone mast, the decision was overturned by An Bord Pleanála. The same has happened recently in Ballygunner in County Waterford and Ennis in County Clare.

In all three locations, the inspector from An Bord Pleanála upheld the councils' decisions and recommended refusal of the masts. In all three cases, the board itself overturned that decision. What is the point of having an inspector who goes out, inspects, considers the facts and comes back with a definitive assessment if his decision is then overturned by people who have not even seen the location or the mast? It makes a farce of An Bord Pleanála. That is why I fully support Senator Scanlan's call for An Bord Pleanála to come before the House. I would love to see those faceless people in that organisation try to answer the questions we encounter.

Debate adjourned.

Visit of American Delegation.

An Cathaoirleach: Before I call the next speaker, I am sure Members of the House will wish to joint with me in welcoming members of the various state legislatures of the United States. On my own behalf and on behalf of my colleagues in Seanad Éireann, I extend a very warm welcome to them and sincere good wishes for a successful visit.

Order of Business (Resumed).

Mr. Glynn: In recent years several calls have been made to ban the Red Bull mixer. A report in one of today's national newspapers clearly indicates why this should be done. That soft drink clearly contains mood-altering components, which cause violent behaviour. Serious unprovoked attacks have been committed against other individuals as a result of it. I ask all Members of the House to support the call for a ban on this mixer. It is banned in a number of other countries and I do not see why we should not do so.

Mr. Norris: I commiserate with you, a Chathaoirleach, because like Senator Quinn when I hear the M50 being impotently rattled by vote-hungry politicians from various sides, I can smell an election in the air.

Mr. McCarthy: Senator Norris is a politician.

Dr. Mansergh: Does Trinity not like elections?

A Senator: You pulled down the tricolour in Trinity.

Mr. Norris: On the issue of the tricolour in Trinity, yesterday the question of the rugby match at Croke Park was raised. Without going over that too much, all national anthems can be contentious. The British is a comparatively mild one. The tunes are usually fairly nice. Our own could do with being reviewed, including the line “Le gúna scréach fé lámhach na bpiléar”. It comforts me that most people do not speak Irish and do not know what they are singing.

An Cathaoirleach: Does the Senator have a question for the Leader?

Mr. Norris: I have a question for the Leader. Perhaps we should have some slight discussion on the matter. Having listened to Micheál Ó Muircheartaigh, I found him judicious in everything he said.

Mr. B. Hayes: Hear, hear.

Mr. Norris: He was reasonable, decent, understanding and sophisticated.

Mr. Coghlan: He is from Kerry.

Mr. Norris: When the Secretary of State for Northern Ireland, Mr. Hain, visits Croke Park it would have been gracious for him to lay a wreath at the memorial, which would have healed many wounds. I am very sorry he decided not to do it.

An Cathaoirleach: We cannot debate the matter on the Order of Business.

Mr. Norris: I am sure the Cathaoirleach will pity me as I pitied him. Last week I was compelled by logic to agree with Senator Mansergh. Today I am discharged from that duty because of the utter rubbish he spoke about an attempt to get Ireland to intervene in Britain's internal affairs to get it to shore up prejudice simply because it was a Roman Catholic prejudice.

Dr. Mansergh: Is Northern Ireland the internal affairs?

Mr. Norris: The British Cabinet gave the answer to that one when it clearly stated it is not possible to have a little bit of discrimination. It would have been much better had Senator Mansergh asked, as I now ask the Leader, to consider this situation in Ireland, where despite his paeans of the past 25 years, his Government needed to be pushed, kicking and screaming, into this area. Let us have a discussion of the motion in my name asking us to revise the exemption by

all the churches, including mine — the Church of Ireland — and the Roman Catholic Church, from the operations of the equality legislation. That was done before the publication of the Ferns Report. We now know what the leaders of the church were doing in moving priests around so they could continue to molest children——

Dr. Mansergh: Come off it.

Mr. Norris: ——while they were simultaneously getting exemption from equality legislation to which they were not entitled. It is a disgrace and the English are 100% right.

Mr. Leyden: If time is available before the Easter recess, I ask the Leader to have a discussion on the work of the British-Irish Inter-Parliamentary Body, of which she is a member and of which I am a sub-member, in particular the issue of free travel for pensioners from Britain when they return home here. From 2 April free travel will be available throughout the island of Ireland thanks to the work of the Government.

Mr. B. Hayes: Not on the M50 though.

Mr. Leyden: Some 430,000 Irish people over 65 years of age will be entitled to travel free up to Northern Ireland and those from Northern Ireland will be able to travel free to the South. It will represent a great joining of people. It is a very commendable day in the history of the State to have free travel between North and South. It is a step forward and I commend the Minister for Social and Family Affairs, Deputy Brennan, on introducing the scheme. I ask that the British-Irish Inter-Parliamentary Body discuss extending free travel to the Irish in Britain when they return here during the summer.

Mr. Bannon: I ask the Leader to invite the Minister for Transport, Deputy Cullen, to the House to discuss the inadequate service signage on dual carriageways and motorways, which is costing us jobs. Business has plummeted in Rochfordbridge, Kinegad and other small towns and villages bypassed by motorways because of inadequate signposting of services in those locations. In Rochfordbridge 17 jobs have been lost and I understand more jobs are under threat in filling stations, restaurants and other stores because of the inadequate signposting of services. On the Continent we see much more adequate signposting of the services available in the smaller towns and villages. We have long stretches of motorway without service stations. A debate would go some way to address the issue. I will give another example. When people leave an airport or a ferry port they do not know where to go.

An Cathaoirleach: The Senator has very adequately made the case for a debate.

Mr. Bannon: Areas in the midlands are inadequately signposted. Longford, Mullingar and Athlone are very prominent towns in the midlands.

Ms O'Rourke: Athlone is all right. The Senator should stay away from there — it is Councillor Nicky McFadden's area.

Mr. Bannon: They are not adequately signposted.

An Cathaoirleach: We cannot go around the country.

Mr. Bannon: There may be the odd photograph of a prominent politician.

Ms O'Rourke: Nicky is on the Senator's path.

Mr. Mooney: I have no difficulty in finding my way home on the N4. I ask the Leader to initiate a debate on climate change. Ten years ago introducing this issue in the House would not have been seen as having any great consequence. However, it is now to the forefront as it relates to the global future. It is appropriate that the Cathaoirleach welcomed representatives of various US state legislatures earlier. I commend the states in the United States which, despite the best efforts of the White House, have adopted many of the Kyoto principles in their own states to the point where I hope the US will come to its senses and realise its citizens too form part of the human race.

At the weekend the Taoiseach made commitments on a number of initiatives in the area of environmental protection. They cut across many Departments, including the Departments of Environment, Heritage and Local Government and Communications, Marine and Natural Resources. I am involved in preparing a report on humanitarian disasters. From talking to the various lead agencies, including the Red Cross, it is clear that natural disasters are increasingly occurring in the Asia-Pacific area. These are very much related to climate change and indicate how, in a sense, we are probably destroying our own planet. In that context and in the context of the Taoiseach's initiative at the weekend, I ask the Leader to have a debate on the matter.

Mr. Coghlan: Some months ago the Government announced its intention to increase the number of High Court, Circuit Court and District Court judges. I believe it was proposed to add two to the High Court and three or four in the District Court, but nothing happened. We now have the Courts and Court Officers (Amendment) Bill, which allows for an additional four judges in the High Court, three in the Circuit Court and up to six in the District Court. They may not all be appointed. As we know all courts have long waiting lists. We all accept the principle that justice delayed is justice denied and the

matter is urgent. No appointments can be made without the passage of this legislation. When will this House take the Bill?

Mr. B. Hayes: It is being taken in the Dáil this week.

Mr. Hanafin: I support Senator Mansergh's call for a debate. It is quite reasonable that we are tolerant and understanding in this House. It is also reasonable that people who would hold a liberal view would be tolerant and reasonable with those who hold a contrary view. I would like to see liberalism redefined as intolerant of other people's views. There is fear because of the situation mentioned by Senator Mansergh where a particular institution formed with a particular ethos is being requested or expected to do something which is against that ethos. The same applies to the Crisis Pregnancy Agency. No group which stands for life should be asked to give information on abortion referral. It is contrary to what it believes.

We in this House should defend the right of any group with an honest and clear mandate and ethos to uphold that ethos and not have forced upon it by liberal thinking a tolerance of other people's views which are in the opposite direction. This would be the opposite of what liberalism should be. This morning I heard again an attack on the church. We all know the history of the church and its difficulties through the millennia, but the fact that the Holy Spirit is in the church is proof that it has survived.

An Cathaoirleach: We do not want a debate on the church.

Mr. Hanafin: Being tolerant is something——

An Cathaoirleach: Does the Senator have a question?

Mr. Hanafin: I have. I would like to see in the debate people who are tolerant being allowed to express their own ethos and views without being forced to change them.

Mr. J. Phelan: I agree with Senator Mooney's request for a debate on climate change. I had a discussion yesterday with somebody involved in the bio-fuel sector. The Government is committed to achieving a target of 5.5% mix in all petroleum products of bioethanol. We will have to double our production of grain and grain products if we are to meet that target. There has been no concerted effort so far in any of the initiatives announced by Government towards ensuring we do that. I call for a debate on that issue as soon as possible.

I ask the Leader to invite the Minister for Agriculture and Food to come to the House for a debate on the issue of farm inspections because I am inundated with queries on and problems with

[Mr. J. Phelan.]

the inspection area. I realise it is part of the reform of the Common Agricultural Policy and the widespread changes that have taken place in the different schemes that affect agriculture. Farmers are presented with 1,500 questions and boxes must be ticked. Two people arrive at the farmyard gate in the morning and are on the farm for the whole day watching the farmer and the practices that take place and, in some cases perhaps, the cows being milked. All parties constantly speak about the need to reduce bureaucracy in agriculture. This is the biggest load of bureaucracy I have seen introduced in my time in agriculture. I call for a debate with a view to reducing it and its impact on farming and promoting the development of agriculture and the entrance of young people into the industry.

Mr. J. Walsh: I refer again to the report of the Committee on Justice, Equality, Defence and Women's Rights in respect of collusion on various atrocities which occurred here during the Troubles of the past 30 years and the involvement of the Northern Ireland Office, the Secretary of State and the British Government without whom these events would not have occurred. I call for a debate on that report. Since I asked previously for a debate, we have had the report of the Police Ombudsman of Northern Ireland, Nuala O'Loan, which clearly identified the collusion that took place in the 1990s and up to the current decade, both in the RUC and the PSNI.

The issue needs to be addressed. There is a point of view that we should move on from these events but if one speaks to the victims of these atrocities, their wounds are as raw as when these terrible atrocities occurred. State terrorism cannot be allowed in any way to go without some form of acknowledgment, apology and redress to the victims involved. I join Senator Leyden in asking if the British Irish Interparliamentary Body might be a forum within which this issue could be explored and some pressure brought to bear on the British to give some modicum of co-operation in this area. I note what the Taoiseach said that until such time as we have the report of Patrick MacEntee, it would be inopportune to debate the issue, but we should move on it on a number of fronts.

I endorse the call by Senator Hanafin for a debate, not on the issue raised by Senator Mansergh which is outside our jurisdiction, but on the Crisis Pregnancy Agency and its *modus operandi*. During the past six months I, and I am sure every other Senator, have received reports and complaints from voluntary groups working hard in that area. These groups are finding it difficult simply because the Crisis Pregnancy Agency wishes them to deviate from their ethos. That is unacceptable and I agree fully with Senator Hanafin. We should have a debate on the activities of the Crisis Pregnancy Agency.

Mr. Browne: I ask that the Minister for Transport come to the House to explain what exactly the taxpayers and commuters are getting when he speaks about buying out the toll bridge? It appears to me they are being charged on the double, having been ripped off for many years. To put this in context and given that he intends to hand over €620 million, yesterday the Carlow-Dublin train service was overcrowded. On the return journey at 4.20 p.m. or 4.30 p.m., the train was so crowded that people were turned back and had to wait an extra two hours to get a train. That is the reality of the public train service. I appreciate there are more trains on the Waterford-Dublin line than in the past but there has not been a corresponding upgrading of the quality and number of carriages and there are no catering facilities on some of the services.

The original bypass earmarked for Carlow 20 years ago is now the outer relief road because the bypass was never built. We are now planning to build an outer relief road instead. Some of the money could be put to that use. This is the same Minister who presided over the electronic voting fiasco, the airport authorities debt-ridden—

An Cathaoirleach: Does the Senator have a question?

Mr. Browne: I have. Today we learned of the taxi signs that were written in braille. First, the braille was incorrect and, second, it caused the windows to jam in taxis and they are now being taken away.

An Cathaoirleach: What is the Senator's question?

Mr. Browne: It is important that the Minister comes to the House for a debate. On the issue of traffic and road safety—

An Cathaoirleach: We cannot answer those questions today but when the Minister comes to the House, he can answer them.

Mr. Browne: Recently in Carlow the drugs squad has been disbanded because the traffic corps is being strengthened. Nobody in the House ever wished to see the traffic corps strengthened at the expense of other services.

An Cathaoirleach: The Senator has made his point adequately for a debate.

Mr. Browne: We need to ask the Minister to ensure the traffic corps is not strengthened at the expense of other services.

Labhrás Ó Murchú: Senator Mansergh made a significant and thoughtful contribution to the issue of respecting people's conscientious position on State issues and also to ensure that agencies with a particular ethos would not be coerced into providing a service which runs counter to that

ethos. I thought it reasonable that he would take the position in Britain as an example because there is a parallel there. I cannot see how anybody would suggest this was interfering in the internal affairs of another country. Does that mean that if we raise an issue on Iraq or Tibet or any other country, we are interfering in the internal affairs of that country as well? We all know why he raised that issue, namely, because a parallel position is developing in Ireland. It would be quite serious for us if we decided on coercing the Crisis Pregnancy Agency, which is rooted in a particular ethos, to provide a service but, worse still, to threaten it with the withdrawal of funding if it does not provide that service. It is time to debate this issue, not what happened in Britain.

Mr. Norris: Taxpayers' money must not be used to promote a particular ethos.

Labhrás Ó Murchú: Tony Blair felt especially uneasy during the debate in Britain but what happened was he left his contribution too late. Senator Mansergh has done a service to Ireland by raising the issue at this time and giving this Chamber an opportunity of debating the matter soon.

Mr. Hanafin: Hear, hear.

Mr. Norris: Let there be open exemptions for the churches here as well while we are at it.

Dr. Mansergh: That is the secular totalitarianism.

Mr. Norris: No, it is not. Rubbish.

Dr. Mansergh: Yes, it is.

Dr. Henry: I support Senator Mansergh's call for a debate on the issue because there is an enormous amount of misinformation about what the Crisis Pregnancy Agency is suggesting to other agencies.

Mr. Norris: Hear, hear.

An Cathaoirleach: Senator Maurice Hayes wishes to speak next.

Ms O'Rourke: I cannot keep up.

Dr. M. Hayes: I am sorry for upstaging the Leader. It might help Members to consider the relevance of what Senator Mansergh was talking about if I remind them that the situation already exists in Northern Ireland.

Dr. Mansergh: Exactly.

Dr. M. Hayes: The law has already been changed in Northern Ireland. We may have an interest, therefore, through cross-Border bodies. I have considerable sympathy for the point raised

by Senator Mansergh. I believe a conscience clause, such as that which exists for abortion and other issues, should be introduced. It would not deny people the opportunity to adopt because they could use other agencies. However, if particular agencies have a particular ethos, it is not unreasonable to accommodate them.

An Cathaoirleach: Does anyone else wish to speak?

Ms O'Rourke: Is it safe to get up?

An Cathaoirleach: The Leader to reply.

Ms O'Rourke: Senator Brian Hayes again raised the issue of the proposed referendum. I repeat what I said on the matter last week, which was that the Senator's comments were sensible. If we can get a wording which is not just agreeable to all the parties but agreed by them, we can move on that. My opinion is that we should not rush the matter either. It is too important and complex to engage with it in a rushed way. I do not think the Government believes we should rush the matter. It should be agreed among the parties, the wording should be produced and the legislation should be prepared. The 28th amendment is sufficiently important to warrant sufficient time being given to all these stages before it becomes a national issue and the debate follows.

I will endeavour to see if a more definitive viewpoint is held on the matter. It is hugely important. We all saw the furore which occurred last May and the crowds outside Leinster House who were very concerned about what was happening but who essentially did not know what they were marching about. This must be rectified. We must close that loophole, but if we do so, I agree with Senator Brian Hayes's argument. It is one of those issues on which the Senator, many members of other parties and I find common cause in respect of doing it in a measured, proper, debatable and agreeable way before arriving at a decision at God knows what time. I repeat what I said last week and hope I will be able to give Senator Brian Hayes a more definitive view.

The Senator also spoke about the Government U-turns on a commitment to the people of Cork in respect of Cork Airport and tolling, respectively. He said we were engaging in U-turns. The Cork U-turn, for want of a better word, has been debated very firmly by people within and outside this House. It makes the point about rushed legislation because we all remember how this was rushed legislation. It appeared to me that rash promises were made. The two going together do not make for decent legislation.

Senator Quinn asked when the pharmaceutical regulation Bill would be introduced. It is on the A list for printing and publication this term so that will happen. The question of whether there will be time for a debate on the issue is another

[Ms O'Rourke.]

matter. It is a very important Bill about which the pharmaceutical unions and owners are very concerned. They want to see it coming. Senator Quinn spoke about generic drugs, how the other drugs are getting more prominence and the fact that generic drugs, which are hugely interesting and positive for people, are not getting a proper airing. I will get back to Senator Quinn on the pharmaceutical regulation Bill when it is printed and published.

Senator McCarthy spoke about the legal protection of children. He subscribes to the view held by Senator Brian Hayes that the referendum should not be rushed. We had examples in the early 1980s of everyone succumbing to high-pressure lobbying and partial or implicit threats. All Governments succumbed to them and ran with a referendum which still has reverberations.

Mr. B. Hayes: Exactly.

Ms O'Rourke: These reverberations are painful and wrong and resulted from the fact that the referendum was rushed. Legislation guides lives for a long period. Therefore, rushing it is not to anyone's advantage.

Ms White: Hear, hear.

Ms O'Rourke: I accept that the points of view expressed here on behalf of the two main parties are felt and expressed very sincerely. It is important that they should be recognised as such.

Like me, Senator Mansergh praised the Minister for Transport, Deputy Cullen, this morning. I thought he was quite emphatic. Senator Mansergh raised an important issue, which is that all of us in both Houses of the Oireachtas subscribe to pluralism. It is a very strong tenet of our public life. If we subscribe to it, we should respect both civil and religious liberties. It is manifestly not right if pluralism involves intolerance because pluralism, by its very nature, should not be intolerant. Senator Mansergh raised the matter of Catholic adoption agencies in the UK and how a feature allowing freedom of conscience in respect of this issue and the other issue, which he did not mention but which has been raised by other people, should be introduced.

Senator Finucane spoke about magnetic fields and mobile phone masts. Another report will be produced on the likely or unlikely health effects of magnetic fields and mobile phone masts. I am sure the Cathaoirleach has noticed that an increasing number of areas in Ireland have very bad mobile phone services because the masts are not in place. We cannot have it every way. I attended a meeting at which people complained they could not get proper mobile phone services, but they still gave out about another mast coming forward.

Senator Finucane also raised the more salient point about inspectors making certain decisions

which are then overturned by An Bord Pleanála. In the three cases mentioned by Senator Finucane, the inspector turned down the applications while An Bord Pleanála allowed them. It is a feature of the legislation governing An Bord Pleanála that the decision is at the behest of the board rather than the individual inspector. He or she advises and the board decides. This is my understanding because I have often queried it.

Senator Glynn raised the matter of Red Bull mixer and how it contains mood-altering components, which is quite serious. He asked all of us to support a ban on the stocking of Red Bull mixer.

Senator Norris said that all national anthems have a trifle of upset about them. He praised Mícheál Ó Muircheartaigh, which we would all do, and spoke about laying the wreath. I believe this would be a futile gesture which would not be proper. Senator Norris also spoke about equality legislation and the need to include in it by way of amendment people who are left out of the earlier equality legislation and groupings.

Senator Leyden rightly hailed the free travel scheme among the 32 counties and spoke about how it will be a commendable day when it comes in on 2 April. He also said we should raise at the upcoming British-Irish Interparliamentary Body whether it could work the other way as well, which is a good point.

Senator Bannon spoke about inadequate road signage. He is correct in saying that Rochfordbridge has no signage showing the location of restaurants and other facilities. These are the usual signs we have all come to decipher and understand very well. It is a matter for the National Roads Authority and I have raised the matter with it and am awaiting a response.

Senator Bannon spoke about Longford and Mullingar. We are very happy about Athlone. A certain lady in Athlone who is not Fianna Fáil is on the Senator's track if he moves into her area.

An Cathaoirleach: I do not think we will discuss the next election now.

Mr. B. Hayes: Read any signs.

Ms O'Rourke: She has her own lorry or whatever one calls it. Senator Mooney spoke about climate change. If we have time in the forthcoming weeks — not next week — we should look for a debate on that. The Senator praised the US states that have gone against President Bush and brought in their own measures in support of the Kyoto Protocol. He also stated there is an increasing frequency of natural disasters.

Senator Coghlan wants to know when the Courts and Court Officers (Amendment) Bill will come to the House. It is scheduled to be taken within the next two weeks. He can tell that to his friends in high places.

Mr. Coughlan: The Leader would not know anybody down there.

An Cathaoirleach: The Leader should speak on the Order of Business.

Ms O'Rourke: He has a family connection. Senator Hanafin spoke about tolerance. He praised Senator Mansergh's point of view. He referred in particular to the Crisis Pregnancy Agency. He is very concerned about it and called for a debate on the matter.

Senator John Paul Phelan called for a debate on climate change. He also raised the matter of farm inspections. Requests about that issue are pouring in to all of us from ordinary farmers, some of whom may be members of farming organisations. A tinge of bitterness appears to have crept in about the increasing bureaucracy required to fit in with those inspections. It would be useful if we were to invite the Minister, Deputy Coughlan, to discuss the matter.

Senator Jim Walsh sought a debate on a report on collusion. He stated it would be tackled on a number of fronts but it would be useful to raise the matter at the British-Irish Interparliamentary Body. He also called for a debate on the Crisis Pregnancy Agency.

Senator Browne asked that the Minister for Transport would be invited to the House for a discussion on crowded trains and the upgrading of carriages. He stated Carlow has one relief road but an outer relief road is now required.

The Senator attributed electronic voting to the Minister, Deputy Cullen. I do not need to remind him a previous Minister, not of Senator Browne's party but of mine, was responsible for the introduction of electronic voting. It is often attributed to the Minister, Deputy Cullen, even though he was not responsible. Neither was he responsible for the introduction of the airports management legislation which is now on his doorstep.

Mr. Browne: He is responsible for taxi signs.

Ms O'Rourke: Senator Browne also inquired why the drugs squad was disbanded at the expense of the traffic corps. I do not know. It is a little strange. I do not see the connection between these issues. I may discuss the matter in private with the Senator.

I agree with Senator Ó Murchú's call for the need to respect people's consciences. We should not coerce anyone into taking a particular stance or action.

Senator Henry referred to the Crisis Pregnancy Agency. Senator Maurice Hayes agreed with Senator Mansergh's point about adoption and the conscience clause, given the approach in operation in Northern Ireland where abortion is in line with UK legislation.

Mr. B. Hayes: No, it is not.

Dr. M. Hayes: Abortion is in line with this jurisdiction but adoption is in line with the UK.

Ms O'Rourke: The conscience clause is the matter to which Senator Maurice Hayes referred. The adoption legislation which is to be introduced in the UK—

Dr. M. Hayes: It is in Northern Ireland.

Ms O'Rourke: —is in operation in Northern Ireland. We have had a most useful debate about tolerance and the need to take care with referenda and provide adequate time to discuss them.

Mr. McCarthy: And to be tolerant about running mates.

Ms O'Rourke: Yes.

Order of Business agreed to.

Electricity Regulation (Amendment) (Single Electricity Market) Bill 2006: Second Stage.

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

Minister of State at the Department of Communications, Marine and Natural Resources

(Mr. J. Browne): I am pleased to have the opportunity to present the Electricity Regulation (Amendment) (Single Electricity Market) Bill 2006 for the consideration of this House. The Bill, when enacted, will underpin the creation of a single wholesale electricity market on the island of Ireland.

The Bill forms a key part of the Government's priority legislative programme. Initiated in the Dáil in November last year, the Bill is an important component in the Government's progressive energy agenda. In conjunction with this Bill, the Government's proactive approach to energy matters is demonstrated by the publication in October 2006 of the Green Paper on energy policy, *Towards a Sustainable Energy Future for Ireland* — the White Paper will be published in March — and the enactment in December 2006 of the Energy (Miscellaneous Provisions) Bill, and the National Oil Reserves Agency Bill 2006, soon to be considered by this House.

The Bill proposes to amend the Electricity Regulation Act 1999 to provide for the establishment and operation of a single competitive wholesale electricity market, or SEM, on the island of Ireland. The main provisions of the Bill include the extension of the existing functions of the Commission for Energy Regulation, CER, for the establishment and operation of the SEM, including the trading and settlement code for the market.

An SEM committee will be established which will make regulatory decisions in regard to SEM matters. The SEM committee will simultaneously

[Mr. J. Browne.]

be a sub-committee of both the CER and its Northern Ireland counterpart, the Northern Ireland Authority for Energy Regulation. Provisions are included to allow for modifications to licences to ensure both existing licensees and new entrants can participate in the SEM. Provisions are also included for the establishment of a market operator, MO, to carry out the day to day trading and settlement functions for the market.

To put the Bill in context, I will speak briefly on the background to, and rationale for, the establishment of the all-island single wholesale electricity market, SEM. The creation of the new market is set in the context of long-standing co-operation between the two jurisdictions, North and South, on common energy issues.

I take this opportunity to recognise formally Senator O'Rourke's significant contribution in the initiation of the North-South energy project some years ago. Her ground-breaking work in this area established a solid foundation for cross-Border energy co-operation and set us on course to bring forward the Bill today.

Both Administrations have a shared interest in more competitive energy markets, reduced energy costs and improved reliability of supply. The mutual benefits to be gained by working together on this agenda are already evident and I believe that what has been achieved to date offers a model of best practice in developing co-operation between North and South. This co-ordinated approach is also set in the context of the European Union's single market for electricity and gas and the growing regionalisation of energy markets.

Policy on the all-island energy market is set out in the all-island energy market development framework published jointly in November 2004 by the Minister, Deputy Noel Dempsey, and his Northern Ireland ministerial counterpart. The framework, produced in consultation with the two regulatory authorities and with energy stakeholders, sets out the commitment of both Governments to achieving a single energy market that will contribute to a more secure and cost efficient service for all consumers.

It outlines a blueprint for co-operation in a number of key areas, including electricity, gas and sustainable energy. The creation of an all-island energy market will bring benefits to the island as a whole. These benefits include a larger, single market with competitive energy prices, greater security and diversity of supply, a more attractive investment location and a robust, integrated infrastructure.

The key short-term priority within the framework agreement is the introduction of the single wholesale electricity market and there is strong political commitment, North and South, to deliver the market by the target date of 1 November 2007. A key task for both Governments is to ensure an appropriate legal framework is in place to underpin the SEM. Imple-

menting the market requires similar legislation to be enacted simultaneously in both jurisdictions.

A memorandum of understanding, MOU, between the two Governments, setting out the broad parameters of the SEM, was also a requirement as part of the statutory process in Northern Ireland. On foot of a Government decision, an MOU was signed in December 2006 by the Minister for Foreign Affairs on behalf of the Irish Government and copies were lodged in the Oireachtas Library.

The parallel legislation, which is being introduced in the North by an order in council through Westminster, needs to be enacted in both jurisdictions in March 2007 to allow sufficient time for essential market trials and to ensure that the new market will be operational by the committed date of 1 November 2007. This is a very tight deadline and it is important it is met. Any delay in introducing the market would result in loss of investor confidence and contribute to regulatory uncertainty. There would also be significant negative financial implications for market participants.

I wish to outline the main provisions of the Bill. Section 4 amends the Electricity Regulation Act 1999 by providing for the establishment of a SEM committee to carry out single market regulatory functions on behalf of the CER. A corresponding provision is being made in the Northern Ireland legislation so that the same statutory framework is in place for effective decision making for the market North and South. Up to seven members can be appointed to the SEM committee under ministerial warrants from among the members and staff of both regulatory authorities, the CER in Ireland and the NIAER in the North. A member who is independent of both regulators will complete the committee.

The CER and the NIAER will work together through the SEM committee to exercise their respective regulatory functions. In compliance with section 5, the two regulatory authorities will jointly publish a statement setting out the procedures and working arrangements of the SEM committee. Appropriate provision is made in both section 8 of the Bill, and in the Northern Ireland Order in Council, to facilitate the sharing of all relevant information to accommodate the carrying on of all-island market business and to ensure that appropriate protections apply to such information.

The functions necessary to establish and operate the market are conferred on the CER by section 7. These functions will include the making of regulations for the purpose of trading in electricity on an all-island basis, including the trading and settlement code. All licensees will be required to trade all electricity generated by them through the SEM and an appropriate threshold will be established to be applied to different classes of licensees in fulfilment of this requirement. These provisions will be mirrored by the NIAER in the North.

The day-to-day trading and settlement of the SEM will be carried out by a market operator established by licence under section 12. The market operator licence will include appropriate terms and conditions relating to participation in, and operation of, the SEM. The market operator function will be jointly carried out by the two transmission system operators, EirGrid in the South and SONI in the North. Provisions allowing the market operator to recoup costs from market participants in facilitating participation in the trading arrangements under the SEM are set out in section 14. Licensing provisions in sections 12 and 13 allow for modifications to licenses to ensure that both existing licensees and new entrants can participate in the SEM. The associated publication process for such modifications and breaches of licence terms and conditions is set out in section 16.

Section 9 sets out the principal objectives of the Minister, the CER and the SEM committee in carrying out their respective functions regarding the SEM. These include a primary objective of protection of the interests of consumers of electricity on an all-island basis by promoting effective competition between market players participating in the SEM. Other stated objectives include the need to ensure that all reasonable demands for electricity are met, the need to ensure co-ordinated regulation of the market, the need to have transparent pricing in the SEM and the need to avoid unfair discrimination between consumers in Ireland and Northern Ireland.

In keeping with the principles of better regulation, section 10 provides that the Minister, the CER and the SEM committee should ensure, as far as practical, that the performance of SEM functions is transparent, accountable, proportionate, consistent and targeted only at cases where action is needed. Section 11 provides that general policy directions given by the Minister to the commission should not apply to matters impacting on the new all-island market. It also includes the SEM committee as one of the prescribed consultees to whom draft policy directions must be sent under the Energy Regulation Act. Section 15 expands the existing provisions of the Electricity Regulation Act, as amended, to allow the CER to work together with its northern counterpart, the NIAER, to produce joint estimates of capacity, forecast flows and loading statements on an all-island basis for SEM purposes.

The establishment of the SEM will bring a range of benefits. It will facilitate improved competition and investment opportunities by expanding the market, and the exploitation of efficiencies and economies of scale in areas such as generation of reserves, plant mix and fuel usage. It will also introduce more transparent and equitable trading arrangements. An all-island electricity market will have approximately 2.5 million electricity customers, 1.8 million in Ireland and 0.7 million in Northern Ireland. While this is relatively small in the EU context, it

is still a considerably larger market than the two single markets operating independently, and will provide an improved base for the entry of new market participants in generation and supply.

This market dynamic should also serve to increase the competitive pressure on prices while providing some economies of scale for market participants. A single market will also lead to a reduced duplication of functions thereby realising cost savings. The strategic benefits for the island will include increased market size, shared reserve costs, shared fuel diversity costs, a boost to investor confidence and a more competitive environment for the island as a whole.

The costs and benefits that are expected from the establishment of the SEM have been subjected to independent analysis by consultants. The findings of a cost benefit analysis to assess the long-term economic impact of the SEM are positive and indicate an estimated net social benefit of €155 million present value over a ten year period. The benefit share is split roughly evenly between North and South and mostly accrues to customers, approximately an 80:20 split between customers and generators.

In addition to these benefits, the study suggests that a range of other benefits will accrue from the SEM. These benefits include improved competition, reduced market power, environmental savings and enhanced effectiveness of the regulators from pooling of experience. In addition to the long term cost benefit analysis, the regulatory authorities have carried out an analysis of the likely short-term price impact of the new market. The initial findings indicate that, at current fuel price projections, a small increase is possible in the first year of operation, 2008, due to start-up costs. This is countered by a small decrease in price projected in the second year of operation.

This Bill is an important measure in the delivery of the Government's energy policy. The all-island approach to energy policy will be one of the main binding elements of the policy proposals set out in the energy white paper. Our long-term energy future lies not as two distinct energy markets isolated from the rest of Europe but as part of a regional energy market in conjunction with Britain and possibly with other close European neighbours. Maximising our potential market size and ensuring competitive and efficient markets in both electricity and gas are at the core of our approach. This places the all-island dimension at the heart of energy policy development for the future.

The development of the SEM is a key part of that policy in the interests of consumers and business on both sides of the Border. I look forward to listening carefully to the views of the Members of the House on this important and groundbreaking Bill and their assistance in progressing it into law.

Mr. Finucane: Fine Gael will support the passage of the Bill. The Minister has stated he is not

[Mr. Finucane.]

in favour of the privatisation or dismantling of the ESB. Our experiences with Eircom were unfortunate, a matter to which we referred when discussing ComReg. Harsh words were spoken about the difficulties consumers have with Eircom with regard to connection and repair. It is a classic example of how privatisation does not work. When the State owned the telecommunications structure there was significant capital investment. Private companies that move in aim to placate their shareholders by making a sizeable profit and often in pursuit of that do not install the necessary infrastructure because that involves an associated cost. This is a small market for electricity and that is why we support this legislation.

There is growing concern at the increased cost of electricity. Any progress, whether through the proposed single electricity market, or the interconnector facilities about which we often speak, will be a success if it leads to a reduction in electricity prices. While the domestic consumer has no alternative because there is no choice, the industrial consumer has some choice of electricity provider. Domestic consumers, however, voice concern to us politicians about the escalating cost of electricity. Anybody in this House could see a dramatic difference in his or her electricity bills between 2005 and 2007. It is sad that the Minister for Communications, Marine and Natural Resources takes a large dividend from the ESB, possibly between €70 million and €80 million a year. Is it not possible to reduce the electricity bills instead of taking a dividend?

Senator Kenneally and I sit on the Oireachtas Joint Committee on Communications, Marine and Natural Resources which has met significant industrial players who have voiced concern at the escalating cost of electricity for their companies. I will not name them but most are well-known large companies which are major users of electricity. They are concerned about their long-term viability and their competitiveness because of the escalating cost of electricity and other charges. We should not take for granted industries which have been here for some time. They make the point that in the past they had the possibility of negotiating the best possible price based on their use but they cannot do that now unless they go to competitors in the marketplace.

I acknowledge the importance of the unique North-South co-operation proposed in this Bill that will benefit both parts of the island. I accept that the all-island market will be of benefit and that economies of scale, of which both sides can avail, should ensue. This is the first positive news about energy we have heard in a long time. The Minister has overseen a shocking drift in energy policy. I recognise that a paper was produced recently which was expensive because the consultants received more than €1 million and we waited for some time to see its contents and now await a further paper on energy.

There has been far too little movement on interconnection, renewables, import substitution and energy conservation. With the change of Government, which I hope will happen, there will be a change in mind-set. The Fine Gael-Labour Government, which I hope will be in place before the summer, will change that.

The Department of Communications, Marine and Natural Resources and the Commissioner for Energy Regulation have made noises in recent weeks to suggest this issue is being examined, despite the circumstances mentioned having existed for some months. I hope they will act in unison to the benefit of the consumer. Benefits will also accrue from the availability of more interconnectors. These will be North-South as well as east-west. As my colleague, Deputy Durkan, stated in the Dáil this will be of great benefit to the operation of electricity and gas markets but it should be recognised that the United Kingdom already has access to the nuclear sector. The traditional methods are fine but we should not use this new situation as a means to slow the development of alternative energy sources.

In terms of the economic independence of the grid we must be mindful that easy options in the North-South market could slow development of the alternative energy sector. We must be forceful about this because people tend to take easy options when the going gets rough. The easy option would be to draw on the cheaper electricity generated by nuclear energy in the United Kingdom and Europe. This would be good for the country but we must ensure we proceed to develop the alternative energy sector.

There are many forms of alternative energy and I am aware environmental issues arise whenever any type of energy is generated. Some say, correctly, that wave generated electricity will affect the development of shores and sandbars. We can develop significant transport to reduce emissions as required and as mentioned in discussions on the previous Bill before the House. Emissions will never be removed entirely but we can improve the situation dramatically and with scientific progress it is hoped ways can be found to reduce the environmental impact of energy usage generally.

I very much welcome the developments at Moneypoint because I grew up in Foynes, on the Shannon estuary, and have long been concerned about the sulphur dioxide spewing into the atmosphere from Moneypoint. The confluence of the winds drives this upwards and along the estuary around the Foynes area. Research shows that approximately 50% of the entire sulphur dioxide emissions in this country are in the Shannon estuary area. I am seriously concerned about those emissions. The changes in Moneypoint to improve this are better late than never and I welcome them. The community has tolerated what has been happening for a long time, which was most unfair.

Other forms of alternative energy are readily available and can and should be developed in this country. If we are to make this electricity market work we must examine the alternatives and develop them to the best of our ability without taking the easy option to escape reality and make excuses when things do not happen. Enlarging the energy market and delivering economies of scale do not offer complete solutions because both parts of the island will need to develop the energy sector significantly in response to population and economic growth.

Economies of scale must be borne in mind. If Ireland had the same population density as the Netherlands, its population would be approximately 48 million and its energy requirements would be massive. It is good that the electricity grid will be jointly operated by the Northern and Southern authorities. We should sing from the same hymn sheet and ensure prices are not arbitrarily increased in either jurisdiction. Prices should increase or decrease as the market demands, having due regard to the needs of industrial and domestic consumers.

Fine Gael has made proposals in its Energy for the Future document, which I again call on the Government to adopt. They include the removal of all excise duty on bio-fuels produced from renewable energy crops; promotion of combined heat and power facilities, especially in regions which have poor energy infrastructure such as many parts of the west and north west; grants of between €500 and €3,500 to encourage householders to convert to renewable energy for home heating; reform of the VRT system, through the establishment of energy efficient labelling for motor vehicles, with lower and higher rates of VRT for fuel efficient and inefficient vehicles, respectively; creating a market for bio-fuels by legislating that all motor fuels must include a blend of fuel from renewable sources such that all petrol sold would include a 5% bioethanol mix and all diesels would contain a 2% biodiesel mix; requiring all public transport and public service vehicles to convert, where practical and feasible, to forms of bio-fuel; establishing a centre of excellence for alternative energy charged with ensuring that Ireland develops a world class alternative energy sector.

Regardless of the continued instability in oil prices, the Government must take on board Fine Gael's energy policy and incorporate it in the forthcoming national plan. It would thereby put in place energy conservation measures such as vehicle labelling; development of biofuels; home heat conservation through insulation; use of alternatives; and a major plan to develop the alternative energy industry and the necessary supports to guarantee security of supply. Such a move would not only conserve and replace energy and develop the energy sector but would also draw public attention to the necessity to take such steps, involving both the industrial and domestic

consumers who rely heavily on reliable energy sources.

An increase in British reliance on nuclear power will have nothing but harmful effects on Ireland. While the British Government is right to analyse its energy policy, nuclear power is not the way forward. Putting in place a new generation of nuclear power stations will inevitably lead to a rise in nuclear waste and much of this will be reprocessed at Sellafield. Those who operate Sellafield have already received warnings from the EU, covered up leaks and falsified documents. As a result, the facility must be closed as soon as possible. The increased risk to the Irish people from a rise in the amount of nuclear waste reprocessed 100 miles off the Irish coast at this appalling facility is unacceptable.

A new generation of nuclear power stations would give rise to a new generation of prime terrorist targets. There are nuclear stations even closer to Ireland than Sellafield. I refer, for example, to Wylfa in Anglesey, which will almost certainly be extended under Prime Minister Blair's expansion plans. I am concerned that, like Wylfa, many of the new stations may be situated just off the Irish coast along the UK's west coast. The Government and politicians on all sides must intervene to make it clear that an increase in the number of UK nuclear stations will be extremely hazardous to Ireland. Renewable sources, particularly the UK's wind, wave and tidal energy resources, should be utilised to meet its energy needs instead of increasing reliance on the nuclear option. If that does not happen, there is still the possibility of taking legal action in respect of the new generation of nuclear stations.

Mr. Kenneally: I welcome the Bill and congratulate the Minister on facing up to and dealing with a situation that has particular relevance and in respect of which there is a sense of urgency.

Never in the history of the State have we been so dependent on a substantial, regular and guaranteed source of energy. With the entry of new players into the market, everyone needs to know precisely where they stand and how those new players can compete on a level playing pitch and be guaranteed rights and access to the market. Equally, the public needs to know that there will always be an energy supply, particularly as regards electricity. For all the criticisms levelled at it, electricity has served this nation extremely well, sometimes in difficult economic and budgetary conditions.

Traditionally, the ESB has been the dominant force in the Irish electricity market. This is hardly surprising when one considers that it has been the only supplier almost since the foundation of the State. I previously paid tribute in the House to the service the ESB has given to this country and its people. While I fully realise that there were deficiencies and that we have all had our problems with some aspect of its operations from time to time, the performance of the company has

[Mr. Kenneally.]

been exemplary. As we prepare for a major change in electricity supply and distribution and with more and more companies entering the electricity market, it would be wrong to forget the service the ESB provided to the fledgling State and the technical and financial difficulties the company was often obliged to overcome.

We must recognise, however, that we live in a new Ireland with a new economy, a larger population and a vastly greater demand for energy. The sector must, like everyone else, move with the times. A reliable electricity infrastructure, providing quality performance, is vital for Ireland's socio-economic development. The huge voltage transmission system is similar to our motorways and our broadband telecommunications network and is a component of the backbone infrastructure that supports the economy. In turn, the transmission network forms the backbone of the electricity supply system in Ireland. It is a meshed network of high voltage lines and cables for the transmission of electricity supplies throughout the country.

Electricity peak demand is forecast to increase by approximately 20% over the period of the transmission development plan 2006-10, which was issued early last year. In addition to the 532 MW generation connected to the transmission system towards the end of 2005, connection agreements in respect of a further 770 MW of generation capacity have been signed. All of this is expected to be connected by 2010.

The development plan sets out the development projects that will have been initiated to meet these future needs and discusses the potential for further development in the next five years. The main features of the plan, which involve developments in all parts of the country, include the extension of the 220 kV system into the north west; expansion of the 400 kV system to provide necessary bulk transfer capacity out of Dublin and Moneypoint; strengthening of the networks in and around Athlone, Castlebar, Cavan, Cork city, Galway, Letterkenny, Meath Hill, Newbridge, Tullamore and Wexford; connection of eight new distribution operator system operator stations; connection of ten new generators to the transmission system; reduction of high short-circuit levels in Dublin and Tarbert; strengthening of the Dublin-Louth corridor; and a second major interconnector with Northern Ireland.

In the current era, it is no longer prudent to depend on just one supplier in respect of our electricity needs and the forthcoming developments to which I refer illustrate the importance of guaranteeing continuity of supply and bringing competition into the market. Ireland is a small island with a small population and it makes sense to have an all-island market.

When the ESB was established — a period when we needed a reliable and constant supply of electricity to fuel our growth — there was precious little public capital available and very little

investment money within the private sector. The ESB provided the required stability and we should be grateful to it for that. However, the Ireland of today is not that which obtained in the 1930s. Our needs are now different and far greater.

Security of supply is an important issue and the role that natural gas plays in this regard is often forgotten. For example, natural gas accounted 44% of electricity generated in 2005. In light of the significance of natural gas in the generation fuel mix, security of its supply is a key issue, particularly when one considers that Ireland is heavily dependent on imported natural gas. The Commission for Energy Regulation, is satisfied that the existing infrastructure is capable of meeting anticipated demand in the coming years. It is also satisfied that there are appropriate measures in place to protect security of supply of natural gas. Such measures include interacting with the UK transmission system operator to identify any issues affecting the importation of gas to Ireland and to establish procedures for managing the impact on Ireland's gas supplies of any supply emergencies in the UK.

There is adequate precedent for co-operation between our two islands. One month ago, 16 ESB crews travelled to the UK to help restore power to the thousands of homes that were left without electricity following some of the worst storms there in 17 years. The 16 crews and their managers set off in ESB vehicles to work in the Manchester and Liverpool areas under the direction of Manweb, the networks utility in the area. The Minister congratulated the crews and commented that the sharing of resources at times of need is an important factor in cross-country co-operation. Other measures in place and highlighted by the Commission for Energy Regulation include the establishment of a task force on emergency procedures to ensure a co-ordinated response to a supply issue affecting natural gas on both the gas and electricity systems would minimise any impacts on customers and requiring large thermal generation to be capable of generating on an alternative fuel and requiring five days on-site storage of same.

This is perhaps a good opportunity to refer to the controversy regarding the bringing ashore in Mayo of gas from the Corrib field. This has been stoutly and resolutely resisted by a small number of local people, supplemented by imported protestors with few, if any, links with the area and seemingly little consideration for the future of this country and successive generations of its children. If there are still perceived deficiencies in Shell's handling of the gas pipeline or any other element of its essential operation, I have no doubt the Minister and officials of his Department are well capable, if allowed, of discovering a way to address them in a comprehensive and amicable fashion. As the protests go on and as more information becomes available, the credibility of the protest diminishes

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considerably. It is to be hoped some formula can be found sooner rather than later to fully resolve the issues, but I doubt that all of the protestors are open to such a course. The majority of the local population do not have a problem and the minority do not have an acceptable solution.

An all-Ireland market for electricity will encourage competition among a growing number of players and will inevitably result in economies of scale. There can be sharing of strategic costs and a greater security of supply generally to customers. This will hopefully lead to lower prices, but that will also depend on international fuel price escalations which are totally outside our control. Other than that, competition should help to drive down prices and keep them in check in the same way it does across the entire economy. We see this from other markets, where prices are lower because of competition. We do not need to look beyond our own country to see the beneficial effects of that.

In Britain it is estimated that 11 million out of 26 million consumers have changed supplier, while 8 million out of 20 million gas consumers have changed their supplier. The comparative figure in the republic is only 40,000 and most of those are probably on the commercial side. Those figures are a couple of years old at this stage, but I have no reason to believe they have changed substantially in the meantime. In due course in this country, experience will result in much greater flexibility and less blind loyalty in the customer base.

As the market grows in Ireland, people will have an even greater opportunity to change supplier if they so wish. It will be in everyone's best interests to be more efficient and to hold onto their customer base. The transfer capability of the existing North-South interconnector is restricted, especially for transfers from south to north. The provision of a second interconnector has been studied and costed and will be provided sooner rather than later. The benefits to the island as a whole from the existing interconnector from Northern Ireland to Scotland and a proposed interconnector between Ireland and Wales will not be fully realised without further North-South investment. The next step in meeting our goals is to have a simple wholesale market for trading electricity which spans the entire island.

The Bill envisages that the new market will provide for a common set of trading arrangements that will apply to both Ireland and Northern Ireland. These will be set out in licensing and contractual arrangements agreed with market participants. Day to day trading will be managed by a single market operator that is established by the two transmission system operators, EirGrid and System Operator Northern Ireland, SONI, as a contractual joint venture. An all-island long-term objective would be that by the end of the decade we would expect to see an all-island competitive electricity market where legacy costs have largely disappeared, where the

generating plant mix is much more efficient and environmentally sustainable, and where customers are able to exercise real choice in their selection of supplier.

In recent times most people have come to the realisation that there is not an endless supply of energy-giving fuels. It has also dawned on us that we must rein in our rampant destruction of the environment and that we must start now. We may not be, by any measure, the worst offenders or the greatest sinners in regard to the production of carbon emissions, but we must play our part and be seen to. We must not, of course, continue to exceed our quotas under the Kyoto agreement. There is recent evidence that we have slowed the increase.

It would not take a great deal of effort on our part to reduce the demand for energy. We need only look at the waste of electricity and gas to realise we can do much better. Many lights can be switched off and many machines, from industrial to personal computers, printers, televisions, battery chargers, overnight central heating — the list is endless — can be switched off when not in use to effect considerable savings. The "Power of One" campaign can teach us a great deal.

After some thought, I have come to the conclusion that we are nothing less than spendthrift when it comes to energy. Who has not left on lights that are not required, used clothes driers when the sun is shining, maintained heating at too high a temperature, left the heating running when they are away overnight, failed to put a lagging jacket on the hot water tank, used the hot water tap for simple hand-washing or opened a window instead of turning down the heat? The list is endless. None of these makes a great deal of difference in isolation but together they make a significant saving and, multiplied by a large percentage of the population, the difference can be enormous. The simple message is that if we do not increase our demand for energy, we will not have to produce more and the benefits are great and visible all round.

The debate about electricity generation by nuclear power is still ahead of us. On the one hand is the acceptance of electricity from another country generated by nuclear power, on the other is our continued use of fossil fuels which are rapidly diminishing, particularly by the burning of coal, which, by any standards, is a dirty process. There is also the debate about alternative and renewable energy resources such as wind and wave power, biofuels and hydro-electric. Most of these are being used, but not by any means to the fullest extent. If we were to develop fully these other systems, we would have sufficient generation capacity, with standby access to gas and oil, to do us well into the future.

The nuclear debate lurks in the shadows but like so many other contentious issues in this country, it will be upset by extremist opinion on both sides. I have no desire to promote nuclear energy

[Mr. Kenneally.]

but when the debate starts, please let it be reasoned, measured and logical.

This Bill is a necessary step forward and further evidence that the country is growing up and leaving the constraints of a less than happy past behind us. I commend it to the House.

Mr. Quinn: How many Australians does it take to change a lamp bulb? The answer, according to the newspaper today, is every one of them. Yesterday, the Australians announced that the traditional lamp bulb, which has been used throughout the world for more than 125 years, will be outlawed in favour of the more effective and energy efficient lamp bulbs currently available. The traditional lamp bulb apparently wastes 90% of the energy it uses. The new lamp bulbs are more expensive but are far more efficient. Given that the Minister, Deputy Noel Dempsey, was responsible for introducing the plastic bag levy and received accolades from around the world for doing so, he should consider taking on board this policy.

The concept and the figures I read this morning were startling. Australia is imposing the ban in 2010 and in three years the traditional lamp bulb will be outlawed. The benefits appear to be huge. I mention this because previous speakers have referred not only to energy regulation but also to the challenges, threats and opportunities facing us with regard to carbon emissions and the Kyoto agreement. There is little doubt that the way we use energy and electricity will influence our way of life and our ability to maintain our traditional way of life in the years ahead.

I have no difficulty welcoming this Bill. On an island of this size, there are obvious economies of scale that can be gained by operating one electricity market rather than two. To put this in perspective, even the single market catering for the whole island of Ireland will be always a small market by European standards. That is why, in the long run, we must look beyond the confines of this island in organising our electricity supplies and think not just on an all-island basis but also from a regional perspective.

My reservations about the Bill are fundamental. I am concerned as to whether we have got the regulation of energy right. The present system of regulation, put in place largely at the behest of the EU, consistently acts against the interests of the customer and, by doing so, puts several important national interests at risk. The driving force behind the regulatory process is the creation of a competitive and profitable marketplace at any cost, even if that works against the interests of the customers in that marketplace. If that is the case, it is a crazy situation and one that should not continue.

From a customer's point of view, there are two main priorities with regard to energy. The first is guarantee of supply, that when one turns the switch, a light actually comes on. In the past 20

years we in Ireland have come to assume this will always happen. In some other countries, hotels supply a candle beside a bed because of a lack of guarantee of supply. A national electricity market needs, therefore, to be organised so that the available generating capacity always keeps ahead of peak demand, with a suitable level of reserve constantly available. Traditionally, Ireland has always had that guarantee of supply. It is ironic that in recent years, since this regulatory system was put in place, the issue of security of supply has raised its head. The regulator's first priority, before everything else, should be to provide an assured supply of electricity.

The second important issue to the customer is the price paid for energy. Naturally, people want to get their electricity as cheaply as possible. In many ways, it is a grudge purchase. From the national point of view, however, it is even more important that energy prices are kept to an absolute minimum.

There are two reasons for this, both of which bear on national competitiveness, an issue I have raised in the House on many occasions. Energy costs flow directly into the cost of living, so any increases are directly and immediately reflected in our inflation figures. When the rate of inflation rises, the cost of all items we buy rises as the multiplier effect kicks into action. That is bad for businesses that must compete on international markets. It is made worse when these businesses are also hit directly by increases in their energy costs. It is nationally important to keep electricity prices low. A sharp increase in electricity prices, such as those the regulator sanctioned in the latter part of 2006, can have a severe impact on our ability to compete as a trading nation in markets around the world. That should give us reason to pause. If we are concerned about national competitiveness, as I believe we should be, we must attach a high priority to containing our energy costs to the maximum extent possible. However, that priority, regardless of whether it is shared by the Government, certainly does not seem to be shared by the energy regulator.

The Minister will recall what happened last September. On the basis of what turned out to be a temporary peak in the price of oil, the regulator made the erroneous assumption that oil prices would remain at that peak level for the whole of the following year. He therefore sanctioned increases in the price of electricity to cover that assumption. This was a truly disastrous mistake and only partly undone.

The current price of electricity is still too high. If we need proof of that, we only have to look at the spectacle of the ESB paying the Government a dividend of €350 million from its excess profits. The ESB has no business paying the Government a dividend at all. It should make no more profits than are necessary to invest in its business and provide for its growth. The €350 million, which disappeared into the maw of the Department of Finance never to be heard of again, is money

from electricity customers that should never have been taken from them in the first place.

This is not small change. It amounts to €300 for every household. A figure such as €350 million is hard to understand. It is easier to understand a figure of €300 for every household, a significant part of each one's total annual electricity bill. It is not just about robbing €300 from each family, serious as that is in itself. Robbing each family of this amount just adds to the cost of living and to the spiral of inflation, delivering another body blow to our national competitiveness.

We are the envy of the world in how we have transformed the economy since 1987. Last year I was asked to give several speeches on the Celtic tiger success story in Latin America. I stated there are several reasons but one is our ability to compete. We recognised national competitiveness was important and kept costs low. We are in danger of letting this slip from our minds.

Is our system of energy regulation part of the solution or part of the problem? Our experience so far would lend credence to the theory that it has become part of the problem. A basic question must be addressed. If we fail to address it, we do so at our peril. Have we got our energy regulation right or have we gone astray? If we have gone astray, as I believe there is at least a risk that we have, then it is incumbent on us to acknowledge that fact and take remedial action. If we do not, we will be laying up problems for the future that will become increasingly difficult to resolve as time goes on.

While I support the Bill, I have some concerns about it. We have led the world in other areas. Ireland, for example, is admired around the world for its plastic bag environmental levy, which the Minister, Deputy Noel Dempsey, introduced. However, we cannot be afraid to challenge our traditional thinking in energy generation and regulation.

Mr. Leyden: I welcome legislation that will help improve the rights of the consumer. This Bill legislates for a single electricity market on the island of Ireland and anticipates that the consequence of this will be a greater sharing of resources, more competition and ultimately a drop in prices. The basis for this Bill has been in place since 2000 and this legislation will formalise it. The Leader of the House was previously involved in the drafting of the legislation. Prior to the Good Friday Agreement and cross-Border co-operation, this would not have been possible. This is one of the benefits from the approach being taken. A devolved Administration and Minister in the North responsible for this area would also assist in enhancing this benefit.

Ireland is a small island and the creation of one electricity market makes sense. As far as a reduction in energy prices is concerned, I welcome this change. The proposed increases from 1 January were severe. The idea behind the joining of both markets is that it will provide a larger

market which will attract the entry of new energy providers. If the market is seen as sufficiently attractive to providers, this will bring down prices.

There must be a better deal for electricity consumers. I have spoken before about the outrageous prices consumers must pay for what is an essential service. It is important to use electricity in the most efficient way possible. Senator Quinn's comments on the experience in Australia was interesting. Similar moves are being made in Cuba, where the authorities are active in this regard. The measures being taken by the Australian authorities sound draconian but there is no choice in the matter; we must all take severe action. It would be difficult to enforce legislation imposing restrictions in the style of light bulbs that may be used. Such initiatives are worthwhile, however, and I ask the Minister to consider the developments in this regard in Australia.

The message about using electricity efficiently is being passed on to consumers, who not only wish to improve the environment but are also becoming aware that the efficient use of electricity will reduce their bills. When electricity prices increase, however, will these savings be obvious to the consumer? If their bills are the same or even higher, it may seem that the efforts they make to become more efficient are for naught.

The division of the electricity market on this island into North and South is economically unfeasible if we wish to ensure a better deal for consumers. I have already mentioned the importance of a larger market in attracting energy providers. On joining the two markets there is the question of making efficient the generation and provision of electricity. There is a duplication of electrical plant north and south of the Border, one that flies in the face of efficient energy provision. This is particularly evident in County Donegal where the supply was previously brought up from the south, instead of coming from Northern Ireland. The northern part of the country would be clearly more efficiently served from the Northern counties. This Bill will facilitate that improvement.

Another provision of the Bill is that it will require all providers to make available to the grid all the electricity they generate. This means that if they generate more than a certain amount of kilowatts, they are legally compelled to provide that electricity to Irish consumers. This will ensure an efficient use of energy and will presumably have the knock-on effect of bringing down prices.

At current estimates, the price of electricity will rise by between 0.3% and 3.0% in 2008, with a reduction coming in 2009. These figures are based on calculations taking into account the current use of fuel to generate electricity. While I welcome legislation that seeks to rationalise the market to provide a better deal for consumers, I also recognise that the generation of electricity

[Mr. Leyden.]

is dependent on other markets, especially that in fossil fuels.

Any reduction in energy costs should be achieved alongside greater efficiency in domestic and commercial use of that energy. This is being achieved in many cases. Other sources of energy apart from fossil fuels should be explored. While good work on this is being carried out by agencies such as Sustainable Energy Ireland, more should be done. I commend the Minister on the inclusion in the budget of many measures for the provision of alternative and sustainable energy.

The Minister may be in a position to respond to the statements made by Mr. Eddie O'Connor on the "Today with Pat Kenny" show during the week.

Mr. Finucane: The Minister responded well on "Morning Ireland".

Mr. Leyden: I welcome his response. It is difficult to keep up with all the various radio programmes on both local and national radio. I heard Mr. O'Connor's statement in which he compared the regime here to the one in Texas. He claimed it took some 72 months to be allowed to feed into the national grid using the method of electricity generation he operates.

In regard to energy conservation, most modern electrical appliances have an automatic turn-off facility. Newer televisions sets, for example, will turn off rather than go on stand-by, which was extremely expensive. Ensuring televisions are completely shut down saves considerable electricity and is also safer. The "Mooney" programme on RTE Radio 1 has run a campaign asking consumers to switch off appliances. Such information campaigns can make a great difference and prevent massive wastage. A general awareness of what is achieved by one person turning off a light bulb can have an enormous impact on overall consumption of electricity.

I previously made the point that there is a difference between the standing charges for rural and urban electricity consumers, with the former paying a far higher rate than their urban counterparts. The regulator makes the provisions in this regard and I appreciate that it is not the Minister's direct responsibility. It is an issue worthy of detailed examination. Rural electricity consumers have been paying for the capital equipment for a long time. Electricity was introduced in rural areas in the 1950s and the standing charges have increased steadily. One might live within a few yards of a town but pay a higher rate if one is deemed to be located in the rural rather than the urban area. It is unfair that people living in rural areas, including those in the Minister's constituency in County Meath, must pay a higher standing charge than those living in nearby villages and towns such as Navan, for example.

This Bill represents a great achievement for the Minister, particularly its arrangements for North-

South co-operation. I recall a time when the interconnector was constantly attacked and disrupted. There is now a completely different atmosphere, which was achieved through the work of the Minister and the Government. The Anglo-Irish Agreement, Good Friday Agreement and St. Andrews Agreement have led to the current situation where the Minister can bring forward this legislation and, vitally, make it work. Nobody will impede the implementation of its provisions on either side of the Border and the devolved Administration will be very much in tune with the Minister's intentions. His British counterparts are working with him in this regard and I assume legislation is being processed in the British Parliament to allow this to happen. The Minister might comment on that.

I support this Bill and welcome the expansion of the market and new regulations it will bring. Irish consumers will benefit from it.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I am pleased to have the opportunity to conclude the Second Stage discussion on this Bill. I thank all the Senators who contributed to this debate. I hope to discuss some of the points they made in greater detail on Committee Stage.

In response to Senator Leyden's last point, this legislation is being produced in parallel with the corresponding legislative provisions of the British Government in respect of the North. We have an obligation to synchronise the timescale of the legislation with that in Westminster. The order in council for the single electricity market legislation for the North was to be laid before the British Parliament on 19 February and will be considered by both Houses of Parliament in the week beginning 12 March. Once this is completed, by 21 March, the order in council will be made at Privy Council. It is hoped that we will have concluded our business here by that time.

This Bill is a key element of a suite of measures that will allow the Government to continue to drive forward a progressive energy agenda. The enactment of the Bill will underpin the establishment of the single wholesale electricity market on the island of Ireland. Like Senator Quinn, I hope this development will be to the benefit of all consumers, both individuals and industrial and commercial consumers. We should place the Bill and the creation of the new single market in the context of long-standing co-operation between the two jurisdictions on common energy issues. What has been achieved to date offers a model of best practice in developing co-operation between North and South. It is fair to say that of all the areas of co-operation and discussion, energy may be the area in which the most tangible progress was made in the last decade. I thank Members for the general welcome they have given the Bill and for their comments, some of which I will deal with now.

Senator Finucane referred to the potential benefits for consumers, especially domestic, from an enlarged market. While the focus of this legislation is on the wholesale side of the market, the long-term cost benefit analysis being carried out indicates a net social benefit of approximately €150 million over ten years. That benefit will be shared almost equally between North and South, with a slightly greater benefit accruing to the North.

Senator Quinn spoke about regulation and I do not take issue with the points he made. However, it is a similar situation to that of the man looking for directions who was told he should not start from where he was. We are halfway through a system which, with hindsight, was not the best possible model. However, we are stuck with it and must make the best of it. There is something perverse about the system but I do not blame the regulator because he must work within the regulations handed down from Europe.

One of the mistakes made in Europe was attempting a one size fits all model for the entire European market. We are a small peripheral nation at the edge of Europe with a small market and very little interconnection, which should have been taken into account at the time, although not in the form of special pleading. To put it crudely, Europe tried to introduce more competition by encouraging more players into the market to increase competitiveness. However, to make participation attractive in a market such as Ireland, with no interconnector and at a remove from the European mainland, the only way is to push up the price of electricity. That is not good for consumers, business or industry.

I do not disagree with Senator Quinn's analysis. However, we cannot persuade Europe to change the regulatory system, although I have raised the matter on a number of occasions. We must work within it and find ways other than raising the price of electricity to make it attractive for other players to enter the market. Some of what is in the Green Paper and what Senators will see in the White Paper, such as the decision by CER last November on licensing the Aghada plant, give an indication of where we want to go. We want to reduce the dominance of the ESB in the market, to make it more attractive for others to compete. As Senator Kenneally said earlier, it is easy to criticise the ESB for inefficiency, and such criticisms have been well made by a number of people, but we should balance it by acknowledging the very good job it has done over the years when nobody else was interested in the market. Time moves on, however, and business and consumers are entitled to expect legislators to seek to mitigate costs as quickly as possible.

A number of Senators, from all sides, said the competitiveness of the economy had to be the overriding consideration rather than the protection of monopolies or the ESB. We want to continue with a strong ESB but do not want that strength to be at the expense of consumers and

industry because the general economy would lose out. I presume Senator Quinn was referring to a five-year dividend of €350 million because the dividend paid to the State last year was approximately €70 million. ESB profits were approximately €350 million but, because we have instructed it to act commercially, it must secure a rate of return so that it can borrow to continue to finance the major upgrade it has undertaken.

Senator Kenneally stressed the need for market certainty and stability, which is an essential point that goes to the core of the issue. Throughout the process we have held widespread consultations involving all the players. I have met utility companies and other stakeholders, such as regulators North and South, and have received no negative feedback. That consultation has enabled us to make the progress we have made. The licensing provisions in this Bill are phrased particularly to ensure a level and competitive playing field, which is very important.

Senator Leyden made a number of points on energy efficiency, as did Senator Finucane. That is not related to this Bill but will be a very important part of energy policy in future. Senator Finucane expressed the wish that Fine Gael would be in power after May so that it could look after these issues.

Mr. Finucane: The Minister will pass on the torch.

Mr. N. Dempsey: I will not rise to the bait in that regard. No matter who is in power, and I have a good idea who it will be, it is important that the focus on energy efficiency continues.

A number of Senators asked about the benefit of the interconnector and the single electricity market, SEM. The SEM represents stage 1 in the creation of a regional electricity market in Ireland. Stage 2 will be facilitated by interconnection to the UK system and onwards to the system in continental Europe. We are committed over the lifetime of the White Paper to becoming a regional market, in line with EU energy policy. We are working with the UK towards that goal and the UK is working with France, the Netherlands and Belgium, among others. Within ten years there will be a regional market where electricity will be bought and sold and will flow in both directions and obviously the interconnectors are important to that. I had discussions with EirGrid and the CER on Monday to ensure substantial progress is being made. I am satisfied the dates we have at present, not later than 2012 for the east-west system and 2011 for the north-south system, can be met. It is always a risk to predict how long the planning process will take but assuming everything goes well, we will meet those targets.

I thank Senators for their welcome for the provisions of this Bill. It is important that we work together on this and I look forward to more detailed consideration on Committee Stage next

[Mr. N. Dempsey.]

week, with the overall objective of adding the Bill to the Statute Book as soon as possible, staying in line with the timetable in Westminster.

Question put and agreed to.

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

Mr. Kenneally: On Tuesday, 27 February 2007.

Sitting suspended at 12.45 p.m. and resumed at 2.30 p.m.

Health Service Reform: Statements.

Minister for Health and Children (Ms Harney): I propose not to use a script if that is in order.

Ms O'Rourke: The best people do not.

Ms Harney: The topic for discussion this afternoon is the health reform agenda. The words "health reform" are meaningless to most people. Essentially health reform concerns improving services to patients in all areas of the health system, including at hospital level, in the disability sector, in the mental health area and in acute hospitals. The journey the Government has begun of reforming the administrative and management system in the health service with the establishment of the HSE, the amalgamation of all the health boards and many other organisations — in all more than 50 organisations were submerged into the new organisation known as the Health Service Executive — is but a means to delivering better health care services for patients.

In the past decade we have increased the funding of health care by fourfold. This year's current expenditure on the provision of health care services will be just under €15 billion and we will spend more than €500 million on capital services. On capital investment in health, along with Norway, we are at the top of the league in the OECD, spending as we do in excess of €500 million this year. In 1997 expenditure on health was 15% below the OECD average. By 2003 we had gone to more than 17% above the OECD average and no country in the world has ever increased its expenditure on public health at the rate at which we have done in the past decade. As we invest that money people are entitled to ask whether we are getting the value for that investment, whether we are getting the outcomes for patients and whether we are getting the services. Clearly investment on its own, without reform and without changing the way we do business will not change the outcomes we all expect for patients.

There have been considerable positive aspects in recent years. Since the cancer strategy was introduced we have employed more than 100 additional cancer consultants and 300 more specialist nurses. Mortality from cancer has been reduced by 15%, considerably ahead of the tar-

gets that were set, which is very encouraging. Clearly where we provide a world-class service in terms of the expertise and the manner in which we organise the service, we do well. Children's cancer services used to be provided in two hospitals in Dublin. Even though it may have been delivered in other hospitals around the country, essentially it was planned in two hospitals in Dublin, at Tallaght and Crumlin. That service was centralised into the hospital at Crumlin a number of years ago. Even though it is planned in Crumlin, much of the chemotherapy etc. can be delivered locally in approximately 15 or 16 other places. Ireland is top in the European Union in outcomes in children's cancer. That is not the case with other cancers because of the fragmentation of the service.

Much of what we are doing in health care is trying to bring best international practice to the provision of services. This can be extraordinarily controversial. For example we know from evidence internationally and from experts in Ireland that a woman receiving breast cancer surgery in a unit performing fewer than 100 procedures per year does not have the same outcome as a woman whose surgery is performed in a unit carrying out 100 procedures or more per year. In many places surgeons can perform as few as four or five breast cancer procedures in a year. From all the evidence from both home and abroad we know that does not give good outcomes and does not provide the service women are entitled to expect.

A number of months ago I established a group led by Professor Niall O'Higgins to make recommendations on symptomatic breast cancer to set standards. Those standards are due to be presented to me shortly and will be implemented across the country. The cancer control strategy that the Government endorsed less than a year ago and which is now the policy of the HSE is about ensuring that wherever in the country cancer services are provided, they are all provided to the same national standard which leads to the outcome everybody is entitled to expect.

Much of the debate on the health services centres on hospitals. In reality we spend more than 60% of the day-to-day health budget on primary, community and continuing care. Just over 30% of the budget goes on hospital services. However, much of the focus and public debate is on hospital services. Clearly hospital services are incredibly important. There is a debate on the number of acute beds we need. We have 13,500 acute beds in the public hospital system. At present I believe we have approximately 1,900 to 2,000 beds in the private hospital system. That stock of beds is greater than the number of beds available in Sweden. Some 11% of our population is over 65, compared with 18% in the UK and 27% in Germany. When considering acute hospital beds we must do so in the context of the population. Clearly older people are more inclined to use the acute services because a greater number of people are ill than in countries

with a younger population. Therefore the debate should not be just about the number of beds. Clearly we will have the number of beds we require and the HSE is carrying out an audit to establish future needs in this regard. In the past ten years we have invested in approximately 170 new beds each year. In the previous period it was 30 new beds per year.

The issue with beds is how they are used. For the top 20 procedures patients spend 50% more time in hospital in Ireland than they do in Australia. Even within Ireland in some hospitals patients having an appendectomy can spend 3.5 days and in others they spend 6.5 days. For a hip operation it can vary from one week to more than two weeks. Clearly we must ensure we have the appropriate stay in our acute hospitals. One of the most effective ways to ensure people do not spend longer than they need in hospital is to carry out ward rounds every day in order that patients are seen by a consultant every day because if they are not seen by a consultant they will not be discharged to go home.

We have too few consultants in our health care system. We have approximately 2,100 consultants and need double that number. We have more than 4,000 junior hospital doctors and need approximately half that number. While we need 6,000 doctors in our hospital system, we need half the number of junior hospital doctors and double the number of consultants. That is the reason I am keen to employ new consultants on the basis of a new contract of employment that meets the health care needs of the 21st century rather than a contract of employment introduced in different circumstances which most of those who have viewed it would agree does not meet the needs of our health care system. It has been described by Dale Tussing as the most attractive hospital consultants' contract anywhere in the world. I do not necessarily say that is my view. I am sure others would have a different view. The fact is it does not serve our needs.

What do we need from a new contract? We need doctors working as part of a team. We need a clinical director in charge of that team. We all accept the hospital manager is not the appropriate person to be in charge of the independent clinical decisions that are made by physicians or the rota and so on that doctors work. We need doctors available 24 hours per day, seven day per week if that is what is required. Clearly that will not be required in every specialty. We cannot have a position where junior doctors are covering because we do not have enough hospital consultants.

Recently I spoke to a respiratory physician who did a round on a Saturday in his accident and emergency department. He told me he was able to send home seven patients whom his junior doctor had decided to admit to the hospital because he had the confidence to make that decision. He knew they did not require to be hospitalised and was able to make a follow-up

appointment with them for his outpatient clinic the following week. That is the kind of decision making one gets when a hospital consultant has the experience and the confidence to make those decisions. That happens in other health care systems as much as it happens in the Irish health care system.

I am optimistic about the talks process which began yesterday. I was happy to read this morning that all sides said the atmosphere was cordial and businesslike. We are now at the stage of discussing what the nature of that new contract of employment should be. It is ironic that it has taken so long to get to this point. One would think the Minister for Health and Children was trying to reduce rather than increase the salary of the doctors. If the reform does not work, there will probably come a day when a Minister for Health and Children will have to negotiate a salary reduction rather than a salary increase. If this is how difficult it is to get a new salary negotiated that will enhance the payments and change the work practices of consultants, I shudder to think what the experience will be of the Minister who will arrive with an opposite agenda.

Obviously the health care system is very dependent on nurses. Some 35% of those who work in health are nurses. There are 12.2 nurses working in the system per 1,000 of population. In France the number is 7.5 nurses by 1,000 of population. In the EU it is 8.5 nurses per 1,000 of population. We have more nurses working in our health care system than in any health care system in the world. As the House is aware the nurses have served notice of industrial action commencing this Friday.

Nurses' pay is part of public pay. The Government's public pay policy is negotiated through the social partnership agreement. Recently the Government made an arrangement with trade unions representing hundreds of thousands of workers who have endorsed that agreement. Effectively, it delivers a 10% pay increase over the next 27 months. Separate from the national pay agreements there is a benchmarking process which benchmarks public sector pay against private sector norms. Nurses have a number of issues. We are seeking to encourage them to use the benchmarking process to have these matters adjudicated on. The eight claims have gone to the Labour Court which has recommended that some be considered in the context of benchmarking. I have already put on record that in the area of mental health, those reporting to nurses earn approximately €3,000 per year more. Some 1,000 nurses are affected and clearly that is an anomaly we are open to having adjudicated on and resolved in the benchmarking process.

The issue of a 35 hour week is different matter. I said in the other House yesterday, and I repeat it here, that if it is the case that nurses will do in 35 hours what is currently done in 39 hours, the Government is open to discussing that issue. If it is the case that to reduce the working week from

[Ms Harney.]

39 hours to 35 hours we will have to employ an extra 4,000 nurses when we already have more nurses in our health care system than any country in the world, clearly we cannot do that. That is why I have said on a number of occasions recently that we should have a process or a forum where these issues could be discussed with all stakeholders in the health care system.

We need to do with health, in terms of reform of work practice, what we did with the economy in the mid-1980s. At that time the social partners and Government got together, had a shared analysis of the problem and had the courage to come forward with a programme of change that has delivered much of the economic success we enjoy today. There should be a similar approach with all the stakeholders together discussing how they can change work practices so that people can work together as part of teams, and how diagnostics can be used on a longer day basis than under the current arrangement. Effectively, after hours diagnostics can only be used on an emergency basis because of the manner in which people are remunerated and it is extraordinarily expensive. We need to change working arrangements to deliver services for patients when they need them.

Negotiating these changes with individual groups of workers is not as satisfactory as seeking to do the change with all the worker representatives together because people must work in a team. Having a changed circumstance with one group of employees will not work if we do not have another group of employees on side for the process as well.

Recently we provided for nurses to prescribe. I want to empower nurses in our health care system. They are an under-used resource in terms of their experience and expertise. Nurses should be able to order diagnostics. That a nurse in an accident and emergency department cannot order an X-ray for a patient and must wait until the doctor comes to order it is crazy. If the nurse could order it, when the doctor comes to see the patient, he or she would know from the diagnostic results what was wrong with the patient. Under our system we must wait for the doctor to order the diagnostics. These are crazy practices that have built up in our health system for many years that do not exist in other countries.

We must embrace change and empower nurses. I believe the nurses' organisations are up for that change but it must be done in the context of wider reforms reflecting other groups of workers. Certainly the Government will sign up to the idea, first mooted by the Irish Congress of Trade Unions, to be fair, of a forum or a process and I hope all stakeholders in the health care system, including consultants, will do so because it could be an innovative way of delivering the kind of change that reflects the needs of patients, and of genuinely improving the health care system.

The focus in the reform is on moving more services into the community and primary care.

Last year we chose to support 90 primary care teams. Such teams include general practitioners, specialist nurses, public health nurses, physiotherapists, occupational therapists, dietitians and so on. These teams, working together, can provide an enormous service to the public. For example, all over the world it has been established that if chronic illness, such as diabetes, is managed, the cost of medication is reduced, as is the need for hospitalisation in many cases. The management of chronic illness must be done at primary care level. We are providing resources to the Health Service Executive to initiate chronic illness management at primary and community care level.

A major issue for society and one that puts enormous pressure on the public acute hospital system is the issue of care of the elderly. We have more than 22,000 people in residential care over the age of 65. International evidence suggests that approximately 4.5% of people over the age of 65 require residential care because they are not in a position to be cared for at home or in the community. We are at that figure. However, one third of those in residential care in Ireland today need not be there if home supports or community supports were in place. The policy is to put in place home supports so that older people will only go into residential care as a last resort. The preferred option of older people, their families and all the representative bodies that represent older people is to provide support at family and community level.

By the end of this year, 5,000 older people will be supported at home through home care packages. These packages are customised around the needs of the individual and average approximately €450 per week. Some are more expensive, some less so, depending on the particular needs. Whether at the €450 level or a lower level, they are substantially less expensive from a financial point of view than residential care and are the preferred option. International evidence suggests that if people can remain at home, they live higher quality lives and, on average, live two years longer than if they reside in residential care. That is the international evidence. We do not have data in Ireland.

Supporting people at home is not just about a home help or meals on wheels, important as they are. It is also about having services at community level. For example, physiotherapy is very important for older people, while chiropody is a very basic service. We still have huge shortages in some of these areas at community level, which is why, in recent years, we have considerably increased the number of therapists we are producing from our education system. This must continue. The new school of podiatry will open shortly in Ireland where we can train our own chiropodists. At the moment, they must be trained either in Northern Ireland or overseas.

Education and training are essential in the health care system. We are producing 325 medical

graduates at present. The Government decided some time ago to accept the recommendation of the Buttimer and Fottrell reports to more than double the number of medical graduates. That increase began this year with the provision of, I believe, 60 places at undergraduate level in 2006. This year, an extra 40 places at undergraduate level will be provided and for the first time, graduate entry into medical school will begin. When that process is completed in a couple of years, we will be graduating over 725 doctors from Ireland and the EU. This should be sufficient to meet the needs of our health care system. Certainly, the intention is that we will have enough graduates from our own stock. We will always want to supplement that with the people coming from overseas to work in our health care system, but we clearly need to educate more doctors in our medical schools here. This process has now begun.

Clearly, in many areas, there are negotiations underway with various organisations, including general practitioners in respect of the reform of primary care and, in particular, the GMS. Those negotiations are ongoing and I hope they will be successful. A key part of them is the management of chronic illness at community level.

Equally, we must negotiate with pharmacists. The HSE and my Department had a very successful round of negotiations with producers of medication, namely, the pharmaceutical industry and the medical device sector. When this new contract is fully operational we will save approximately €100 million per year. The HSE then began to negotiate with the wholesalers, of whom there are three in the Irish market. Shortly after these negotiations began the wholesalers produced legal advice sent to them by a pharmacist. This advice suggested that they could not negotiate with the HSE because the outcome of their negotiations would affect the prices paid to the retail sector, namely, the pharmacists, and would therefore be illegal under Irish and European competition law. This was a surprise to us. We were not aware of it.

The HSE obtained its own advice, which confirmed that what the pharmacists said was true, and the Attorney General has so advised. Under EU law it is not open to the State to negotiate prices with pharmacists or any other group. It can negotiate a contract and the nature of what is in that contract, but a different process must be found to settle price. I hope that we will be able to find a mediation or independent process chaired by somebody that is acceptable to both sides to be able to discuss the nature of the contract we wish to have with community pharmacists. I have spoken to the HSE and hope we can put this in place in the coming weeks because it is important. I wish to put on record, because it is misunderstood, that it is not a question of not negotiating with any union. That is not the issue. The issue is that under European law, the State cannot set a price with any group of citizens. It

can only negotiate price with its own employees. This is why a pharmacist asked me recently why I was negotiating with the consultants. They are our own employees and are in a different category to people who are self-employed and in their own business. I believe a resolution can be found and we want to work on the basis of being positive and making progress, not on the basis of putting our heads in the sand and saying we will not talk to anybody. That is not my approach nor is it the approach of the Government or HSE.

I will not mention hospital acquired infections because I was here last week to discuss that matter. I say this because I fear Senator Browne will accuse me of not talking about hospital acquired infections.

Mr. Browne: I would never accuse the Minister of anything.

Ms Harney: We had a long debate on the matter and there is a strategy in place, in particular to recruit infection control nurses, surveillance scientists and antibiotic pharmacists. I have said many times that hygiene is a significant issue in our hospitals. It has a role to play in respect of infection. Hand hygiene is the most important form of hygiene in this regard, but hygiene in general is important. The two hygiene audits that have been carried out have thrown up some very interesting results. First, they have shown that it was not a question of the hospitals that outsourced performing worse than hospitals that had their cleaning service in house. Equally, the audits showed that it was not a question of old hospitals performing worse than new ones or that hospitals with microbiologists performed better than those without them. What it did show was that it did not matter whether the hospital had insourced or outsourced services or a combination of both or whether the hospital was old or new. Hospitals that were well managed performed extraordinarily well. The good thing about the second audit was that there was a huge improvement across the hospitals, which is very encouraging. It proves that one can manage what one measures.

Clearly, this feeds into wider issues. We know the biggest issue affecting MRSA is the over-prescribing of antibiotics. Senator Henry gave an excellent speech here last week on many of these issues. Among the issues being dealt with by the HSE is a programme of education for general practitioners which must include patients as well. The countries I have looked at which do very well in this area, for example, the Netherlands, place huge emphasis on informing and educating general practitioners and patients. We all tend to become a little obsessed with the need for antibiotics if we start sneezing. The number of people I know who have antibiotics in their hand bags is incredible. To be honest, before I got this job, I would have thought that having antibiotics is a good thing because one gets over the cold quickly

[Ms Harney.]

and that is the end of it. If we do not need them, we should not take them because we become resistant.

In respect of swabbing patients when they go into hospital, one could have MRSA in one's nose but not on one's hands or *vice versa*. Dr. Neligan, who is not a fan of mine and writes about me at least every second week and sometimes every week, recently addressed a Fine Gael meeting in the midlands. I will probably encourage him to write about me again. A friend or two of mine attended the meeting, during which he told the audience that half of them were carrying MRSA and I believe they were very shocked. They were not carrying MRSA because they were members of Fine Gael, but the reality is that we all carry it. When people are sick, they are more vulnerable and when one is in an environment where is a lot of sickness, one is clearly more vulnerable. In respect of isolation, the hospital of the future, which it will take quite a long time to reach, will probably be one with single rooms. The new children's hospital we are building will have single rooms for these kind of reasons.

The decision on the children's hospital has been made and endorsed by the Government. There is no perfect site. One thing we do need is a national children's hospital for very sick children with cancers or who require heart surgery. As Linda Dillon, a woman from Crumlin who tragically lost her daughter, Alice, to cancer last year, said to me in my office and subsequently on "Morning Ireland" recently: "Get on with it. Let us not have any more reviews, delays, analysis. We have been waiting a long time for get what our children need, which is a world-class hospital". We are going to get on with it. The consultants are currently scoping out what will be in the hospital, but I hope it will be a hospital with single rooms so that as we move with new hospital developments, we cater for the issues that arise with serious illness and infection. I have had discussions with the HSE and my officials in this respect.

It is a pleasure to be here. I apologise to my officials for having to write this wonderful script. If anybody wants it, they can have it. There is a considerable amount of regulation. The Medical Practitioners Bill is being moved in the other House on Friday. Its purpose is to regulate the medical profession. This Bill is long overdue because it is 30 years since we had the last Bill. The Cabinet cleared the Pharmacy Bill yesterday. Believe it or not, we are reforming an Act from 1875. I understand that 30 years ago, a predecessor of mine informed an annual dinner that it would be done in the following six months. This has been a minefield and is a great tribute to the officials who have worked very hard on it.

The Health Bill 2006 will establish the Health Information and Quality Authority, a new State body responsible for authoritative information, setting standards and inspecting against those

standards. There is a huge amount underway on the legislative side, as well as on change at HSE level.

My aim and that of the Government, and I believe, everybody in this House, is to have a world-class health system in Ireland and to have people visit this country in the future to see how we did it in the same way they visit today to see how we created our economic success. This is the ambition we have set for ourselves and there is no doubt it is achievable. It is not achievable overnight and will not be achieved next year or the year after. It will take quite some time to get there, but get there, we will.

We have fantastic people working in our health system and can attract some of the world's leading physicians and nurses. Recently in our public hospital system, a therapy known as
3 o'clock brachytherapy has been introduced for prostate cancer in University College Hospital, Galway by Dr. Frank Sullivan, an Irish doctor who has returned home. Until then one could have that procedure only in a private hospital in Dublin and a few years prior to that one could not have it in Ireland. Wonderful things are happening. We have fantastic world class clinicians. We want to put in place a contract of employment, working arrangements and facilities to match that expertise at every level in the health system. We are lucky we have the resources to be able to do that. As we invest, through reform we will deliver and get closer to the day we achieve that world class health system to which we all aspire.

Ms O'Rourke: Hear, hear.

Mr. Browne: I welcome the Minister and her officials. I agree with most of what the Minister said.

Ms O'Rourke: Good.

Mr. Browne: I wish to start on a positive note but, unfortunately, I will not be able to remain positive for long. We face major problems in the health system. The reality is people are living too long.

Ms O'Rourke: Oh dear.

Ms White: Our life expectancy is below the OECD average.

Ms O'Rourke: What about euthanasia?

Ms Harney: I do not agree with euthanasia.

An Cathaoirleach: Order please.

Mr. Browne: As people are living longer they are putting enormous pressure on the health service. People now survive illnesses that would have killed them previously. Unfortunately, the health service is a victim of its own success. As

quickly as it cures one illness, another one comes along that may kill a patient subsequently. Regardless of the Government in power, preparing for all eventualities is an ongoing battle.

The Minister is correct in what she said about nursing homes and elderly people living at home. Unfortunately, due to changes in society more women are in the workforce and people are not able to care for their elderly relations in the way they did in the past. There are more single parents and society in general is different. It is difficult to keep pace with changes in society, advances in medicine and increased longevity.

The Government has been in power for ten years and the Minister, Deputy Harney, has been responsible for the health portfolio for the past two and a half years. I have not been in the Cabinet and I do not know what goes on there. I am sure Senator O'Rourke could share her expertise in the area.

Ms O'Rourke: I will not tell Senator Browne.

Mr. Browne: I am sure other Ministers were entitled to speak on health issues when they arose in the past. I am amused by the impression given by the Minister, Deputy Harney, that she opted out of any Cabinet discussion on health for seven and a half years and became involved in it only in the past two and a half years.

Ms Harney: No, that is not the case.

Ms O'Rourke: She was most vocal on the matter.

Ms Harney: I was.

Mr. Browne: Senator Mansergh would have us believe the world began in 1997 and the Minister, Deputy Harney, would like us to believe health issues date only to 2004 when she was appointed Minister.

Ms Harney: I do not believe that. It is not even my own propaganda.

Mr. Browne: That is the impression one gets at times. There are significant challenges ahead for anybody who will have that responsibility. I believe we can make a difference. I am pleased the Minister is being upbeat about changing the system. It depresses me to hear people say it does not matter who is in charge of health, that nobody can make a difference. I believe we can. For instance, improvements in cardiology have been a great success. My mother had a leaking valve replaced ten or 15 years ago — on the eve of the 1992 general election. It was not great timing.

Ms Harney: She was so shocked at what was going to happen.

Mr. Browne: She had a major heart attack the night before the election. Currently, one hears of

very few bypasses. They have been replaced by stents. This shows what can be done. The Minister referred to advances in prostate cancer and in other cancer services. Unfortunately, other areas are not performing as well.

I have no major difficulty with the HSE. It makes sense to have a unified system for running the health service. It allows us to compare what happens in different areas. The Travers report outlined different approaches to legislation and regulations by health boards which led to chaos. Currently, even if rules are wrongly interpreted at least there is a uniform approach and scope to compare and learn from what happens.

The PAD system is still not working according to plan. Members of the Oireachtas are still not getting replies quickly enough to their queries. As Opposition spokesman I raise many issues, not to score points against the Minister or anyone else. I do it to try to bring about an improvement in the health service. It is amazing the stories one hears from people. It is difficult to believe some of them could be possibly true but it appears they are when one investigates them. It is important for us to point out where the health service is not working in order that we can improve it.

Getting information is a real problem. Anyone who is a member of a regional health forum is aware a question must be tabled a week in advance and only one supplementary question is allowed. That is not very democratic, especially when meetings take place only every few months. That system must be beefed up, in the interests of democracy and of patients who have difficulty getting information. The odds are stacked against us.

It was significant there was no major announcement on health last weekend at the Progressive Democrats conference, apart from the issue of an ombudsman for the elderly. The main focus was on tax cuts which says it all about the Government.

Ms Harney: It mainly says something about the media because I made a long speech about health. Liam Doran and Gary Courtney spoke also and wonderful things were said.

Mr. Browne: We all face that difficulty.

Ms Harney: I would have invited Senator Browne if I had known he was interested.

Mr. Minihan: Senator Browne should have come.

Ms Harney: He would have been very welcome.

An Cathaoirleach: Order, please.

Mr. Browne: My good friend looked after the Minister for the day.

An Cathaoirleach: Senator Browne should be allowed to speak without interruption.

Ms Harney: We even had the former Taoiseach, Dr. FitzGerald.

Mr. Browne: Very good. The Minister is correct about nurses pay. If nurses were to have a 35 hour week it would mean they would be off for six weeks extra in a year. It would cause chaos in the health service if they cut back by four hours a week. We must be careful on this issue.

Another cause of concern is the number of different trade unions involved in hospitals. The Minister may correct me if I am wrong but I understand there are 11 different trade unions in Waterford Regional Hospital. It must be a nightmare to negotiate with staff. As soon as agreement is reached with one group another would be out of kilter. I do not blame the Minister for this but I blame the Taoiseach who has allowed the situation to develop over the years. It is well and good to be cosy with the trade unions but one ultimately pays a price.

Ms White: For God's sake.

An Cathaoirleach: Order, please.

Mr. Browne: The number of different trade unions can lead to problems.

Boards of management are badly needed for HSE hospitals. I understand some hospitals in Dublin, such as The Coombe, has a board of management structure similar to that in a primary school. This approach ensures some lines of accountability. We need to reintroduce that system into HSE hospitals and have people on the boards who can govern and be held to account.

I am interested in examining the issue of private health insurance. I disagree with the Minister's approach to take part of the value of a person's house to pay for nursing home charges. I urge her to negotiate with the private health insurance companies in order that they would include an option for people to pay an extra premium if they so wish to cover their nursing home charges down the line should they end up in need of nursing home care. Only 5% of the population requires nursing home care. People might prefer to do this rather than have the value of their houses taken into account at a later stage. More than half the population has private health insurance. People would be more than willing to pay a few extra euro every week to be set aside for a nursing home fund should the need arise. Nobody knows how long they will spend in a nursing home, whether it will be for a week or up to three years.

The Minister referred to a world class health system. All any Member wants is to ensure people are safe when they go into hospital. If we could pick one thing to happen in the next five

years my wish would be for the health system to be as safe and clean as the food industry. The Minister referred to that issue in the Dáil yesterday. She stated abattoirs are cleaner than hospitals. I read a quotation in *The Irish Times* today.

Ms Harney: I did not say abattoirs, I said factories. Abattoirs can be pretty dirty places.

Mr. Browne: I made that point lately to the Minister of State, Deputy Seán Power, and he looked back at me in complete bemusement. It would be a major achievement if we could say that in five years' time the health system in Ireland would be as clean as the food industry, and that we would have in place the same stringent standards in order that a person could go into a hospital and not pick up a fatal bug. The Minister deserves some credit for the hygiene audits but that is only the start of the battle. The question now is to take it a step further to ensure all hospitals are as clean as they should be.

In regard to primary care teams, I was disappointed to see the recent resignation of a key person in the HSE. I understand it was due to frustration with some doctors who are not playing ball on the issue. The private sector is moving into this area. I understand they are developing primary care centres. This approach makes sense in so far as all the required services are available in one place, for example, chiropodists, physiotherapists etc. I regret the lack of feedback from doctors on this issue, even though I have been in contact with them on numerous occasions. As far as I can gather they do not tend to make known their views to anybody. The focus should be on the patient at all times. Doctors must remember this. Today and last week in the Oireachtas Joint Committee on Health and Children the Minister acknowledged the need to increase the number of medical graduates and the number of people opting to study medicine at postgraduate level.

People are living longer and the new generation of doctors will not make house calls to the same extent or work the same hours as before. We must prepare for that now. The Minister for Health and Children is correct in referring to a doubling of medical graduates but this is not sufficient. The figure should be trebled. Many doctors are keen to work from 9 a.m. to 5 p.m., Monday to Friday. I do not envy any doctor on call who receives a telephone call at midnight from a person with chest pain and who must decide if it is a heart attack or indigestion. We must recognise that doctors are not prepared to work the long hours worked by previous generations.

We must examine preventative health care. Many people suggest the Department should be called the Department of disease because we tend to be reactive rather than pro-active. Has the Minister negotiated with the Minister for Education and Science to ensure every secondary

school has a physical education hall to allow students to exercise and get fit? We all have a responsibility to care for our health. Can heavy smokers be surprised if they have cancer after smoking for 40 years? As legislators we have an onus to inform the public but the public has a responsibility to lead healthy lives.

We must provide community facilities such as swimming pools. The problem is that it takes so long. The Government had to find €1 billion to repay the illegal nursing home charges. It is a pity that sum of money was not put towards community facilities. The Government could find that money when it was forced to do so but if one seeks money for a community hall during an Adjournment debate the reply is that there is no money available. Government thinking must be shifted to encourage the health and well-being of the citizens.

Mr. Glynn: I look forward to the contributions of my colleagues to this timely debate in which everyone has a relevant contribution to make. As Members of the Houses of the Oireachtas we must change the health services. In the past few years the demands on the health services have changed dramatically. The population is getting older and living longer. There is a greater inclination to avail of elective health procedures. Some 30 years ago, when a person went to hospital half of the community would cry at the terrible event. Nowadays, people can drive, take a taxi or cycle to the hospital for procedures.

There is demand for additional health services and we must examine how these are delivered. Are we afraid to change established practices? Are we deriving optimum benefit from services? Apart from our longer living and ageing population, the population has increased significantly through immigration. Many people have come to the country from eastern Europe to contribute to the economy and they are very welcome.

What are the reasons for the changes we seek to make? Some years ago the health services were administered by the county councils. The Health Act 1970 and the establishment of health boards caused a hue and cry. Some suggested the health services would be far better under the county councils. Whatever we may say about the health boards, many of the regional specialties would not be there without regional health boards. Some people may agree or disagree with this but it does not alter the facts.

Nothing remains the same. The health boards had a number of deficiencies. I bemoan the democratic deficit, about which I have spoken to the Minister. Representational fora exist but should meet more often. It is important that locally elected representatives can be updated by the powers that be in the HSE. Locally elected members are the conduit between the ordinary person on the street and the health service delivery organisation *vis-à-vis* the HSE. The Minister should examine whether these fora could meet

more often and be given more teeth. Many members feel these fora have no powers and are not performing the function expected.

Under the health board system varying degrees of qualification were required for medical cards, for example. Different levels of nursing home subvention were available. I am delighted with the home care packages. A member of my family is in the early stages of Alzheimer's disease and lives in a three storey house in another country. It is a beautiful house but is unsuitable for someone with this condition. It was advised that the patient would be better off remaining in familiar surroundings. Placing the patient in new surroundings would add to the patient's confusion. It is important that old people be cared for in their homes. We must laud the home help service. Every effort must be made to extend this marvellous service and increase the hours. This is better for the health of the person and generates a few extra euro in the community's economy, especially in rural areas.

We must examine new models of care. Some years ago my brother-in-law and I visited his mother, who was in her 90s. She was in a two storey nursing home in London with in-house carers. The apartments were self-contained, with independent cooking facilities, a sitting room and a kitchen. There was also a community hall. Specially selected people fulfilled the role of watchdogs and it worked very well. It would be worth viewing this model and taking it on board.

Infrastructure is imperative for the delivery of services. As I have said previously, here and at the Oireachtas Joint Committee on Health and Children, we must find a way to fast track capital projects. This involves serious money and the Minister is doing her best but sometimes project teams add extras and facilities which takes forever.

I spent some years in the area of nursing and am delighted at the extended role given to nurses. I have long argued that junior doctors performed functions that could easily have been performed by nurses who in turn did jobs that could have been done by people with a short spell of training. This was a waste of a valuable resource.

I commend Mr. Carey, one of the Minister's officials who is here today, on his proactive approach to nurse training and his role in the establishment of the College of Nursing in the midland region. We are not, however, winning enough recruits for nurse training to care for those who are mentally handicapped or sensorily disabled. I will not get involved in industrial relations but I strongly support the nurses' cause. I have spoken to them and believe they have a strong case. This is in hand and industrial relations negotiations are difficult enough without people like me in a public forum complicating the issue. Some people with a qualification in nursing the mentally handicapped took a care assistant position because that is better paid. That is regrettable and must be addressed. Although

[Mr. Glynn.]

there is an individual in the midlands who has revolutionised orthodontics some difficulties remain, of which the Minister is aware.

I am pleased the Minister will increase the number of consultants and reduce the number of junior doctors because consultants are important. I worked with a certain kind of consultant for many years and am aware that consultants play a pivotal role in the delivery of health services. I wish the Minister and the Health Service Executive well in the negotiations on the consultants' contracts because this is a difficult area. The Oireachtas Joint Committee on Health and Children has discussed the fact that when recruitment of a consultant is approved the money is available but the appointment takes as long as a wet Sunday. There must be some way to fast track this process.

A couple of years ago a delegation from the committee went on a study trip to see the primary health care system in France. There is a great differentiation between general practitioners' fees there and here. Running a practice is expensive but is it possible to examine and compare practices in the two countries because here fees are sometimes high. I have been asked several times to raise this issue.

We debated MRSA last week but it is worth repeating the point that it involves operational matters. It is not for the officials of the Department of Health and Children or the Minister to make sure that hospitals are clean. People are appointed to positions of responsibility to do this work. A famous doctor from St. Loman's, who twice stood for election in Dublin, used to repeat *ad nauseam* that no antibiotic should be prescribed without a culture and sensitivity test. I endorse Senator Henry's point that some people who visit a general practitioner feel that the consultation was a waste of time if they do not get a prescription. That is nonsense. I spent some years in Britain where advertisements in the national media told people to take their doctors' advice because that was often the best treatment. There was no reference to a prescription. People should think about that point.

The appointment of mental health teams should be expedited. There are some in place but it is necessary to go further with this work. I am aware that there have been improvements and that the Minister has devolved significant additional resources to the mental health service but this has been something of a Cinderella service. The Minister has corrected that situation but that should continue.

The Minister must try to tackle the scourge of diabetes which is a silent epidemic and will have a major impact on all aspects of the health service. I thank the Minister for listening and know that she will take cognisance of what I have said.

Dr. Henry: I am delighted to welcome the Minister to the House because she has a difficult

role and I support many of her initiatives. I am particularly impressed by the initiative to get home support for older people which is incredibly important. Most people want to stay in their homes as long as possible. While it is expensive to have customised services for them, it is worth doing and is much less expensive than admitting them to nursing homes. I am concerned, however, that the programme may mean that the person must become an employer to deal with such help. The Minister can examine that position.

The management of chronic illness should also be transferred, as often as possible, to the primary services but frequently general practitioners want the advice of a consultant before they continue with the care of a person with a chronic illness. It can be a long time before a person can get access to a consultant appointment in order to be reassured that he or she is handling the person in the right way, or to get extra advice. For example, many diabetics wait long months, or sometimes years, to see endocrinologists. This does not encourage general practitioners to take a person back on to their books and mind the person alone because they are afraid that if they are not sure of what they are doing they will get repeat appointments every six months in the diabetics clinic and the person will be out on a limb again. It is important we try to establish services for general practitioners in order that they may rest assured their patients will be seen by hospital consultants rapidly and not after a year or more. This will ensure they receive the advice they need.

Many diabetics require additional supports. After arterial disease and neurological disease, one of the most common complications caused by diabetes is the development of foot ulcers. Access to podiatrists is almost impossible. There has been an ongoing fracas between the Department of Health and Children and the podiatrists since pussy was a kitten. As a result, patients with lesions that could be dealt with by podiatrists must be admitted to hospital, when their foot ulcers become sufficiently bad, and must endure a minimum stay of six weeks in an acute bed. Some of these individuals have had feet amputated because their ulcers were left untreated for so long. I am informed that it is proposed to appoint one podiatrist for every county. I do not know if that is true but surely we should appoint one podiatrist for every few thousand people. Money invested in this regard would be well spent.

The Minister referred to respiratory disease. As she is aware, I have a special interest in the respiratory unit at Peamount Hospital. It is important that one should not examine just bed occupancy when looking at conditions such as respiratory disease. Patient turnover must be also considered. A friend of mine who worked as a respiratory physician stated he used to try not to let his patients get into bed because if they could be kept sitting in chairs — I do not mean over-

night or on a trolley — they frequently regained confidence in themselves. It is extraordinarily depressing and frightening to feel that one cannot breathe. However, the patients to whom I refer regained their confidence and were discharged by evening. Bed occupancy should not be seen as the only parameter and consideration should be given to patient turnover within units.

The Minister also referred to the different lengths of stay experienced by patients suffering from the same conditions in different hospitals. It can become traditional to retain patients for certain periods. This is an aspect which must be examined. However, we must also take into account the socio-economic conditions to which patients are exposed. If patients come from areas where such conditions are not so good, they may be retained in hospital for an additional two or three days in order to ensure they are back on their feet. Other patients who enjoy better living conditions at home may well be discharged earlier.

The position regarding nurses threatening industrial action is most unfortunate. We must take into account that there is a shortage of nurses and that the market is in a position to dictate. I am not convinced that nurses frequently carry out jobs that could be done by others.

Ms White: Hear, hear.

Dr. Henry: Making empty beds is one thing but making them with patients in them is quite another. It is not just that one must deal with the patient and make the bed, it is the fact that one might discover something that is of great importance while doing so. We are in a difficult position *vis-à-vis* nurses. It was very difficult for them to go on strike on the first occasion and I recall senior nurses weeping on my shoulder at the thought of doing so. It will not be difficult on this occasion.

Nurses will be able to prescribe in the future, which is perfectly acceptable, and the Minister referred to them ordering diagnostics. We already discussed the rationale — brought forward by the Minister — for having more consultants, namely, that people would be in better decision-making positions and would, we hope, have more confidence in respect of discharging people and ordering diagnostics. If junior doctors are not confident and tend to refer too many people for X-rays — I am aware of a survey which indicates that a junior doctor is seven times more likely to order an X-ray in respect of a case than a consultant — we must accept that a similar position will obtain with nurses and that this will give rise to an additional expense.

I am greatly concerned by the fact that there has been a major increase in the amount of money being spent in the health services and that one does not often obtain any idea regarding what something will cost. I wish to refer to the National Treatment Purchase Fund, in respect of

which I spoke on previous occasions. This fund operates under a veil of secrecy, which is wrong. One can discover what the VHI, BUPA and VIVAS will pay in respect of procedures. However, one cannot discover what the National Treatment Purchase Fund will pay. The fund's annual report for 2005, the most recent issued, indicates that €64 million, a considerable amount of money, was spent and that 18,000 cases were treated. The administration costs relating to the fund are low, which means approximately €3,500 is being spent per case.

The only really expensive procedures among the top ten listed in the report are joint replacements and cardiac surgery. If we allow €10,000 per procedure — which the VHI would consider generous — in respect of joint replacements or cardiac procedures involving 2,000 patients, the total spent would come to €20 million. When this figure is subtracted from the overall amount of expenditure — that is, €64 million — €44 million is left. Among the other procedures listed in the top ten are those involving procedure scopes, tonsillectomies, varicose veins, skin lesions, hernias and grommets, none of which is expensive. The most common procedure carried out in 2005 related to cataracts and a total of 2,256 patients were involved. To have a procedure carried out on a single eye cost €3,000 in the most expensive of private clinics, while €6,000 would ensure a patient could have both eyes operated on. If we add up the figures in this regard, we find that a further €10 million has been spent. This means that €30 million of the overall budget has been accounted for and that the other €34 million was used for procedures involving skin lesions, hernias and tonsillectomies.

The VHI will pay far less than €1,000 — this includes the fee for the services of an anaesthetist — in respect of tonsillectomies, regardless of whether they are carried out on adults or children. Allowing for expenditure of €1,000 per case, this means we paid €1.5 million for the 1,351 tonsillectomies carried out under the National Treatment Purchase Fund. Where is the money going and why can we not be informed with regard to the type of commercial deals the Government is making?

I was obliged to undergo an MRI scan — Members will be delighted to discover it was perfectly clear — at the Blackrock Clinic at a cost of €259 to the VHI. I telephoned the VHI because I thought there had been a mistake only to be informed that this was the cost under the deal it had negotiated. In my opinion, it was a pretty good deal. Are taxpayers being obliged to pay way over the odds for procedures carried out under the National Treatment Purchase Fund? It is not right that we are being denied access to some form of ballpark figures in respect of individual procedures and that an overall sum is being provided. Procedures relating to skin lesions, grommets and varicose veins cannot cost more than a few hundred euros. The cost of her-

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nia operations must have increased dramatically, particularly when one considers that only 253 were carried out under the National Treatment Purchase Fund. I cannot understand why such common procedures cost so much. I really resent what is happening in this regard.

In addition to what I have just outlined, I understand that GPs are going to receive access to diagnostic services in private facilities. That is great but they should also receive access to such services at public facilities. If a GP refers a patient to a public hospital for an X-ray, there is no cost. GPs should have access to diagnostic facilities at public hospitals. Why is it not possible to extend the use of diagnostic equipment into the evening? Most patients requiring diagnostic procedures are ambulatory and would be well able to attend at a hospital after work. I cannot understand why patients are referred to private facilities but I presume the Department has done a very good deal in this regard. The cost of X-rays at these facilities varies from €54 to €112. At which end of the scale will the Department of Health and Children pay? This is very important and there is no reason that we should not be informed of such things. I resent it very much. The practice in the Department of Health and Children at present appears to be strongly towards the privatisation of the treatment of patients.

I refer the Minister to an editorial in the Canadian Medical Association Journal 2004 by Steffi Woolhandler and David Himmelstein from the department of medicine, Cambridge Hospital, Harvard Medical School, Cambridge, Massachusetts. One cannot get a better address. They discuss the privatisation of health care in the United States and what it has cost. They state that "investor-owned firms have come to dominate kidney dialysis". Where did we hear that previously? It was in Ireland, where patients now go to private facilities. They also dominate nursing home care. That is also the case in Ireland. As I told the Seanad a few nights ago, when I was in the casualty department of St. Vincent's Hospital there were several patients there who looked as if they had been brought there by private facilities because it was felt that they were near the end of their lives. They were, and they should have been left at home in bed. I checked on this later and discovered I was correct. The editorial also refers to inpatient psychiatric and rehabilitation facilities.

We could not choose a more expensive way. Health care in the United States costs 15% of GDP, and 8% of that is private. In Japan and Sweden, two countries which the highest longevity rates in the world, private health care accounts for 1.6% of GDP. I wonder if we are getting value for money in some instances. Why can we not get the figures? I am sure Senator Quinn would not adopt this type of attitude towards his suppliers, whereby they would send

him supplies and ask for a blank cheque in return. Why should we have to do it? We simply want to be told what the prices are for hip operations, coronary bypasses, tonsillectomies and so forth. If it is commercially sensitive information, let the suppliers argue between themselves. They will know what the average is. Many of the private hospitals at present are enormously dependent on the National Treatment Purchase Fund for their survival. The Minister is aware of that.

I am glad we are increasing the number of doctors qualifying from our medical schools. It took 30 years to increase the numbers, but it is most important. However, there is a problem with intern places for people to complete their qualifications. We must supply them with intern places. There is already a serious shortage. When we were told they could no longer take up intern posts in England, I went over to argue with the Medical Council about it. Unfortunately, I discovered that we had banned English students from filling intern places here about 20 years ago. That finished my argument on that score. It is an important issue.

I am pleased more consultants will be appointed and I wish the Minister well in her negotiations on the consultants' contract. Given that 70% of consultants are public only at present, I am sure something can be worked out with the other 30%. I wish the co-located hospitals could be step-down facilities rather than acute hospitals side by side with acute hospitals. I express that wish as a patient, not as a doctor. All our high care equipment and expertise in acute areas, such as intensive care, should be located in a single area. The private investors could make far more from running a step-down facility. If I could find out who they are I would send them a note to that effect. They might then take it up with the Department. It would be better for them, better for us and better for the patient. Everybody must think ahead; we will want the best treatment possible from the health service. I wish the Minister well with the changes she is trying to make.

Mr. Minihan: I listened to the Minister, Deputy Harney, and her upbeat comments on the reform agenda being driven through the health service. It is refreshing that despite the onslaught of criticism and ongoing gamesmanship, we have a Minister who is so committed to driving that agenda in the interest of patients. The key issue is the interests of patients. On the one hand there are the Government, political parties, policy makers and officials, while on the other there are the consultants, doctors, nurses and the many health care professionals associated with the health service, down to the administrators in hospitals. All have different and competing interests. In the middle are the people it is all about, the patients.

Nobody can deny that reform is necessary. We can argue and debate about how that reform should take place and what it should comprise but

we must all agree that it must be patient driven and in the interest of the patient. Health is an emotive subject. It is traumatic for any family or patient who must experience our health service. However, we should not lose sight of the fact that an independent survey found that 90% of patients who had experienced the health system were more than satisfied with the care they received. A total of 10% were dissatisfied. There will always be dissatisfaction.

The key issue is speedy access to the service. Patients want to be seen, treated and discharged faster. The reform agenda is about ensuring that people are seen faster, their treatment is speedily provided to the best standard and with the best care, and that they are discharged. It is about ensuring we no longer have continuous delays in the occupancy of acute beds and that people are discharged to step-down facilities. I dislike the term "step-down" but it appears to be the buzz phrase in use. People should be moved out of acute beds and into facilities where they can receive the necessary care to recuperate.

The reform agenda will only be fully embraced when the competing parties set aside self interest, empire building and promotion of their speciality or interest and work together. That applies not only to medical professionals but also to political parties, officials, bureaucrats and the like. We all must put self interest aside and try to work towards improving facilities for patients. As we move nearer to an election, the self interest becomes more vocal. There is the self interest of constituencies, with people wanting hospitals at every crossroads and more cancer facilities. However, we must ask if that is in the interest of all patients. I believe we have set out a reform agenda that is focused on delivering services for patients and we must continue in that direction.

The horror stories are, of course, traumatic and capture public attention. However, we probably have not done a good job, or the media are not interested, in presenting the success stories. There have been success stories. It is no harm, for example, to briefly consider accident and emergency services. There are still horror stories but waiting times in accident and emergency departments have dramatically improved in all 35 hospitals with those departments.

New accident and emergency facilities are being provided. A new management focus, driven by the HSE, is in place to improve the health services. Hospitals and accident and emergency facilities are being monitored. The hygiene audits have improved cleanliness in hospitals. Waiting times for operations and major surgery have decreased from years to months. At times it is difficult to listen to the criticisms of the health services when there have been positive improvements. I accept there is room for more. The National Treatment Purchase Fund, which has received pessimistically when first mooted, has brought about tremendous results. I have criticisms of certain aspects of it, such as orthopaedic

services where there are difficulties with figures for referrals and outputs. This is not due to availability but because of professional self-interests not pushing the treatment fund to work properly. It is only when self-interest is put aside can progress be made.

The Government's announcement on the package of services for older people, including the fair deal package which will commence in 2008, is welcome. Society and the sense of family have changed dramatically. The traditional arrangement of three generations living together has changed, resulting in a greater requirement for care of the elderly. Care for the elderly must be provided in a safe and secure environment. Some reports on nursing homes have highlighted unacceptable conditions. Standards and inspectorates are being put in place and a proper approach to this new demand on our health care system must be put in place.

A political debate has emerged over the collocation of private facilities in hospitals to create an extra 1,000 hospital beds. Political opponents argue the State is building 1,000 beds in private hospitals. The reality is that the 80%-20% mix in acute hospitals is out of kilter. If private patients are occupying public beds above the required mix, the public patient is being deprived of a bed. While we allow the private sector to use our facilities, it will have to locate its beds and have to build its facilities in the hospital. It will receive the benefits of the hospitals' facilities but it must create its own beds. It is not about building 1,000 beds on public sites. It is a case of freeing up 1,000 public beds that are occupied by the private sector.

This matter can be debated all day but the key point is that when these facilities are rolled out, 1,000 public health patients will benefit. I welcome an initiative that can create 1,000 beds at less cost to the State and to the benefit of the public patient. That is not the privatisation of the health services. It is the freeing up of public spaces. I am dismayed by the political and ideological arguments surrounding this matter. It is a question of looking at the glass either half-full or half-empty.

Mr. Ryan: Senator Minihan should be careful of the black box.

Mr. Minihan: I look forward to Senator Ryan's contribution to which I will listen with great interest. The last time the Labour Party had control of the Department of Health, the then Minister, Deputy Howlin, ran out of it. At least the Progressive Democrats will stay there and do the job as best we can.

There has been an uptake in the GP-only medical cards. I was disappointed that the initial uptake was so low. Up to 75% of drugs dispensed are through the medical card system. The remaining 25% are paid for by private patients. Of that

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25%, the individual is entitled to recoup any costs that exceed €85.

Mr. Browne: That is per month.

Mr. Minihan: Yes. If a proper survey was completed on this, it is more than likely that 88% to 90% of dispensed drugs are paid for by the State. The numbers of patients paying for private medicines would then stand at approximately 10%. The State plays a large role in dispensing medicines and the supply and facility given to patients is to be commended.

Thresholds for medical cards have been increased dramatically to take into account transport costs, mortgage repayments, etc., and allow people in the middle income bracket certain flexibility in visiting a GP without incurring a cost. No patient should be deprived of a visiting a GP because he or she is fearful of costs.

I welcome the bringing forward of the new pharmacy legislation. This was promised 60 years ago and the Act to be amended dates back to the 1880s. It is incredible we have waited this long to amend the legislation. In case Members remind me later, I must declare an interest that I own a pharmacy.

Mr. Ryan: I would have reminded the Senator anyway.

Mr. Minihan: Unfortunately, many people in the political establishment and the Department of Health and Children do not view pharmacists as an integral part of the health care system but as retailers. The number of customers who seek medical advice in pharmacies, without any prescription or sale of product, and who receive professional advice from a highly qualified medical professional is seldom acknowledged. How is that costed? How does one pay for that advice?

On the argument of drug costs and the 90% paid for by the State, it must be remembered that pharmacists have no mark-up on this. The State pays the pharmacist for the cost of the drug at cost price and a dispensing fee. There is misperception about the role of pharmacists and they are viewed too much as retailers. If there was a greater use of pharmacists' professional knowledge, a far greater service could be made by them to the overall health plan. Advice on conditions such as diabetes and testing are some examples.

Health care reform is moving in the right direction. It is only by keeping it focussed that we will achieve the results that are in the interests of patients. As the general election approaches, I hope the public debate and the debate in the Oireachtas does not derail a reform that is necessary and long overdue in the health service.

4 o'clock

Mr. Ryan: I do not propose to launch into my usual type of diatribe about the quality of the health service.

Ms Feeney: Is that a promise?

Mr. Ryan: No. It will most assuredly not be kept if Senator Feeney keeps interrupting me.

It is extremely important in dealing with reform of the health service to ensure the action taken is designed effectively to make it better. The word "reform" is one that is used too loosely. We must ask ourselves what type of service we want to provide. I am not sure everybody on the other side of the House would agree with my definition in this regard. What we should seek to provide is universal, guaranteed, free at point of use access to the services necessary to sustain and restore well-being. Where such sustenance and restoration is not possible, we must provide care and comfort, either at home or in hospital, that is universal, guaranteed, and free at point of use.

That is my definition of a good health service, devised while wearing my engineer's hat and arising from my enormous obsession with having ideas clear in my head. It is the curse of an engineer that one is not allowed to fudge. One must say either this or that; there is no room for "maybe". That is why engineers and economists do not mix well and engineers and social scientists mix even worse. Being married to a doctor, I will not say how doctors and engineers mix.

I make no apologies in referring to the observation of the leader of the Labour Party that health care is not a market commodity but a community service. This is not to get away from issues such as value for money and so on. However, the market is a poor measure of value for money in the health service. Neither is it a guarantee of discipline, nor a particularly useful instrument. It was considered a glorious triumph when, in the interests of competition, the Competition Authority forced VHI to stop negotiating with consultants as a group.

The ideology of the Competition Authority is that competition controls prices and that people will be drawn towards the best price. The difficulty, however, is that a person suffering from an illness such as cancer will examine the prices charged by consultants and may well choose the cheapest rather than the best. Which consultant is the best? VHI is not available as a mediator because that is no longer allowed. In the absence of any other information, who will patients consider the best — the cheapest or the most expensive?

This turns on its head the entire ideology of competition. A person suffering from a life threatening illness will want to choose the best treatment. The only index available to patients in making that decision is cost. Many will conclude that a consultant who charges half the rate of a competitor is doing so because he or she is not as

good and cannot attract patients. That may not be true but it is the perception that will arise.

There will be an orgy of investigations by the Competition Authority as it tries to prove collusion among health service providers in keeping prices high. The first chapter of a first year economics text book will tell us that consumers seek to maximise their utility. The Competition Authority seems to believe this is true in all cases and that patients will balance their health against a price. That is not the case, however, because people do not see their health as a commodity, like buying oil for the winter. That is why the market model is suspect. Similar activity is now taking place in regard to pharmacists.

I am aware that many negotiations such as this are ineffectively carried out. Given its poorly supervised monopoly, VHI was less than rigorous in its negotiations with both doctors' organisations and hospitals in agreeing what was value for money for a particular procedure or service. I agree with Senator Henry that it is a great pity the National Treatment Purchase Fund considers itself entitled to withhold the type of information that commercial entities like VHI, Vivas and BUPA are obliged to make public. I cannot accept there is any rationale for this other than a protectionist mentality on the part of the National Treatment Purchase Fund. The irony of a pro-competition Minister defending that secrecy and the absence of the rigours of the marketplace is astonishing. Perhaps a better service is being provided because more is being paid. There is no reason we should not know whether this is the case.

Discussion of the health service is infected by claims about the advantages of the alleged rigours of the marketplace. One need only read the eulogies on competition written by the eminent economic correspondent, Mr. Marc Coleman, of one of the newspapers that claims to be the newspaper of record. Perhaps there is a competitive model of a health service that works. I am not aware of such, however. The best health services in northern Europe, including those in Germany, France and Sweden, are funded by government to the tune of between 7% and 10% of total spending. According to all the commentators, however, that is unaffordable for this State. We are repeatedly told there must be an insertion of the disciplines of the marketplace.

Those disciplines are in place across the Atlantic. Two comparisons are sufficient to point to the failings of this model in the case of the United States. Infant mortality rates in that country are higher than in any state in northern Europe. This is one index of the quality of universal health care. The other is life expectancy. Life expectancy in Sweden is far higher than it is in the United States. This may be because the price of alcohol is so enormous in Sweden that its inhabitants cannot drink themselves into an early grave as we in this country are trying to do. There is no doubt, however, that on these two indices of perform-

ance, the Swedish, French and German health services, and even our own, are superior to that of the United States.

Moreover, the costs of that underachieving health service are such that I cannot understand why people in senior positions in Irish public life nod in that direction. Some 16% of GDP in the United States is spent on health care. This means that instead of us spending €12.7 billion per year on health care, we would have to spend €25 million to match the percentage of GDP spent by the United States. Has anybody faced up to the reality that where one takes a marketplace approach to health services, one is dealing with a commodity for which there is a limitless demand and for which people will pay a limitless price. It is therefore entirely unsuitable for market rigours. An attempt to introduce such rigours will merely distort it and make people rich without any significant improvement in the service itself.

This is where the issue of private hospitals on public land comes into question. It introduces into the context of public health provision issues to do with the way the market works. I do not refer to the silly old hard-line lefty stuff to the effect that private health providers are only in it for profit. It is possible to run good quality services that are profitable. Profit and good quality service are not inimical but given the nature of the commodity, as some people regard it, there is limitless demand because people want ever better services for which they are prepared to pay limitless amounts. Principles of supply and demand and elasticity do not work in health care so we should be wary of going down that road.

If the market model does not work, what are we to do? I do not dispute that things have improved in some areas and everybody acknowledges that inside the hospital system, despite MRSA, the quality of medical care is as good as one could ask for. I know affluent people abroad who are able to pay for high quality private care where they live but return to Ireland to give birth in Irish maternity hospitals because of the quality of care. Who delivers that high quality service? Coming from the left, as I like to think I do, I say it is the doctors and nurses who deliver that service, among them the much-maligned consultants.

I will declare that my wife is a hospital consultant. She works very hard, entirely in the public sector, and the only time she ever worked in private practice was when the public sector declined to give her a job. The minute she landed a public sector job she gave up private practice because she had no interest in it, as is the case with the majority of her colleagues in psychiatry in Cork, although I cannot speak for every region. Consultants, who receive much criticism, are the central deliverers of the quality health care about which this country boasts, as are the nurses who are threatening to strike. The debate ought not to be about beating consultants over the head or silencing them. The most effective and vocal lob-

[Mr. Ryan.]

byists for the quality of public health care are hospital consultants, yet it is proposed that they be silenced by a clause in their contracts.

I work in a public body, Cork Institute of Technology. Short of defamation and libel I can say what I like about what is wrong with the service and I can make public its deficiencies when and where I like. I can be warned of the consequences for student demand if I say foolish things, and the Department of Education and Science might be upset at what I say but I cannot be silenced. Why would anyone want to silence hospital consultants unless they thought there was something to hide? The suspicion is now widely held that one of the strategies of the Health Service Executive is to make its problems internal, invisible and silent, which is a dreadful prospect. The health service will only be reformed by open, transparent and accountable decision making. If we take the opposite path, we will make it worse, although it might look better.

Is the allegation true that there has been a directive to move people out of accident and emergency units and into corridors, so that they are no longer regarded as being on trolleys in accident and emergency units? Why do we have to reinvent the wheel in connection with MRSA? Other countries have sorted out the problem and I will shortly say why that is the case.

Ms White: The Senator should tell the House.

Mr. Ryan: I explained why it was the case during the debate last week on MRSA. The fundamental problem with the health service is that the quality of its management is abysmal. It is entirely recruited from inside the service and does not have the necessary injection of external expertise to manage the system. It has the largest budget in the country but is managed by people not qualified or experienced in dealing with budgets of that scale. That is not an excuse for turning it into a privatised service, which is what the Government is in danger of doing.

The only way to make management better is to make it open, transparent and accountable. No decision should be taken in the health service which is not accompanied by the name of who took it, so that a person who did not agree with it would know whom to talk to about it. That happens in every private organisation and I know the pharmaceutical industry quite well. It is not possible to move a bucket across a room without a document stating that, for example, Brendan Ryan moved it. That is the way to maintain clear lines of accountability. One can go into a hospital to find a ward closed in the morning but no one to say who was responsible. That person must not be able to hide behind public relations people but must face up to the consequences of the decision. In that way we will guarantee that anybody who is not up to the job will leave and take early retirement. It is not as simple as that because all

sorts of interests, such as trade unions, have a say in such matters but that is the required fundamental reform.

I do not understand why a rich Government did not expand the proportion of the population eligible for medical cards to 40% because that is an obvious way of taking some pressure off the public hospital system. The only reason I can imagine is one of ideology. Why are we carrying out another study into the number of acute beds in the country when we know from the OECD that our figure is among the lowest in the world?

Ms Feeney: I will share time with Senator Daly. I welcome the Minister of State at the Department of Health and Children, Deputy Seán Power, and his hard-working officials. I know one of his officials personally because I served with him on An Bord Altranais and I assume he is one of the officials referred to by Senator Ryan as coming up through the system. I do not know any more committed or hard-working official than Mr. Bernard Carey. I have watched him spearhead the nursing agenda through many different stages, increasing the number of places in schools of nursing at a time when no one else contemplated it. There is nothing wrong with the present staff at the Department of Health and Children and long may it last. I wish Mr. Carey well in his new role.

All is not well in health and we on the Government side would be fools to claim it was. However, it is not all bad either and it is a question of whether the glass is half full or half empty. From my vantage point it is half full. All the bad stories we hear every day about health pull at our heart strings and no one is more likely to have her heart torn apart listening to Joe Duffy or Pat Kenny discuss the issue than I. I have children and siblings and know what it feels like when one of them is ill. However, for every bad story we hear, two good stories go unheard.

One such story involved a brother of mine who returned from a long-haul flight with a sore leg. He went to a walk-in general practitioner after a few days and was sent to an accident and emergency unit in St. Michael's Hospital, Dún Laoghaire, as a public patient. The treatment he received was second to none. He was kept in for two weeks as a day patient and now attends a warfarin clinic. As late as this morning a consultant rang him to tell him not to take warfarin because his blood reading meant he did not require any more medication. He was to come into the hospital instead. No one will ever hear that story but that man is singing the praises of the nurses and doctors he met there. The VHI was not involved, everything was done through the public system and he was very well looked after. That is not to take away from the hundreds out there who have a bad experience in hospital.

Leaving aside the political point scoring and the parochialism, the National Children's Hospital is a hospital for sick children throughout

the country. It is not a Dublin hospital, it is not a Tallaght hospital or Mater hospital, it is a national children's hospital. The debate is scaring away the top Irishmen and women who have been trained outside the country and who want to come back. When they hear the parochial debate they say to themselves that they are better off in Britain, America or Canada, where they can do what they are asked to do in their job description without politics or religion muddying the waters.

The health budget has increased four-fold since 1997.

Mr. U. Burke: And the situation has got worse.

Ms Feeney: It increased from €3.6 billion then to €14.5 billion today. I wish I had more than seven minutes to tell Senator Ulick Burke how great it is and how much it has improved since his years in office.

Mr. U. Burke: If the Senator believes that she will believe anything.

Ms Feeney: Extra investment has brought about major results, including record levels of activity in the acute hospital system and a range of extra services across all programmes. Total patient admissions to hospital are up from 300,000 to over 1 million. Waiting times for operations have been dramatically reduced from years to months. I know the Opposition does not like us to talk about that but those are the facts. No longer do 75% of children and adults wait for more than a year for heart operations. Since 1997, the number of public acute beds has increased by 1,600.

I could go on but I do not have time. I do not want to finish, however, without addressing what Senator Ulick Burke will say. During its term in office, the current Opposition raised the health spend by €400 million.

Mr. U. Burke: Fianna Fáil has been in power for 18 of the last 20 years.

Ms Feeney: The waiting lists rose under the Fine Gael-led Government by 27%, although the Senator does not like to hear it. Senator Ryan mentioned the pending nursing strike. The nurses were not just talking about strikes today or yesterday, this goes way back.

Mr. U. Burke: There were to be no waiting lists within two years of this Government taking office.

Ms Feeney: Deputy Quinn confessed that he did not listen to those voices at the time as well as he might have and the problems the Minister for Health and Children is experiencing today are partly related to that. He said that about his time in the Department of Finance.

The Opposition is great when it sits in a policy-free zone, as it does now. It shouts for more money to be spent on health but it will not tell the public where that money will come from.

Mr. U. Burke: We want the money to be spent properly.

Ms Feeney: The Opposition screams that we are investing too much money while shouting that we should put more money in.

Mr. U. Burke: PPARS.

Ms Feeney: All that is wrong with the Opposition is that it cannot wait to see what will happen in June but it will still be in Opposition then.

Mr. U. Burke: The Senator will be lucky to be sitting on the Government benches.

Mr. Daly: I thank Senator Feeney for affording me the opportunity to speak briefly on this matter. I support the reforms that have taken place and congratulate the Minister on the work she has done so far. Not only is reform underway in administration, a vital area, it is happening in budgeting and finance.

I would like to see more co-operation between the voluntary organisations that provide services and the Health Service Executive and the Department. In many cases, voluntary organisations provide facilities that the HSE could not afford. Kilrush Community Hospital is spending €1 million to install a kitchen but the estimated cost for the HSE to carry out the work was €4 million. The hospital could only secure some funding from the national lottery. There should be a lien in the financial arrangements so that community hospitals in places like Kilrush, Ennistymon and Raheen, which provide excellent facilities, do not depend on grants from the national lottery.

There are gaps in the system that must be bridged, such as when young people suffer from a stroke. The post-stroke facilities are almost inadequate, with people waiting months for treatment in the National Rehabilitation Centre in Dún Laoghaire. In the community and county hospitals, there are people in post-stroke trauma who should not be in acute hospitals but the National Rehabilitation Centre, where the staff do an excellent job, is so limited in its facilities that people must wait four months before someone from the centre can examine patients in acute hospitals to assess their suitability for the centre. That is a major gap that must be filled.

Orthodontic treatment is in a chronic situation. We have been hearing about this for years on end and the situation appears to be getting worse, with more people on waiting lists and failing to get the required treatment, which causes further damage. In the allocation of resources to these areas, not only should the facilities be provided

[Mr. Daly.]

but there should be more training places for the occupation.

The Minister mentioned the impending dispute with the nursing organisations. This must be resolved so I send an appeal to the Minister and Minister of State to call in the negotiating organisations to resolve the issue before strikes start, with the resulting inconvenience to patients and staff.

Mr. U. Burke: I welcome the Minister of State to the House. The Minister said she came in to deal with health reform but her statement was that it was meaningless to most people. Those are her words, open to correction on the blacks when they come out eventually. When a Minister for Health and Children says that reform is meaningless to most people, surely that is a clear admission of the fact that the reform that has taken place to date is meaningless. That is the core of the crisis today.

Mr. Daly: The Senator is taking those remarks out of context. I sat here for the Minister's speech, Senator Ulick Burke did not.

Mr. U. Burke: If Senators Daly or Feeney want to check, I suggest they go downstairs and get a copy of the blacks. I took down what she said verbatim.

Mr. Daly: The Senator is taking the remarks out of context.

Mr. U. Burke: She said it is meaningless to most people. That is the reality of the situation today.

Mr. Daly: Senator Burke is playing his political cards.

Mr. U. Burke: People have problems securing access to the health service, although those who get in receive very good care, there is no doubt about that.

Mr. Daly: He is being positive now for a change.

Mr. U. Burke: Those who can get treatment are satisfied with it but access is the problem. Senator Minihan mentioned the same matter of access. Some Senators have said that matters have improved. What about the length of the waiting lists and the problems in accident and emergency units?

Ms Feeney: They have been reduced since the time the Senator's party was in power.

Mr. U. Burke: Those Senators should sit for five minutes in any accident and emergency unit to witness the reality of the crisis in the health service.

Ms Feeney: Not all areas are bad.

Mr. U. Burke: Can the Minister of State tell me definitively whether the Hanly report still represents Government policy?

Mr. Daly: Who appointed Hanly? It was Deputy Noonan.

Acting Chairman (Labhrás Ó Murchú): Allow Senator Ulick Burke to speak without interruption.

Mr. U. Burke: Can Senator Daly tell his electorate in County Clare that, as of now, the Hanly report represents Government policy? What about the additional medical cards that were promised? The shortfall in the number granted represents another major problem. The Minister should selectively grant cards to diabetics, coeliacs and asthmatics who, because of the number of times they need medical attention, end up in accident and emergency units, adding to the turmoil. They should be granted cards on the basis of need and not income.

The Minister and other contributors spoke about home care packages. I have yet to find one person in east Galway who has been able to get access to such a package despite numerous requests. Why can the Health Service Executive in the west not indicate that it is available and the procedure to access it? Many people have said, and the Minister has said it previously, that the most important thing is to keep people in their homes for as long as is practicable. The HSE has made a miserly response to the provision of home care and home help in cases of great need. Families are trying to support and maintain people with reasonable dignity in their homes. Why is it not possible to provide an additional hour or two each week — never mind each day — to provide adequate support?

Some people say it is great to have one HSE with the equalisation of payments and access to various services nationally. However, that is not the case. Recently on the Adjournment I highlighted the nursing home subvention which is still not equal across the board. Many excuses have been given and continue to be given by the HSE western region why it provides reduced subvention payments by comparison with Dublin or elsewhere.

I have attended some of the briefing meetings when representatives of the HSE appeared before the Oireachtas Joint Committee on Health and Children. I am sure some of my colleagues opposite have done likewise. Across the board, regardless of political party, there was total dissatisfaction with the response of the HSE to representations made by public representatives. Never mind the responses to parliamentary questions in the other House, whenever we contact the HSE we are passed from one person to another and more often to an answering machine.

We get excuses that a person is at a meeting or compiling a report. It is chaotic. We get neither transparency nor accountability from the HSE. Nobody is accountable.

I will give an example. Thank God one person eventually intercepted the issue. I made representations on a very urgent case immediately after Christmas on behalf of a person who had had a stroke and was in need of an electric wheelchair. She was 84 and her husband was 96. She was paralysed on one side and could operate an electric wheelchair to give some degree of mobility in the house. Eighteen months passed without a suitability assessment for that patient. I raised the matter at one of the Oireachtas joint committee meetings with the HSE and I was told it would be looked after. Nothing happened. I sent an e-mail to the manager of the HSE western region. Following five further transmissions within that region, this person who is in a managerial position intercepted and stopped the rot. I got a telephone call advising me that what had gone on was enough.

Other people had told me that the HSE professional, who would need to examine the patient in east Galway, was no longer in place and would not be replaced until April 2007. I pointed out that the patient and her husband might no longer be there because they would be either dead or institutionalised. Thank God that manager had the initiative to send somebody out and had the assessment carried out as an emergency. As long as people are pushing paper around in the HSE, nothing will be done. That cannot be called reform. When we had members of the health boards in the past, people knew somebody and could identify a person who had responsibility and would do the work or if it could not be done, would advise of that.

In December 2005 the Minister for Health and Children came to University College Hospital Galway and indicated the need for a neurosurgical unit in the new HSE area stretching from Donegal to Limerick. The National Hospitals Office-Comhairle issued a report contradicting this. It stated we had two units, one in Beaumont Hospital and one in Cork. I raised this matter previously on the Order of Business in the House. The consultant in Beaumont said that neurosurgery in Beaumont and in the country in general was in crisis. The three reasons the National Hospitals Office-Comhairle gave for rejecting it were the very reasons in favour of having such a unit. The people in Cork claimed we were encroaching on their area. They seem to believe that the preservation of catchment areas is more important than the health of the people in the west. Will the Minister of State, Deputy Seán Power, remind the Minister for Health and Children that she agreed with the need to establish such a unit in Galway? She should restate that need and confirm it will be provided.

Ms White: I wish to share time with Senator Jim Walsh.

Acting Chairman: Is that agreed? Agreed.

Ms White: In researching my document, A new approach to Aging and Ageism, much to my horror I discovered that the life expectancy of Irish people was not as high as for many of our OECD colleagues, such as those in France, Spain or Germany. I shall focus on the need for a proper health promotion campaign for older people in Ireland. An adequate health care service is good. If we can prolong people's lives and give them a healthier lifestyle that is as critical as a good health service.

In my document I recommend that the Government devise and launch a long-term campaign aimed at raising awareness of health issues among older people. The Government should take a more proactive role in the promotion of health for older people. Despite recent improvements, alcohol and tobacco consumption among those over the age 65 in Ireland remains high and above the European average. Many older people, particularly older men, do not attend for regular health check-ups. That could be the reason men do not live as long as women.

Research by the National Council on Aging and Older People shows that over 20% of older people have not had a health check-up for three years. In addition the same research has reported that 33% of people aged 50 and over do not consume the recommended daily servings of dairy, fruit, vegetables, meat and fish. In 2002, cancers accounted for 36% of deaths among those aged 64 to 75. Many of these cancers could have been prevented through healthier living and a healthier lifestyle and could have been treated had they been identified earlier. Tobacco and alcohol consumption, poor diet and lack of awareness about health issues can have a detrimental effect on the population as a whole, yet health promotion campaigns place an undue focus on the young. More attention must be focused on older people by Government health promotion schemes and sports activities funds and a continuous campaign to improve the health of older people must begin immediately.

I have travelled all over the country from counties Donegal to Kerry and Carlow speaking about my document.

Mr. Browne: And Waterford as well.

Ms White: Waterford as well.

Mr. S. Power: Senator Browne is keeping an eye on the Senator.

Acting Chairman: Senator White without interruption, please.

Ms White: I have been on all the local radios saying the mandatory retirement requirement will

[Ms White.]

have to go. It is the Minister's responsibility to launch a health promotion scheme to encourage physical activity and better diet for older people to enable us to live as long as our OECD colleagues and enjoy a better quality of life.

Acting Chairman: I called Senator Jim Walsh. I understand Senator Quinn is also offering. I ask the Senator to bear in mind that time is against us.

Mr. J. Walsh: How long does that allow me?

Acting Chairman: I am calling the Minister of State at 4.50 p.m. to reply.

Mr. J. Walsh: Perhaps the Minister of State might give us two minutes of his time. I thank Senator White for sharing her time with me and giving me the opportunity to contribute to the debate. Like other Senators, including Senator Ulick Burke, I listened with interest to what the Minister had to say. Her contribution reinforced my opinion that the Minister and her two able Ministers of State, Deputies Seán Power and Brian Lenihan, provide a formidable team to meet the strong challenge in the health service. The debate is about health service reform. Undoubtedly that is overdue. I welcome the fact that it is now happening.

Within the health service there are more than 100,000 employees, the vast majority of whom are dedicated and caring in the manner in which they approach their jobs. However, there is a need to tackle some systematic failures that have existed for a considerable period under many Ministers, including Ministers from all sides. It is wrong to make a political football out of an issue that is so important to the life and well-being of our citizens.

In regard to some of the negotiations taking place, I am already on record in complimenting the Minister on taking a firm stand to ensure that bad practices, which have preserved unsustainable benefits and systems for those who work within the service, need to be brought to an end. I hope there will not be any fudging on that matter. The time has come to make the changes that are essential.

We all know from our dealings with people who go through the health service that as soon as one gets access people are positive about the service provided. I have found that because of the systems working within hospitals that patients who might be discharged on a Saturday, Sunday or bank holiday are not discharged simply because the consultants do not operate a system that allows that to happen. That is not in the interests of the patient and it is certainly not in the interests of those who are waiting to access the services. All of that needs to be changed.

There is also the issue of the two-tier system. I am a strong proponent of people participating in

and using health insurance but access to the services should be strictly on the basis of health need rather than on who and how much the consultant is getting and from what source. That is an issue that badly needs to be corrected. It has been recognised by chief executive of the Health Service Executive and the Minister and clinicians need to be put in charge and given the management responsibility to ensure they function properly and effectively.

That we have a higher number of nurses than any other country needs to be examined. The amount of investment in the services has quadrupled during the past decade without a commensurate output and benefit to patients from that investment. Some of the difficulties and management lacunas which apply need to be examined, evaluated and changed so that we have a health service of which we can all be proud.

One hears complaints of the Caredoc system. I am aware from speaking with people that many go to accident and emergency departments simply because that service is not as good or as available as it should be. Any such changes in services constantly need to be re-evaluated to ensure their focus and target is what was intended. Where doctors have invested in significant property developments, whether in pharmacy or the lease of premises to a pharmacy, there has to be an issue of conflict of interest which must be examined to ensure we get better value for money for medicines than heretofore. There is a huge element of waste in that sector.

In regard to governance, I welcome the fact that there have been some changes but the HSE is too centrally focused. The system at regional level, where executives report to executives at national level, is fundamentally flawed from a corporate governance point of view. There is a need for a system of accountability at regional level. I have advocated previously that we should also look at having accountability within counties because it is at that level at which most public representatives are interested. In the past our local health committees served a useful forum for identifying weakness and ensuring they were addressed. There is a range of issues that need to be examined.

Acting Chairman: Does the House agree to allocate five minutes to Senator Quinn and change the time for the commencement of Private Members' Business to 5.05 p.m.?

Mr. Leyden: May I also have time to speak?

Acting Chairman: As Senator Leyden is aware, we are due to finish at 5 p.m.

Mr. Quinn: I will take three minutes. I have only a few points to make.

Acting Chairman: And then have the balance of the five.

Mr. Quinn: If Senator Leyden wants to come in at that stage, I am happy to accept.

Acting Chairman: Is that agreed? Agreed.

Mr. Quinn: I know the Minister of State will probably not take his full ten minutes on that basis.

When the Minister for Health and Children accepted the poisoned chalice of her ministry, she did so in the knowledge that it was not going to be an easy job. It was going to be a very tough job. I admire her for doing so and the help she has in her two junior Ministers.

My point concerns value for money, which has been discussed by Senator Jim Walsh. We are not doing a very good job in respect of it. Hospitals should be for medical care, but a very large amount of the cost goes on keeping people in hospital when they do not need to be there.

I was chairman of Hume Street Hospital and sat on the board for many years. One of the things we did there was recognise that the vast majority of those who wanted help perhaps only needed one visit from a doctor of between one hour and ten minutes but had to stay at the hospital for the full week until we made it a day care centre. We copied something that was being done in the US and which seemed much more efficient. People could go to work in the morning, come into the hospital, have their treatment and go back to work. Very often, the treatment received involved dermatology or something like that. Before that, they had to stay in hospital for the full week even though they only saw the doctor once during the week. It did not make sense.

We have not done nearly enough in respect of the use of the hospital as somewhere where people stay when they only need medical treatment for a very short time. For example, I know a man in the US who had to go into hospital for an operation and stayed in the hotel right beside the hospital. He went over to the hospital for his operation and when he was not well after it, he was driven back to the hotel. He stayed in the hotel near the hospital. It was not a very serious operation, but it was something he had to undergo. It appeared that the cost was dramatically lower than the cost of running hospitals here.

I should not mention names, but I heard Noel Smyth on "The Marian Finucane Show" on the radio the other day. I was very impressed by what he talked about and the example he used of people of high value who very often take on philanthropic work in the US where charitable giving to such establishments as universities or hospitals is quite commonplace. We have not opened the door to that sort of thing in Ireland. There is money available to invest, not for a return or in capital, but because one wants to do good. There are people who want to do this and perhaps our

legislation and tax laws are not making that attractive enough.

On the Order of Business today I raised a point on figures published in Great Britain concerning the huge cost to the National Health Service as a result of doctors prescribing highly expensive branded drugs when generic drugs are available. We have a long way to go in that area. Doctors prescribe drugs because they hear the names of them and I am told that sometimes these drugs are seven times more expensive than generic drugs. Let us make sure we are doing the right thing in buying those drugs at a much more sensible price.

Mr. Leyden: I welcome the Minister of State. It is proposed to refurbish St. Catherine's Ward in the Sacred Heart Hospital in Roscommon, a public institution with 200 beds which is doing tremendous work. This refurbishment will bring about a much needed development. It is also proposed to provide an Alzheimer's unit in the hospital. It is an excellent facility and one I hope the Minister of State can visit sometime in his term of office in the not too distant future.

In respect of medical cards, I recommend that people apply for doctor-only medical cards, which have only attracted 55,798 people when 200,000 cards were originally promised.

Mr. Browne: The financial limits are too low. If these limits are changed, more people will apply.

Mr. Leyden: I would recommend that this be brought about.

I also welcomed the fact that the Minister for Finance, Deputy Cowen, officially opened the CT scanner at Roscommon County Hospital. Again, this is a step in the right direction where the proper diagnostic equipment is on site and available.

Through the efforts of Deputy Finneran, a group from Roscommon met the Minister for Health and Children today to discuss the establishment of Defibrillation and Resuscitation Access, DARA. The founder and secretary of this organisation, Eunice Langley, has been doing tremendous work and she has set about a programme. The Minister kindly met us today at the request of Deputy Finneran to discuss the provision of defibrillators throughout the country. This programme has been established—

Mr. Browne: Why not make them exempt from VAT?

Mr. Leyden: The Minister is considering the proposal. This is a very worthwhile organisation which has established that approximately 6,000 lives per year could be saved if these defibrillators were provided in areas where they are accessible. I thank the Minister for organising the meeting and commend the organisation, particularly Eunice Langley, who is the secretary and founder and

[Mr. Leyden.]

all the members of this committee who are active in this regard. They are doing tremendous work and I am delighted that the Minister might give support to this organisation.

Mr. Browne: Why are they subject to VAT? Why do people have to fund raise for them?

Minister of State at the Department of Health and Children (Mr. S. Power): I thank all the Senators for contributing to the debate. The Minister outlined the type of reform that is taking place and how she and the Government see our health service developing in the coming years and the investment we have made. Change does not happen overnight or without creating certain difficulties. I remember attending a conference where a speaker said that there were two certainties in life. The first is change and the second is resistance to change.

The aim of the health reform programme is to provide the best possible service in terms of quality and effectiveness to patients within the resources made available by Government and to have equity as a core value in our health service. I strongly reiterate that the importance of the health reform process is underlined by the demographic challenges facing the State; increased public expectations; the impact of medical and technological innovations; and adverse health indicators, such as the growth in obesity and alcohol consumption, as some Senators have already mentioned. All of these factors generate increasing demands on our health and personal social services.

We know that certain regional inconsistencies in service have been evident for some time, such as differences in rates of nursing home subvention and in availability of home help and disability support services. However, other less obvious inconsistencies, such as differences in admission rates and length of hospital stay, as was addressed by Senator Quinn, also must be addressed in the context of the health service reform programme. Through operating a unitary system, the HSE is now making headway in addressing these issues.

We have made considerable progress in most areas. There have been certain criticisms that we have not made as much progress as we would like in others. We are very much aware of the difficulties there and the issues that must be addressed. We have provided the funding. I know people are often critical of that, but part of solving the problem is providing the funds for it. In many cases, the attitude can be equally as important as the provision of funds.

I am convinced the health reform programme can, over time, deliver a world-class health service and significant progress is being made in the here and now with unitary health system delivery, the development of clear accountability structures and modern human resources and

management systems, and the modernisation of service delivery and regulatory framework.

I will mention some areas where we have made considerable progress. In respect of structure and responsibilities, we have witnessed the restructuring of the Department of Health and Children, the Office of the Minister for Children, the HSE itself and the Health Information and Quality Authority, HIQA, which will incorporate the Social Services Inspectorate and is currently operating on an interim basis. All of these vital elements are now working together.

I mention HIQA in particular because there has been some criticism in recent times over nursing homes and the type of service that is being provided in some of them. From our experience, the majority of nursing homes try to provide quality care. By setting up HIQA and bringing in this new legislation, we will ensure that a high level of care is provided in all nursing homes and not just in some of them. It is important to note one of the core responsibilities of the Department of Health and Children is that of holding to account the HSE in regard to its financial performance and service delivery, in addition to the effects of the implementation of Government policies.

We have made major progress also in terms of financing services and strengthening accountability. Senator Feeney referred to the fact we have increased investment in the health service from €3.67 billion ten years ago to €12.95 billion in 2006. That investment has made a real and meaningful difference to the type and quality of service provided.

Senator Ulick Burke criticised home care packages. He said he was unaware of any in his area. This approach to home care was set up on a pilot scheme. A total of 1,100 packages was provided in 2005. A detailed study showed they worked exceptionally well.

Mr. Browne: How many extra packages have been provided?

Mr. S. Power: I will provide the Senator with that information. The 1,100 home care packages that were provided kept people out of hospitals and nursing homes. In some cases the provision of a small amount of additional help allowed people to live at home. In other cases, people were enabled to leave hospital earlier than would have been the case, secure in the knowledge that the necessary level of care would be provided to them in their own homes where they are happiest. In 2005 we increased the number of home care packages by an extra 2,000 and we will do the same this year. The total number of home care packages will be over 5,000.

Mr. Browne: Is that 5,000 extra places?

Mr. S. Power: That is the total number. As I stated, 1,100 places were provided in 2005, a

further 3,100 places were provided last year and an additional 2,000 places will be provided this year.

Reference was made to the subvention scheme. A number of changes have been made in this regard. The relevant legislation was discussed in the House last week. Some people have been critical about the fact the scheme was administered in a different way in different parts of the country. The scheme is now standardised and guidelines have been issued to all local health offices. An announcement was made last December about the introduction of a new scheme which will come into effect from 1 January 2008.

Speakers referred to the inappropriate occupation of beds which has contributed to the current difficulty. People are reluctant to take family members home from hospital when they are not fit to be at home. The difficulty is compounded because people would not qualify for nursing home subventions. This has created serious financial difficulties for families. The new system that it is proposed to introduce next year will make a positive difference to the lives of many people, especially the elderly.

The reform programme is an enormous challenge that will require our ongoing commitment over the coming years but significant progress is being made by all concerned. To get the best out of any team requires a concentration on positive aspects. By doing so we will give confidence to the people who form part of the team. I accept there are problems in the health service but it is important we acknowledge the tremendous effort people working in the health service are making. We should not get in the habit of knocking things. It is important to express our appreciation to the people involved and show support for what they do and the service they provide. In concentrating on the difficulties that exist we only serve to undermine it. High morale is an important ingredient of team building. It is important for people to be more measured when they contribute to these debates.

It is also important for those involved in providing health services, to remember we are all part of one team, be they in the Department of Health and Children, the HSE or members of hospital staff such as doctors, nurses and consultants. We must work together if we are to provide the type of service people deserve. I acknowledge we have not yet arrived where we want to be in terms of improving the service but we must recognise the progress has been made across a number of fronts. We will continue to build on the progress that is evident in so many parts of the country.

**Mental Capacity and Guardianship Bill 2007:
Order for Second Stage.**

Bill entitled an Act to reform the law concerning mental capacity, to provide for infor-

mal decision-making on behalf of adult persons who lack capacity in certain circumstances, to establish a Guardianship Board which may appoint Personal Guardians to deal with the property, financial matters and welfare of adult persons who lack capacity, to confer jurisdiction on the High Court in certain matters, to provide for the establishment of the office of Public Guardian and to set out the functions and powers of the Public Guardian, to amend and repeal various enactments for this purpose, and for related matters.

Dr. Henry: I move: "That Second Stage be taken now."

Question put and agreed to.

**Mental Capacity and Guardianship Bill 2007:
Second Stage.**

Dr. Henry: I move: "That the Bill be now read a Second Time."

In the recent past, legislation has been brought before the Houses of the Oireachtas to repeal statutes which are no longer relevant to life in Ireland. This was a worthy exercise. I have brought forward this Bill in the hope it will lead to the repeal of the Lunacy Regulation (Ireland) Act 1871 and its replacement by this proposed legislation and to the repeal of the Marriage of Lunatics Act 1811.

The Bill addresses the needs and rights of older and vulnerable people. The Bill is based totally on the draft scheme for a Bill on mental capacity and guardianship published by the Law Reform Commission in 2006. I recognise the presence of the permanent law reform commissioner, Ms Patricia Rickard-Clarke in the Gallery. I wish to recognise the work the commission did on the law affecting older people with physical, mental and learning disabilities and the law as it affects older people. The commission published a consultation paper on the law and the elderly in 2003 and the many responses to it were taken into account in its report on vulnerable adults and the law in which the draft Bill to which I referred is an appendix.

In May 2005 the commission published its consultation paper, *Vulnerable Adults and the Law: Capacity*. While the focus of the consultation paper on the law and the elderly was to make recommendations concerning older people, the commission acknowledged these recommendations were also relevant to other adults with limited decision-making abilities and to adults who otherwise needed protection. There is no universally accepted definition of intellectual disability but one definition which is quoted in the report is the presence of a significantly reduced ability to understand new and complex information and to learn new skills — impaired intelligence — with a reduced ability to cope independently — impaired social functioning.

[Dr. Henry.]

The spectrum of intellectual disability is wide and extends from people with mild learning difficulties to those with profound difficulties. Some adults with intellectual disability lead independent lives within the community while others need intensive care and support. Decision making capacity may vary but the opportunity should be given to them to make or participate in making, with help, decisions relevant to their lives. That is the purpose of the Bill.

People with mental illness such as depression, bipolar disorder and schizophrenia may temporarily need help. When ill they make decisions they would not make when well. Those with acquired brain injury, due to trauma, stroke and brain surgery, or with rarer conditions, such as locked-in syndrome, were also considered by the commission. Under the current law those over 18 years of age are considered to have capacity. If it is shown that a person lacks capacity the current law sometimes has the effect of completely changing the person's status, from a person with capacity to a person without capacity. The example given by the commission is the wards of court system that, the commission suggests, should be replaced by a guardianship system.

Before addressing the content of the Bill I wish to refer to the issue of capacity. Paragraph 1.61 of the report states:

Current Irish law begins with a presumption of capacity. This maybe displaced by evidence establishing that a person lacks capacity. At present, however, there is no generally applicable definition of capacity at common law or in statute.

The commission examined three models of capacity. The outcome approach is used by many doctors and means that if one agrees with the doctor's decisions one has capacity and if not, the doctor advises that capacity is absent. The commission concluded that the outcome approach penalises individuality and demands conformity at the expense of personal autonomy. In other words, it is important not to fight with one's doctor.

The status approach was also dismissed by the commission because it was considered to be based on an across the board assessment of a person's capacity rather than the person's capacity in respect of the particular decision. An example of this is the denial of capacity to a person in a long-stay psychiatric ward even when the person was well.

The commission decided the functional approach was best, considering capacity on an issue specific basis. An all or nothing approach should not be adopted. This commonsense approach appealed to me and for this reason I ask the Minister of State to consider it.

Part 1 is self-explanatory, concerning title, interpretation and expenses. Section 4, regarding

the guiding principles of the Bill, exemplifies the commonsense approach. It states:

Every person concerned in the implementation of this Act or in making any decision or Order under this Act shall have regard to the following principles:

(a) No intervention is to take place unless it is necessary having regard to the needs and individual circumstances of the person including whether the person is likely to increase or regain capacity;

(b) Any intervention must be the method of achieving the purpose of the intervention which is least restrictive of the person's freedom;

(c) Account must be taken of the person's past and present wishes where they are ascertainable;

(d) Account must be taken of the views of the person's relatives, primary carer, the person with whom he or she resides, any person named as someone who should be consulted and any other person with an interest in the welfare of the person or the proposed decision where these views have been made known to the person responsible;

(e) Due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy.

Section 5 is self-explanatory and concerns the age of majority and the repeal of the 1871 Act.

Part 2 deals with capacity and the functional approach. Capacity, rather than incapacity, is the term deliberately used. Sections 8(3) and 8(4) concern the carers working to do their best for the person. They should not have liability for expenses. Section 9 deals with the situation where informal decision making will no longer do and the guardianship board needs to be set up and a personal guardian appointed. Section 10 covers everyday expenses incurred for a person's welfare. Section 11 deals with wills and how these may have to be changed in exceptional circumstances. Section 12 concerns consent and capacity of persons in specific circumstances such as in the context of the common law, capacity and consent to marriage, consent to divorce, consent to adoption, and voting at an election for any public office or at a referendum.

Part 3 sets up the guardianship board, deals with the appointment of members and describes the functions and related powers of the board and part 4 does likewise for personal guardians. Part 5 follows commission recommendations that a public guardian, with a supervisory role in respect of personal guardians, should be appointed by the guardianship board. It also implements the recommendation that the public guardian should have an educative role in raising awareness of capacity issues among the general public. Codes of practice are explained.

The commission recommended a sixth part to the Bill, which is not included. This would incorporate specific amendments to the Powers of Attorney Act 1996 concerning enduring powers of attorney. These are described in the report as an excellent way to preserve the autonomy of the decision maker in setting out his or her choice of an alternative decision maker in the event of loss of capacity. The commission recommends that the primary legislative regime governing enduring powers of attorney be included in this Bill on mental capacity. This area needs further discussion.

I hope the Minister of State accepts this commonsense Bill. The status of older people and those with disabilities is considered more carefully now than it was in decades past. They are entitled to have as much control over their lives as is possible and this is the view of society at present.

Mr. Quinn: I second the motion and welcome the concept of the Bill. It will update the legislation on incapacity. I appreciate Senator Henry asking me to second this motion because I had to study the subject. This opened my eyes to the work undertaken by the Law Reform Commission, which initiated many of the ideas in the Bill. I welcome Ms Patricia T. Rickard-Clarke, who is present in the Distinguished Visitors' Gallery.

I was stunned when I first read this legislation. I was surprised by two aspects of existing law, language and age. The Lunacy Regulation (Ireland) Act 1871 and the Marriage of Lunatics Act 1811 are still in force. This language comes from another era and is unacceptable in modern days. It is similar to bear baiting, cock fighting and public executions. This Bill aims to change the attitude to, and decision making for, people who do not have full mental capacity. This involves moving from a status approach which referred to people as mad, to use the word applied in those days, to a functional approach which acknowledges levels of incapacity. The approach used to be black and white, defining someone as sane or not.

We all know elderly people who have reached a stage at which they live a normal everyday life but whose mental capacities are slipping, either in respect of their memories or of repeating themselves. In the old days those people would have been regarded as insane. The crucial aim of this legislation is to propose that there are levels of incapacity, especially among the elderly. Senator Henry used the word "dignity" and it is used in the Bill where the individual's human rights are uppermost.

I refer to the existing legislation as belonging in the past because it is so unsuitable today. We all know of people who do not have 100% mental capacity. I met a former Member of this House recently who is in his nineties and has 100% of his capacity so let us not assume that everyone's

capacity diminishes as they get older. To a large extent, however, older people lose mental capacity and memory and because of that, in the past they were ostracised.

I was jolted on reading the Bill to discover that I had probably broken the law. Some years ago a couple asked me to become an executor of their will. The man died and his widow began to have some difficulty such that she was not able to make decisions for herself. I arranged for her to go into a nursing home and later for her house to be sold. I did that without any authority. The lady should have been made a ward of court and it may well have been that I could have influenced the President of the High Court. I did not realise that I was acting without the legal authority to do so. The situation lasted for some time. There must be many others like me who did not know that the law provides that if one loses one's mental capacity the President of the High Court makes one a ward of court and he or she becomes one's guardian. That lady was not by any means mad or a lunatic, in the terms of the 1811 legislation. She was losing some capacity and lived a good life for the remainder of her years.

Although a small portion of one's faculties is harmed, one loses all of one's rights when the President of the High Court makes one a ward of court. This Bill seeks to replace that system with a new one that includes the guardianship board, the health care group, the personal guardian and the office of the public guardian. This system will consider all aspects of the individual and introduce the least intervention possible. It will help those guardians, probably family members, to make and implement decisions.

The guardian, for example, might take into account the fact that someone early in life has said that in the event of becoming ill, he or she wants to stay in his or her home rather than go to a nursing home if he or she has the facilities to do so. The same is true of someone who says that he or she does not want to have a hip replacement in the event that is suggested. The guardian can help to make decisions in these situations. For a simpler matter such as the flu injection there would not be a need for this help or decision making but the law needs changing. The European Union forced the British to change their legislation because it had not been updated quickly enough. We may not be in that situation yet but we soon will be. We cannot possibly continue to act according to legislation passed in 1811 and 1871.

This Bill is worthy of Government support. I hope the Government will take it into account, ideally by accepting and passing it as quickly as possible. It is the right thing to do and we should not be forced into doing it. If we do not pass this Bill, we will rob the older people who need this legislation of their dignity. I urge the Minister of State to accept the Bill.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. Fahey): I commend Senators Henry and O'Toole, supported by Senator Quinn, on their initiative in presenting the Mental Capacity and Guardianship Bill 2007. The Government accepts the principle of the Bill which addresses the important and sensitive topic of legal capacity for adults with intellectual disabilities. In common with Senators Henry, O'Toole and Quinn, the Government recognises the need for reform of the law on legal capacity and for modernisation of the system for administration of justice in this area.

The subject matter of the Bill is complex but the Law Reform Commission has already undertaken important research and consultation. The Bill replicates the Law Reform Commission's draft legislative scheme. The Law Reform Commission published its report entitled *Vulnerable Adults and the Law* on 18 December last. The report follows the commission's consultation papers *Law and the Elderly*, published in 2003, and *Vulnerable Adults and the Law: Capacity*, published in 2005. The commission's key recommendations are to introduce a functional test of a person's mental capacity and to establish a new system of guardianship to replace the existing wards of court system.

The High Court is responsible for the operation of the wards of courts system which is administered by a registrar and staff of the Office of Wards of Court. The origin of the courts' jurisdiction in wardship over mentally incapacitated persons lies in the prerogative exercised by the sovereign as *parens patriae*, to have charge of the care and custody of incapacitated subjects. The role of the sovereign was customarily delegated to each lord chancellor. In 1961, the wardship jurisdiction was vested in the High Court, to be exercised by its president. When a person is made a ward of court, the court takes jurisdiction over all matters relating to the person and estate of the ward.

There are approximately 2,000 persons in wardship, most of whom are adults brought into wardship due to mental incapacity. The other category of wards consists of persons under 18 years of age taken into wardship as minors for particular reasons and in respect of whom mental capacity is not an issue. The principal purpose of wardship is to protect the person and property of the ward and to manage it for the benefit of the ward and his or her dependants, if any. While decisions affecting a ward are made by the President of the High Court, usually sitting in chambers, due regard is paid to the wishes of the ward and his or her family and it is only for the most cogent of reasons that those wishes would not be accommodated. The type of decisions required to be made may include the appropriateness or necessity for the sale of assets, the encashment of investments, the suitability of current accommodation, the use of a ward's funds to purchase suitable accommodation and the payment of

allowances to a ward or dependent relatives. Decisions are also required to be made in respect of health care decisions, including the carrying out of medical procedures, both routine and non-routine.

In every wardship matter, a committee of the person and/or estate of the ward is appointed. Where no suitable person is available or willing to act, the court will appoint the General Solicitor for Minors and Wards of Court to be committee of the estate of the ward. A committee means one or more persons to whom the welfare or affairs of the ward are committed. The committee acts under the directions of the court.

The principal legislation regulating the exercise of the wardship jurisdiction is the Lunacy Regulation (Ireland) Act 1871. The Title of the Act is indeed, as Senators suggested, unacceptable in today's language. In addition, there is a difficulty in operating under the Act because of the terminology it contains. The continued use, in legislation concerned with intellectual disability, of expressions which have long since acquired a pejorative meaning is no longer acceptable. While the Office of Wards of Court makes every effort to use more appropriate language in its day-to-day operations, the controversy that such terms generate has tended to colour the views of relatives and third parties towards a system which, despite its archaic nature, has in large measure operated for the great benefit and protection of incapacitated individuals.

The Office of Wards of Court also has a role regarding the registration of enduring powers of attorney pursuant to the provisions of the Powers of Attorney Act 1996. The path of recent legislative reform could be said to have begun by way of enactment of the 1996 Act, which gave effect to recommendations of the Law Reform Commission for a system of enduring powers of attorney. The system created by that legislation has much merit in that it allows persons, during the time they have intellectual capacity, to influence the decisions taken for them when they do not have such capacity. This has limited application in that it is of relevance only to those who have intellectual capacity and who cater for a future stage in their lives when they may not have such capacity. Nevertheless, the Powers of Attorney Act meets the needs of one category of people and the Law Reform Commission has recommended its wider use as a means of meeting particular needs.

While those concerned with the operation of the wards of court system have been working to introduce incremental changes, to modernise the system and to make it more open for wards themselves and their families, they acknowledge that comprehensive reform of the legislation is required. They have contributed their experience and expertise to the Law Reform Commission in the work it has been carrying out during the past three years and more on its report, *Vulnerable Adults and the Law*. The latter report recom-

mends replacement of the current regime with a more open and incremental approach to people who need legal protection. As in the case of the Bill, the wards of court system for adults would be replaced by a guardianship system. It would operate on the basis that where a person has some capacity, it will recognise and work with that capacity, as well as being empowered to make certain decisions on behalf of a person where they are assessed as not having capacity to make that decision.

The Law Reform Commission's report contains 63 individual recommendations. A matter of some note is that many of the recommendations will require significant additional consideration and elaboration. In particular, the report recommends the enactment of new mental capacity legislation to define legal capacity, provide for assisted decision-making and provide appropriate regulatory mechanisms. It also proposes the development of codes of practice for a range of people dealing with vulnerable adults, including medical, health and social care staff, financial institutions and legal professionals. The definition of capacity put forward would follow a functional approach whereby an adult's legal capacity is assessed in respect of the particular decision to be made, at the time it is to be made.

The proposed guardianship board would consist of a High Court judge as chairperson, a registered medical doctor with expertise in the area and a health professional who has the expertise and training to assess functional capacity, such as an occupational therapist or clinical psychologist. The board would have power to make guardianship orders and appoint personal guardians where necessary.

It is also proposed to appoint personal guardians. These would be individuals of at least 18 years of age who have consented to becoming personal guardians. Before appointment, the guardianship board must be satisfied that the proposed personal guardian is a fit and proper person to act in that capacity. A personal guardian could, depending on the scope of the guardianship order, be empowered to make substitute decisions regarding the property, financial affairs and personal welfare of the adult who lacks capacity. Under the proposed guardianship regime, the High Court would be the appeal body from any decision made by the guardianship board and would have reserved to it certain major health care decisions such as non-therapeutic sterilisation, the withdrawal of artificial life-sustaining treatment and organ donation.

The report also recommends that an office of public guardian be established to take over many of the functions of the Office of Wards of Court. This office would offer wide-ranging advice, support and educational role for vulnerable people and their families. It would oversee and supervise personal guardians and attorneys operating under enduring powers of attorney and act as personal

guardian in cases where there is no one else willing or able to act.

The report also proposes that the guardianship board should be empowered to make intervention orders where guardianship is not considered necessary. It makes further proposals regarding areas such as assisted decision-making, enduring powers of attorney and the drawing up of what it describes as "statutory principles governing decision-making on behalf of incapacitated adults".

The Government welcomes the report of the Law Reform Commission and the opportunity presented by the publication of the Bill to inform the debate on vulnerable adults and the law. Those operating in the area of wardship have also recognised the need for reform of the law relating to the protection of mentally incapacitated individuals and have welcomed the report. The Law Reform Commission's scheme of a mental capacity and guardianship Bill, which is replicated by the legislation put forward by the Senators, sets out the legislative changes as they apply to persons over 18 years of age. However, it is acknowledged in the report of the Law Reform Commission that further consideration of the effects of reform on persons under 18 would be required before any comprehensive legislative scheme is prepared. Account would also need to be taken of other matters including clarification of the legal basis for the wardship regime and recommendations for reform already proposed by the Office of Wards of Court.

The legal advice available to the Government is that some of the provisions in the Bill will require particularly careful examination with respect to constitutional protections. We must ensure that the various issues are fully analysed. For example, the sweeping powers conferred in section 8 on persons making decisions for others will have to be the subject of detailed deliberation. The authority of the High Court to vary the provisions of a will, albeit in exceptional circumstances, will also need to be reconciled with the constitutional protection of the right to private property.

At the practical level, experience gained from the operation of the personal advocacy service provided for in the recent Citizens Information Act will also be valuable. Under the Citizens Information Act, personal advocates will be appointed to provide a range of services to qualified persons with disabilities, including assisting, supporting and representing the qualified person to apply for and obtain a social service; pursuing any right of review or appeal on behalf of the qualifying person; providing support and training to the qualifying person and any member of his or her family, a carer or any other person representing the interests of the qualifying person; entering any place that provides day care, residential care or training for the qualifying person for the purpose of representing his or her interests; and, subject to the requirements of data

[Mr. Fahey.]

protection legislation, accessing information, attending meetings or consultations and identifying any person who may assist the qualifying person for the purpose of performing his or her duties.

I am conscious of the challenges and pitfalls with legislative reform in the area of legal capacity, and good practical experience of the operation of the advocacy system will help in the development of proposals tailored to needs. While not directed towards legal capacity of persons with intellectual disability, the advocacy system will be of assistance to us in considering what reform is needed with regard to legal capacity.

The recent passing of the Citizen's Information Act will see Comhairle rebranded as the Citizens Information Board and there will be significant increases to the advocacy functions it supports. This will allow qualifying persons to obtain the assistance of a personal advocate in accessing social services. A personal advocate may also provide support and training to a qualifying person, his or her carer, or family members. This legislation is another step in helping people, especially those with disabilities, to access the social services many of us take for granted and to give them a higher level of formalised support in so doing.

The Disability Act 2005, a key part of the national disability strategy put in place by this Government, underpins the equal participation of people with disabilities in society. The importance of the Disability Act is that it establishes an independent assessment of need; a service statement — the content of which will have regard to resource availability, eligibility and other factors; and redress and enforcement systems. The Disability Act complements proposals for reform in the area of legal capacity of persons with intellectual disability and will also provide valuable experience to inform reform proposals.

Our legislative and budgetary programmes have seen significant enhancements to the supports available to several classes of vulnerable persons, and further reform, whether in the exact terms of the Law Reform Commission's recommendations or otherwise, will build on the foundations and the work done so far. The principles underpinning the legislation to date, of facilitating capacity and taking account of a person's wishes where these can be determined, will inform further legislation in the area.

Legislation must give more control and choice to persons who have an intellectual disability and provide more protection for people with intellectual disabilities and their families, carers and service providers. The best interest of the person who lacks capacity must prevail. Achieving these objectives, however, is not an easy task. The Government is committed to legislating in this area and has given its approval for the preparation of comprehensive proposals by my

Department. The Department is now seized of that remit. In developing the legislation it will take into account the Law Reform Commission's scheme of a Bill. It will be informed by debate on the Bill and will consider the most effective and efficient model to replace the wards of court system.

A regulatory impact assessment will, in accordance with Government guidelines, form part of the process, and there will be necessary consultation with the Courts Service, the Judiciary and all relevant interests. The House will appreciate that since significant Exchequer funding of the system, its staffing and its accommodation will be involved, it is appropriate that the Government should bring forward its own detailed legislative proposals. I assure the Senators that this Bill will be left on the Order Paper, if that is their wish, and will be incorporated in the Bill that will be brought forward as quickly as possible by the Government.

Mr. Cummins: I compliment the Law Reform Commission on its various publications dealing with this subject and I pay tribute to Senator Henry for bringing this Bill before the House. I strongly support the Mental Capacity and Guardianship Bill, which is a long overdue replacement for the outdated wards of court system currently in place. We need not look beyond the title of the Lunacy Regulation (Ireland) Act 1871 and the Marriage of Lunatics Act 1811 to recognise that any Act incorporating the term "lunacy" has no place in 21st century Ireland and is in definite need of attention.

The Bill is an important step in providing protection and certainty to vulnerable adults and their families. It is estimated that more than 2,000 people in Ireland are wards of court. Under current legislation, these people lose complete control over all aspects of their financial and personal life. They are stripped of many of their basic human rights and live life devoid of the level of dignity and equality they deserve. The Bill proposes the introduction of a new, more functional way of considering the capacity of an individual to make financial, personal and health care decisions. Rather than focusing on the lack of capacity an individual might have, the Bill proposes that unless the contrary is established, every individual will be presumed to have full capacity to make a decision affecting him or her.

This is a very important proposal as obviously the capacity of an individual to make decisions varies significantly from person to person. Some individuals covered by this legislation may be suffering from mental illness, others may have sustained a brain injury following an accident and others are elderly people who have lost certain mental faculties as part of old age. Some of these people may be able to make minor decisions like running a small bank account but may not be able to take care of more complicated financial affairs. Where an individual is capable of making

decisions relating to his or her life, it is important we support their ability to do so and provide the person concerned with the quality of life and dignity they deserve.

The introduction of a guardianship system consisting of a guardianship board of three people is a positive proposal that would support this new way of looking at capacity. The guardianship board would consider the capacity of the individual concerned, appoint a personal guardian where necessary and monitor the required level of involvement of this guardian in an individual's personal, health and financial affairs. This is a fair and practical system which provides for flexibility as the nature of a person's capacity changes over time. It is a system that would definitely support the rights of a vulnerable individual.

An important aspect of the Bill relates to the health of the individuals covered by this legislation. It is archaic that, previously, it was entirely possible that a vulnerable person considered a ward of court could have been subjected to major medical interventions such as sterilisation without their consultation or consent. This Bill rightly proposes that decisions relating to non-therapeutic sterilisation, the withdrawal of life sustaining treatment and organ donation will require a decision from the High Court.

The subject of mental health has been given substantial attention by the Fine Gael Party. Fine Gael and the Labour Party have published a policy document setting out our priorities in this area. *Reaching Recovery* was published last September and includes a number of commitments by Fine Gael and the Labour Party on what we will do when elected to Government to improve the lives of the many people who suffer from mental illness. Although mental health is central to our well-being, the treatment of mental illness and the promotion of good mental health do not receive the same attention, investment and resources as physical illness. Fine Gael and Labour recognise that the mental health services have been neglected and under-funded and are resolved to change this.

We will build and foster positive mental health throughout the community and provide accessible, community-based, fully staffed, multidisciplinary services for people with mental illness. The provision of these services will be brought at least on a par with the general health services in hospital and community services. To build that positivity, we must deal with the issue of guardianship for persons of diminished capacity. That is why this Bill is so important. Following the report of the Law Reform Commission in this area, it is disappointing the Government has not seen fit to bring forward any proposals to deal with the issues concerned. For example, the simple issue of mental capacity remains improperly defined in the law. Much of the existing legislation uses out-dated or inappropriate language. There is no single person or body, independent of the Government that can make guardianship

orders, intervention orders, or appoint personal guardians. That is why I particularly welcome the proposed establishment of a guardianship board in Part 3.

Personal guardians are an innovative instrument that can be used to help and guide persons who suffer from a mental disability. I am aware of many families who find themselves in a position where the making of a guardianship order would solve many of their problems and concerns. Furthermore, Senator Henry's proposed public guardian instrument, established in Part 5, is a reassuring safeguard against any abuse by an unscrupulous person who becomes a personal guardian. These safeguards are paramount if families and friends are to have true faith in the system outlined in the Bill and to benefit from the reassurance that they provide.

The Fine Gael Party supports the Bill's proposed structures. We have also made a specific commitment to put in place multidisciplinary community mental health teams, therefore, reducing the need for inpatient care and to close those psychiatric institutions which are inappropriate for their purpose and undermine the dignity of their patients.

Measures like these, in tandem with the provisions of Senator Henry's sensitive and progressive legislation, will allow us to construct a society in which mental health is treated with dignity, compassion, but with clear guidelines and clarity for family members and next-of-kin.

I commend the Bill to the House and I hope the Government will accept it. The Minister of State claims the Government will introduce similar legislation but God only knows when it will be published. It would be appropriate for the Government to accept this worthy Bill.

Mr. J. Walsh: I commend Senator Henry for pioneering this legislation. She has on many occasions brought the issue of mental health to the forefront in an enlightened way. It is to our benefit that she has taken an initiative in this area. As she stated the reform of the law on legal capacity is overdue. I am glad the Minister of State concurs with the Bill.

The Law Reform Commission recommended comprehensive reforms in this area and which embrace a wide range of matters such as mental capacity, powers of attorney and testimony capacity. It recommended replacing the wards of court arrangements for incapacitated adults in its entirety. The report, published on 18 December 2006, sets out how the law should approach the concept of capacity to make decisions and what structures are needed to support vulnerable persons when it comes to make decisions. There were 63 wide-ranging recommendations, particularly for the provision of new guardianship and decision-making arrangements for people whose decision-making capacity may be temporarily or permanently impaired. It includes a draft scheme

[Mr. J. Walsh.]

of legislation on which I believe Senator Henry's Bill has drawn.

The wards of court system is headed by the President of the High Court with the support of the office and registrar of wards of courts. Approximately 2,000 persons are in court wardship, the majority of whom are adults. It caters for minors who may not have mental capacity problems. The purpose of wardship is to protect the person and the property and to manage it for the benefit of his or her dependants. The President of the High Court has regard to the wishes of the ward and his or her family. It is important this is retained in a new system. Only in exceptional circumstances does the president deviate from those wishes. It covers such matters as the sale of assets of the ward, suitability of accommodation, power of the ward's fund to purchase suitable accommodation, payment of allowances to a ward or dependant relatives, and decisions with regard to health care. It operates under a committee of the person or estate of the ward which in turn acts under the directions of the court.

The basis for the wardship system is contained in the Lunacy Regulation (Ireland) Act 1871. A major difficulty is the terminology in that title which contains an element of stigma and its pejorative meaning is unacceptable. It also colours the views of relatives and third parties. While it is archaic in nature, it has operated for great benefit for the protection of the incapacitated individuals. The system must be modernised. Senators Henry and Quinn referred to the dignity of the individual, which should be a guiding influence in making legislation.

The Bill will change the current system with two statutory agencies, a guardianship board and an office of public guardian. The Bill sets out limitations on the liabilities for persons who make decisions. The Minister of State drew attention to section 8(4). It states:

Where an act to which this section applies involves expenditure, it shall be lawful for the individual to apply money in the other person's possession for meeting the expenditure and if the expenditure is borne by the individual for the other person, it shall be lawful for the individual to reimburse himself or herself out of money in the other person's possession or to be otherwise indemnified by the other person.

Undoubtedly that would be an essential component and responsibility. However, where cash and assets are involved, secure safeguards need to be in place. Under the current system, people, who many not have been of full capacity, were deprived of assets by unscrupulous relatives. The section needs to be tightened.

Many sections set out guiding principles which establish an incremental approach to an intervention under the Bill, limit the scope of the Bill to adults, establish an assumption of capacity

until the contrary is established and define capacity for that purpose. The establishing of assumption of capacity until the contrary is found is an important aspect of this legislation. Intervention should take place only where it is absolutely necessary.

Reading the Law Reform Commission's report, I was impressed to discover the inclusion in a Scottish Bill of five general principles in this regard. This issue goes to the heart of State involvement in the lives of citizens. I am firmly of the view that the State should be minimalist in its interference in people's lives. This is an issue that has arisen in the context of the debate on the constitutional amendment on children. I contend that the State should intervene only when it is absolutely essential to do so and should not place itself in the position of parents or others who make decisions in regard to children.

The Law Reform Commission report states:

In Scotland section 5 of the Adults with Incapacity (Scotland) Act 2000 sets out five general principles which govern all interventions in affairs of an adult under that legislation. The statutory principles which are broader than a "best interests" test aim to ensure that the adult is consulted, as well as anyone else with an interest in the adult. The relevant principles which are to be respected can be summarised as:

- There is to be no intervention unless the intervention will benefit the adult and that benefit cannot reasonably be achieved by other means.
- The intervention must be the option which is least restrictive of the person's freedom, consistent with the purpose of the intervention.
- In deciding on any intervention, account must be taken of the adult's past and present wishes, beliefs, values and feelings so far as they can be ascertained.
- Account must be taken of the views of the adult and relevant others (including the nearest relative and primary carer) where it is reasonable and practical to do so.
- Persons holding powers of attorney or acting as guardians must encourage the adult to use existing skills and to develop new skills concerning his or her property, financial affairs or personal welfare.

There is much wisdom in these five general principles. They should be applied in the case of vulnerable adults. Moreover, in all cases where the State is deemed to have responsibility to intervene, it would be valuable to apply them as a litmus test for how and when it should intervene.

I compliment Senator Henry on her initiative in bringing forward this Bill. I note the Minister of State's comment that if the matter is not

pressed, the Bill may remain on the Order Paper. More interdepartmental work is required to refine aspects of it and to add to its general content.

Mr. Ryan: Cuirim fáilte roimh an reachtaíocht seo agus roimh an Aire Stáit agus an méid dearfach a bhí le rá aige. He could have gone further but I will leave it to Senator Henry to deal with that.

I am in and out of this House for a long time; Members opposite may consider it too long a time. It is 20 years since I first heard a Minister acknowledge the existence of offensive language in legislation. Words like “imbecile” and “lunatic” are inappropriate. There are others I cannot recall and which I might not wish to put on the record in any case. If I were to offer a crusading Minister a single action to take, it would be to go through all the legislation and remove those terms once and for all. They are profoundly offensive. They are also inaccurate in many cases because they presume the opposite of what the Law Reform Commission report makes clear is the case, that is, they presume it is possible to make an absolute distinction between people who have capacity and those who do not. The reality is that there is a spectrum rather than a single threshold. Ascertaining a person’s position on that spectrum is where difficulties arise.

One of the benefits of the diligence of people such as Senator Henry is that lazy people like me are forced to read reports we always intended to read but never managed. I am a reasonably good reader but there is a wonderful pile of Law Reform Commission reports sitting on my desk. Perhaps others Members are more diligent but I doubt it. We hear about these reports in the news but tend not to read the reports themselves.

Every Law Reform Commission report I have read has impressed me. They are elegantly written, comprehensible to mere lay people like ourselves and, in cases where they offer draft legislation, do much of the work we should be doing. I compliment Senator Henry on undertaking the obvious course well in introducing the Bill that the Law Reform Commission drafted. It is a route that any of us who survive the oncoming deluge might consider in future. Members on the other side of the House who will be on this side after the election might be particularly interested in such an approach.

Mr. J. Walsh: That is wishful thinking.

Mr. Ryan: They will not be used to introducing Private Members’ business and it might be a good place to start. They have not been here for a while.

Everybody has a story that illustrates the difficulties that arise in regard to the circumstances of vulnerable adults. Many of us have an immediate or extended family member who is in that area of

capacity where one knows he or she is unable to make major decisions. The idea of a ward of court system, however, seems extraordinarily dramatic and draconian.

I had an acquaintance who came to me looking for support after a road accident in which he sustained a head injury that had the unfortunate effect of making him quite paranoid. The processing of his claim through the courts was tedious for this reason and the other side began to suggest he was fabricating his injury. However, I saw the documentary evidence from witnesses and medical staff which supported his case. The other party ultimately persuaded a court to declare him a ward of court even though he was the plaintiff in a civil case. He absconded to England to escape what he believed was his imminent incarceration in a psychiatric hospital. However, a prominent British politician assisted him in sorting out the case. He was eventually awarded substantial damages in the Supreme Court three weeks before he died from cancer in 1993. He died vindicated and that was a wonderful achievement given that he suffered from this particular paranoia.

I had only a small role in this case but it concerned me that this person was declared a ward of court without his knowledge. I am not sure of all the details but I am certain that the sensitivity which ought to have applied in this process was not evident. The paranoia this man already suffered as a result of his accident was multiplied a hundredfold by this action, which he saw as the activity of outside conspirators.

There is anecdotal evidence of the difficulties that arise when people are declared wards of court. I recall speaking to a woman whose son was awarded an enormous amount of damages because of an injury at birth or something like that. The son was a ward of court and his mother assumed the money was assigned to support him. She encountered major difficulties with the ward of court system, however, in securing its agreement to undertake necessary modifications to the family home. She endured a long and well publicised battle. It seemed the instinct or perhaps legal obligation of the individuals involved in the wardship system was to challenge and question every proposal she made. I have heard of people who face challenges from the wardship system on such matters as the purchase of a pair of socks. Members who are familiar with my family situation will know about whom I am speaking.

This is not right and would not be so no matter what language is used. Given that we now understand the spectrum of abilities, it is even less so. I welcome the erudite treatment of capacity in the report of the Law Reform Commission. I welcome the reference to enduring power of attorney, which was drawn to my attention by my clear-thinking mother who thinks it a practical way of dealing with her future situation. I was

[Mr. Ryan.]

disturbed to discover that enduring power of attorney did not, and still does not, apply to major health decisions, which creates a grey area. I am grateful to the Law Reform Commission for drawing that to our attention.

The report stresses the need to recognise that people of limited capacity are, nevertheless, very human, which is only mentioned in passing in the Bill. They have all the needs of a human being, and a sexuality, and an unintended consequence of earlier legislation has been that any sexual activity between two people of limited capacity is illegal. I find that somewhat problematic, though I fully appreciate sensitivities about complications. However, to throw up a *cordon sanitaire* of celibacy around anybody deemed to be of limited capacity is not very human. We have imposed a law on such people which is based on marriage and it is a difficult area, whatever our morals. It will not be resolved by making a decision that is simple for us. We make laws for people of diminished capacity and essentially criminalise them for something they do freely but with limited capacity. I do not suggest the answer is easy.

Mr. J. Walsh: It is an issue of exploitation.

Mr. Ryan: It is. Many people, however, including many women, are exploited in sexual relations but that is not of itself illegal. I chose this area on which to speak because it exemplifies how difficult the issue is to resolve.

The Law Reform Commission can be extraordinarily blunt when it wants to be. It describes the criteria for bringing a person into wardship as archaic and complex. It states, for example:

The paternalistic concepts which are the heart of the wardship system sit somewhat uncomfortably with the more recent social and human rights models...Aspects of the wardship procedure do not contain adequate procedural safeguards...The wardship inquiry would appear to be more inquisitorial than adversarial in nature and the rules of evidence are therefore relaxed.

This issue does not deserve adversarial comment or criticism.

Why is everything so slow? Two consultation reports have been published, in 2003 and 2005. We knew this was coming and agree it is important, but why is the Department only now beginning to think about it? Is it not possible for the Government to recognise that the Law Reform Commission is working on something important and to work in parallel so that it can respond immediately to the issues? The Opposition would be nothing but helpful in producing reforming legislation and getting it through the Oireachtas quickly to remove all the anomalies in

the current legislation, especially the language that is such a feature of it.

Mr. Glynn: I welcome the Minister of State to the House and commend Senator Henry for bringing forward this Bill. Senator Ryan spoke about the terminology of the current Act, which dates from 1871. It should never have been acceptable but it certainly is not acceptable in 2007.

Having served in the psychiatric services I have come into contact with many wards of court. I will not repeat what other Senators said but I am pleased with the conclusions of the report. I am delighted the Minister is bringing forward legislation so that we all have the opportunity to add to or take from its proposals to ensure the optimum benefit accrues to the people whom we are trying to look after. I welcome the appointment of a suitable personal guardian who will be trained and will work under a regime of care practice which will be reviewed on an ongoing basis. The guardian will work with the people concerned to ensure they get the optimum benefit from their estate.

I witnessed a number of situations which would make us all frown, in which vulnerable people were exploited prior to coming into the care of the psychiatric services, which is very regrettable. The Minister of State said the office would offer wide-ranging advice, support and an educational role for vulnerable people and their families. It would oversee and supervise personal guardians and attorneys operating under enduring powers of attorney and act as personal guardian in cases where there is no one else willing or able to act. That is a very important provision.

This is overdue legislation and I agree with what colleagues on all sides on the House have said. It is time this horrible legislation was repealed because some of the terminology evokes revulsion. It belongs to another era like the ice age, or a horror film, and I would welcome anything that replaced it. I am delighted the Minister is present and I listened carefully to what he said.

I commend Senator Henry for bringing forward the Bill, which is consistent with the report of the Law Reform Commission, and look forward to the legislation coming before this House. I hope both Senator Ryan and I are around to give it due consideration, along with Senators Norris, Henry and Jim Walsh.

Mr. Ryan: We can change places.

Mr. Glynn: Some of us might be elevated to higher office in the interim.

Mr. Norris: I agree with Senator Glynn on most things but I do not think Senator Henry will return to the Seanad because she does not intend to stand for election.

Mr. Glynn: She will have a watching brief.

Mr. Norris: We will be diminished by her absence. We have not always seen eye to eye but she has offered something important to this House which will be missed. I refer not only to her care and concern for vulnerable people, which she has displayed in producing this Bill, but also to her medical expertise, which will be lacking on the backbenches. One can never tell, however, who will pop up at the last minute in an election but Senator Henry's decision not to stand is regrettable and I commend her on her initiative in presenting this Bill, the outline of which was drawn by the Law Reform Commission. That is not to be regretted, Senator Henry should be complimented on it because it shows a positive relationship between the Law Reform Commission and us as legislators. This is exactly what the Seanad should be about and it is marvellous that the Minister has indicated that the essential principles of the Bill have been accepted. We are generating more legislation than ever on this side of the House. I have a Bill on the Order Paper, although obviously it will not be taken and a similar Bill is being discussed in the other House tonight, but if I get back, I certainly will push it like blazes.

I concur with my friend Senator Ryan who, rather engagingly, confessed that like everyone else there are connections with wards of court in his family. My family tree is liberally festooned with imbeciles, idiots, lunatics and wards of court. I rather relished that old fashioned terminology in some cases because I remember how embarrassing it was for the family when, for example, I discovered a legal document belonging to an ancient relative of mine called Anthony Gale. My aunt tried to possess herself of it and destroy it because it noted the "said Anthony Gale, being a lunatic and declared ward of court". I rejoiced in that, thinking it to be absolutely charming.

I had another relative, a Hungarian aunt by marriage whose husband was tragically killed in a motoring accident which left her traumatised. She became very difficult and was made a ward of court. That was possibly in her best interest but she was someone of such strong personality and her mental condition was understandable because she came from an old Hungarian family that was thrown all over the place because of the collapse of the monarchy and the advent of communism. Communism drove her mad and she saw everything as a communist plot. I arranged for her to have a cataract operation. She agreed to have it and I pulled all sorts of strings to move her up the queue and at the door of the operating theatre, she said, "No, I will not do this, it is a communist plot." It obviously was not but she had convinced herself that the commies had infiltrated St. Vincent's Hospital and were going to take out her eyes. She was, however, well capable

of making all kinds of other decisions. That is why I like the idea in the Bill of a gradation of capacity.

Being serious, for people today, whatever about the 18th century, it is obnoxious to throw around phrases such as lunatics, idiots, imbeciles, morons and so on. The terms have become so outdated that they have become ludicrous and do not reflect the human situation.

The Law Reform Commission report usefully divides the situation of vulnerable adults into two sections, with the first being people who by virtue of age alone are rendered deficient in terms of mental capacity. That will happen increasingly because the population is ageing and life expectancy is increasing all the time, as is the incidence of Alzheimer's disease, which is generally associated with age. There is the other perhaps even more tragic circumstance where young, fit people, either through car accidents or sports injuries are rendered with some degree of intellectual disability. That is certainly a great difficulty and that is why it is important the present provisions be replaced by the guardianship system and I compliment Senator Henry on this.

I like the idea of a functional approach, that people should be judged on their capacity, with an individually tailored approach. We will not just say that a person has Alzheimer's and therefore nothing can be done, we will assess his or her capacity and respect it.

If the Minister is introducing legislation, he might consider something that is not in Senator Henry's Bill — regulation by IFSRA of these equity release schemes. I have been bellyaching about the packages available and the way they are advertised on the radio. It is heartless. They suggest at the age of 90 a person can flog off half of his or her house and skip off to Bermuda and have a bloody good time with lots of cocktails.

Ms O'Rourke: It sounds good.

Mr. Norris: It sounds good but it is not, life is not like that. Sometimes people apply for these without realising all the implications. Someone mentioned that there was a difficulty with a ward of court who needed alterations to her house. That is the same as taking up one of these equity release schemes. It gives a bank equity and its permission is needed to install a chair lift or similar facility. The bank may refuse because it would reduce the value of the house. People must be protected from that, particularly some older people who are easily led and a bit sentimental.

The Bill covers the question of consent. As the law stands, dentists, doctors and surgeons get consent forms signed by patients but they have no legal force. Technically, a dentist or a doctor who operates on someone of diminished capacity could in law be held to be committing an assault because those consent forms have no validity. As

[Mr. Norris.]

I understand it, this situation will be rectified by the current Bill, another good reason for commending it to the House.

The Minister indicated that although he will not take the Bill *en bloc*, it will remain on the Order Paper. Nothing will be done before the election and, alas, Senator Henry will not be here to propose the legislation after the election but if no one else will, I will push it, as will Senator O'Toole, who seconded it.

Mr. Ryan: So Senator Norris will definitely be here?

Mr. Norris: No one can say for definite that we will be here. I remember very well what happened to you, honey, when you came along with a poster stating, "When shall we three meet again?" and you met your fate. I will not tempt providence.

Ms O'Rourke: The Senator is so gleeful.

Mr. Norris: I am not a bit gleeful. To adapt Oscar Wilde, and I am sure he thought of saying this if he did not say it, I have never understand the idea of tempting providence because it is older than the whole bloody lot of us put together and should be able to resist temptation. I will not bank on providence being able to resist temptation in my case because, over the years, I have been a deliciously naughty boy and providence might decide it is about time I got a smack so I refuse to tempt providence in the way Senator Ryan so unwisely did. I wish him well and hope that on this occasion he survives.

This is a positive evening because we have been *ad idem* on the need for the Bill and the Government in succeeding years will introduce legislation along these lines. It now has the endorsement of the House and Senators Henry and O'Toole have done a good day's work for Seanad Éireann.

Ms O'Rourke: I wish to support the Bill. I have not read it fully but I listened to some of the debate and I believe Senator Henry has brought credit to the Seanad by introducing this Bill; she has talked about it for a long time. That a woman has introduced it is interesting because I would not find delightful at all the words which Senator Norris mentioned. They were an affront to sensibilities and would not skip lightly off the tongue and in the Bill Senator Henry seeks to address this.

Senator Norris mentioned Bills put down by the Independent Members but Senator Brian Hayes has a Bill on the Order Paper. From this side Senator Leyden successfully piloted a Bill on wills, which has passed all Stages in the Seanad. This Seanad has had a pretty good record of introducing Private Members' Bills. As well as

being a scrutinising and reviewing Chamber, our protocol allows us to introduce Bills. I am delighted the Minister of State has agreed to accept the Bill. I commend Senator Henry on what she has done. Senator Norris spoke of her not returning. I presume that is freedom of will.

Dr. Henry: Yes.

Ms O'Rourke: She has made a very good valediction to the House by introducing the Bill and having it accepted. I congratulate her.

Labhrás Ó Murchú: I came in to pay tribute to Senator Henry. I had listened to her contribution earlier. I hope she will not mind me saying she is a remarkable lady. The work she has put into the Bill is amazing. Not only her medical background but also the social conscience she has always demonstrated here have come across clearly. It is probably not an area that many would feel attracts much political kudos as it deals with probably the most vulnerable people in society. It is amazing that the legislation governing those areas and the accompanying language is so archaic. It is time we came into modern days and not simply talk about looking after those who cannot look after themselves, but also ensure those who do so are legally covered.

Senator Quinn quoted from personal experience having been asked to be executor of a will. He pointed out that some of the work he did may not have had any authority to back it up. While we did not question that in the past, we are now living in a different age. Obviously any one who takes the choice to help people is vulnerable if the law does not provide cover. I do not believe any of this motivated Senator Henry. Those who advised and helped her in many instances work at the coalface and wanted to bring it to the Legislative Assembly to ensure there was a legislative voice to cover the types of issues and people mentioned.

I pay tribute to Senator Henry. There was considerable sadness when Senator Norris said that although the Bill will remain on the Order Paper, Senator Henry may not be here to deal with it. That was the saddest part of all because the Senator has made such a contribution to the Seanad. This will be another monument to her and I compliment her on the work she has put in and the balanced way she presented it to the House. Above all we know the motivation she had in introducing it. I congratulate her.

Dr. Henry: I am quite overcome with the words of praise I have had tonight, which while undeserved are very welcome. I accept the suggestion of the Minister of State that the Bill remain on the Order Paper, which will send a timely reminder to everyone about it. The Seanad is a great place to introduce such Bills, which are not party political. We need to get around to such

legislation at some time. It is unfortunate that this matter has gone on for so long, but here we are with it now. I would like to see it addressed with a certain sense of urgency, particularly as it affects older people. Earlier today we had a debate on health service reform and I believe everyone supported the Minister for Health and Children in her desire to keep older people at home for as long as possible if that is what they want. This matter will require some working out and we need to be in a position to know what they want to do and what their carers want. It is important to ensure that the carers are legally covered. Senator Quinn spoke about what he did, which eventually may have been completely outside the law. Families could make challenges when others are doing the very best they can for a person. It is important particularly from the point of view of older people to get the legislation enacted as soon as we can.

Perhaps I read too much Dickens. When I read about people being made wards of court in chancery I felt worse than ever. As several Senators pointed out, frequently after people have been made wards of court, particularly following the award of big sums of money in damages for accidents, those who need to care for them on a day-by-day basis have had an extremely difficult time in dealing with things. I remember a case similar to the one mentioned by Senator Ryan in which a child was awarded damages. When the child was only seven, eight or nine, the carer was still having trouble getting money to care for the child.

When the Powers of Attorney Bill was being discussed in the Seanad, I tried to provide more flexibility regarding health care. However, the then Minister, Mr. Mervyn Taylor, felt he could not do so. He allowed for more latitude during its passage through the Dáil to take into account personal wishes. Older people are terribly worried about health care. They often say that they want no artificial resuscitation or other actions. However, people have no legal power unless these wishes are documented.

The Law Reform Commission mentioned under 18s and Senator Jim Walsh also spoke about them. I am sure many others apart from me were deeply shocked by a recent case in America where a child of approximately nine years who was supposed to have the mental age of six or seven months had her womb, ovaries and breast buds removed because her parents decided this was how they wanted to keep her — in a state of suspended animation.

Ms O'Rourke: It was done so that she would not become sexually active.

Dr. Henry: She was absolutely immobile. I would have thought that would have required

much more consideration than simply the consent of the parents.

As the Marriage of Lunatics Act is still in force, we might spend another day considering that legislation. Inappropriate language is used in so many Bills, including “weak mind” and “of unsound mind”. We introduced legislation before Christmas that again contained the phrase “of unsound mind”. This was quite important because “unsound mind” is not defined legally, nor does it have a medical definition. In that legislation a person considered by a garda of a certain rank to be of unsound mind was not considered to be fit to operate a gun shop. That potentially took away a person's livelihood on grounds that were neither legal nor medical. We need to introduce a sense of urgency into the matter and I am sure the Department of Justice, Equality and Law Reform officials will do so.

I am most grateful to the Minister of State for his and the Government's response to the Bill. I will keep an eagle eye on its progress, probably from the Gallery as opposed to from here.

Ms O'Rourke: It might be from above.

Dr. Henry: No, not from up there at all. It will happen in the autumn when the Cathaoirleach and I are having a wild time outside the Seanad.

Mr. Fahey: I did not realise Senator Henry was not planning to stand for election again. In that case I join the other Senators in saying what a wonderful job she has done here. She is one of the kindest and best people. As a gesture, if she is not going to be back here, I am prepared to accept the second reading of the Bill.

Dr. Henry: I thank the Minister of State. That is very gracious of him.

Question put and agreed to.

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

Dr. Henry: After 17 March.

An Cathaoirleach: Is that agreed? Agreed.

Business of Seanad.

Ms O'Rourke: I wish to move an amendment to the Order of Business to suspend sitting until 10.55 p.m. when we will set out the arrangements to take urgent legislation at 11 p.m. The Bill will be circulated to Members at 8 p.m.

An Cathaoirleach: Is that agreed? Agreed.

Sitting suspended at 6.40 p.m. and resumed at 10.55 p.m.

Business of Seanad.

Ms O'Rourke: I move an amendment to the Order of Business which I made a few hours ago to suspend sitting until 11.15 p.m. until the Bill arrives to this House from the Dáil.

An Cathaoirleach: Is that agreed? Agreed.

Sitting suspended at 10.56 p.m. and resumed at 11.15 p.m.

Business of Seanad.

Ms O'Rourke: I move that:

Notwithstanding anything in Standing Orders and the Order of the Seanad of this day, it is proposed to take Nos. 3a and 3b on the Supplementary Order Paper. No. 3a is the Health Insurance (Amendment) Bill 2007. All Stages of No. 3a on the Supplementary Order to conclude not later than 11.55 p.m. The contribution of each group is at six minutes and the Minister to be called upon to reply no later than ten minutes before the conclusion of Second Stage. No. 3b, motion for earlier signature of the Health (Insurance)(Amendment) Bill 2007, to be taken immediately without debate on the conclusion of No. 3a.

Mr. B. Hayes: Are we debating the supplementary Order Paper proposed by the Leader?

An Cathaoirleach: Yes.

Mr. B. Hayes: We face a very unusual situation in that the Government intends to take all Stages of this Bill and, in effect, to guillotine it by 11.55 p.m. I asked the Leader to provide more time for a considered discussion of the Government's proposals. The reason I make this argument is that in the likelihood of a legal challenge being mounted at some stage by the parties to this matter it would be most useful for the courts to have access to a transcript of a full debate from all sides of the House.

It would also be useful on Committee Stage for Members to put specific questions to the Minister so the court would have a clear view as to the mind of the legislators and of the Oireachtas if the matter ever comes before it. I make this proposal on the basis of the constitutional propriety of this House and the way in which the House has always exercised its business in a manner that ensures parliamentary accountability. I ask the Leader to consider my proposal to extend the debate, otherwise we will be compelled to oppose the Bill.

Mr. Ryan: I support Senator Brian Hayes. There is no reason of which I am aware why we have to rush through this Bill in 40 minutes—

Mr. Norris: We are only keeping the President up.

Mr. Ryan: —other than the fact somebody said it had to be done in 40 minutes. It could be done in 80 minutes. We are here late and it does not really matter at this stage if we are here longer. The experience of myself and other Members of this House in recent years is that legislation from the Department of Health and Children requires detailed scrutiny. To rush it through without a Committee Stage is bad in principle and, given the record of that Department, is potentially disastrous.

An Cathaoirleach: This is not the Order of Business.

Ms O'Rourke: While the points put forward appear extremely reasonable, I am advised the Bill must conclude prior to 12 midnight.

Mr. Ryan: On a point of order, the only argument might be that the Bill must be enacted before 12 midnight. Even if it is passed at 11.55 p.m. unless the President is sitting downstairs it will not be signed into law before midnight.

Mr. B. Hayes: That is also my view on the matter. The Interpretation Act does not apply in this case, because if the President signs the Bill as passed by the Dáil and Seanad before the stated time tomorrow morning the effect will be neutralised. That is the objective of the Bill. I do not see the difficulty in extending the time provided for debate to ensure people can do their jobs.

Ms O'Rourke: I am advised the Bill must be concluded prior to 12 midnight.

Mr. Norris: The House is entitled to an explanation. The Leader evidently believes there is some justification for her position. She has been advised the Bill must be passed by midnight. It would be helpful if we were to know why this is so. I said jocosely when it was first announced it had to be passed by that time was because the President wants to go to bed.

Mr. Dardis: That is reasonable.

Mr. Norris: It is a reasonable human need but if this is an emergency the watchdog of Ireland cannot sleep. If there is a real reason perhaps the Leader could share it with us, or has she just been told it must be passed by midnight? If that is all she has been told, that is showing considerable disrespect to Seanad Éireann and to those of us who stayed on late in order to take part in the debate.

Mr. Ryan: Is it in order for me to point out something? The Bill will not be passed until after

midnight if there is a vote at 11.55 p.m., therefore, the midnight argument is a smokescreen.

Question put.

Ms O'Rourke: I have nothing further to add.

The Seanad divided: Tá, 25; Níl, 13.

Tá

Brady, Cyprian.
Brennan, Michael.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Kenneally, Brendan.
Leyden, Terry.
Lydon, Donal J.
Mansergh, Martin.

Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Rourke, Mary.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Coghlan, Paul.
Cummins, Maurice.
Feighan, Frank.

Hayes, Brian.
Hayes, Maurice.
Norris, David.
Phelan, John.
Ryan, Brendan.
Terry, Sheila.

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

Question declared carried.

**Health Insurance (Amendment) Bill 2007:
Second Stage.**

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

Minister for Health and Children (Ms Harney):

The Government decided today that emergency legislation should be introduced to amend the Health Insurance Acts. This urgent measure is required to support our system of community rating, which ensures that health insurance is affordable for old and sick people. It closes off any potential abuse of the three year exemption from risk equalisation payments. Deputies—

Mr. Bannon: On a point of order, we are not Deputies.

Ms Harney: I beg the Senator's pardon.

(Interruptions).

Ms Harney: Senators will be familiar with the regulatory framework which underpins the operation of the private health insurance market in Ireland. The key elements of this framework have been supported by successive Governments. These are community rating, open enrolment and minimum benefits. The adoption of this approach to regulating the market has been part of the reason the level of private health insurance cover-

age in Ireland is unique in Europe. Approximately 52% of the population now have health insurance cover.

There are many reasons people choose to buy health insurance cover. Many people in Ireland choose to do so because it is affordable. Even more importantly it remains affordable throughout people's working lives and into retirement. We all know we are more likely to need expensive medical treatment later rather than earlier in our lives. In most countries and as part of a risk rated insurance market, health insurance premia increase as people get older and as a reflection of the higher risk of claims related to ageing.

The policy of community rating means health insurers cannot discriminate against older customers and must offer their various plans to subscribers at the same cost regardless of age or medical history. This is a fair and equitable approach. Apart from keeping health insurance affordable, it is a practical demonstration of inter-generational solidarity whereby younger and healthier members of the population pay more than would be needed in a risk-rated market but themselves benefit in later life when they might be expected to pay prohibitive premia if their higher risk were to be reflected in the price paid.

It is generally accepted that a community rated market cannot operate as intended if insurers in the market have markedly different risk profiles. Some mechanism is required to balance the risks and spread them across the market so that the different insurers can offer community rated

[Ms Harney.]

products. For this reason, all community rated markets also have a risk equalisation mechanism of some nature in order to balance the risks. New entrants to the market typically tend to attract young subscribers with a lower than average risk of claiming under their policies. There is much evidence to suggest that existing older health insurance subscribers are reluctant to switch their businesses to new entrants.

To counteract this phenomenon, the Health Insurance Acts allowed new entrants to the market to avail of a three year exemption from the obligation to make risk equalisation payments that otherwise might be levied as a result of their having a more favourable risk profile. The exemption was intended to give new entrants the opportunity to establish themselves and to build up a market share. It was clearly the intention of the Oireachtas when the measure was enacted that this exemption should be confined to new entrants seeking to build up market share from zero by organic growth.

It was recognised that the exemption could be open to abuse by an existing insurer reincorporating itself or establishing an associated company and seeking to secure a second three year exemption by claiming to be a new entrant. Section 12B of the principal Act, inserted by section 10 of the Act of 2001, was amended in 2003 to prevent such a move. However, the amended legislation did not encompass the situation which emerged with the announcement on 31 January by the Quinn Group that it had reached an arrangement with BUPA for a takeover of the latter's Irish operations. This development followed BUPA's announcement on 14 December that it was withdrawing from the Irish market following the dismissal of its High Court challenge to the risk equalisation scheme.

I emphasise that the Government and I welcome the Quinn Group's interest in entering the market. It has built a strong reputation and a successful business in the reformed motor insurance market and has been a positive influence on the level of competition in that market. I have not seen the legal agreement between the Quinn Group and BUPA for the transfer of the BUPA Ireland business to the Quinn Group. However, the Attorney General has advised that the potential exists for an incumbent or non-incumbent to avail of the three year exemption by particular corporate transactions, in essence, acquiring or restructuring the business of an existing player in the market.

In the Government's view, the securing of the exemption in this way would constitute a frustration of the intention of the Oireachtas when it passed this measure into law. The Government is advised that this loophole should be closed off as a matter of urgency. The Government decided, based on legal advice, that the most effective means of achieving this is to remove the exemption for new entrants in its entirety. The removal

will become effective immediately the Bill now before the House is signed by the President. It will not affect the exemption VIVAS currently has and which expires in October 2007. Clearly, it does not prejudice the ability of the Government to form policy for the market or the Oireachtas to pass further legislation at any time. On the other hand, not to close off the exemption now would have constrained policy development in a significant way.

Section 1 contains standard provisions dealing with definitions. Section 2 deals with the provision under existing legislation that risk equalisation payments apply to existing undertakings. However, it is considered prudent to put beyond doubt that should an undertaking no longer be on the Health Insurance Authority register of undertakings, it should be liable for risk equalisation payments in respect of contracts written when it was a registered undertaking.

Section 3 comprises a technical amendment that follows on from section 2. Section 4 repeals with immediate effect the limited three year exemption from risk equalisation for new entrants to the market. The purpose of the exemption was to promote competition in the market by allowing new entrants a period of time during which market share could be built up before risk equalisation payments fell due to be paid. However, the exemption has the potential to be exploited by a company which acquires an existing undertaking or associated company to avoid making risk equalisation payments. The Government believes it is therefore necessary to enact legislation to prevent such abuse. Section 5 provides for the usual short title and collective citation.

I have repeatedly restated the Government's commitment to maintaining community rating in this market and to promoting greater competition. I also want to ensure the regulatory framework does not place unnecessary obstacles in the way of companies seeking to enter the market and allows them to earn a reasonable return on capital. For that reason I have appointed a market review group chaired by Colm Barrington to examine whether, having regard to all aspects of the current market and the need to maintain community rating, it is possible for current and prospective participants in the health insurance market to earn a rate of return on capital employed which would be regarded as adequate for the insurance industry.

When I receive the Barrington report at the end of March I expect to bring it and the reports of the Competition Authority and the Health Insurance Authority, together with my recommendations, to Government in April.

I commend the Bill to the House.

An Cathaoirleach: I remind Senators that we must conclude at 11.55 p.m., including the Minister's reply.

Mr. Browne: I will share time with Senator Bradford. We are very upset on this side of the House as this is bad legislation.

An Cathaoirleach: Under the order of the House I will call the Minister in three minutes' time.

Mr. Browne: The Minister might give way. This legislation reminds me of the nursing homes fiasco, where legislation was rushed through the House and ended up being referred to the Supreme Court. If, with us having passed a motion for earlier signature, the President were to refuse to sign the legislation, what would happen? Would it be complete chaos? She has done so in the past on health legislation.

Mr. Dardis: That is the President's prerogative and is nothing to do with us.

Mr. Browne: We are in favour of risk equalisation but there are different ways of implementing it. In Australia it was applied only in respect of 65 year olds. As far as I am aware BUPA accepts the principle but disagrees as to the payment involved. EU Commissioner Mr. McCreevy also has major concerns, as does the Minister, which is why she is awaiting three reports, from the Competition Authority, the Health Insurance Authority and Mr. Barrington.

The Minister spoke about the different solvency requirements for VHI. We have heard about that matter for years but no action has been taken. Is it not time for an independent audit of the assets of VHI to ascertain how well off or otherwise it is? Is it on the verge of bankruptcy, as it claims?

The Minister has known of this since July but has only decided to take action tonight. It also emerged during the debate in the Dáil that the Minister for Enterprise, Trade and Employment, Deputy Martin, knew about it in 2003 and assured the House that what has happened tonight would not happen. Competition works as it provides more choice for consumers and a cheaper and more varied service. The Minister compared the British example, which is grossly unfair as one cannot compare the NHS with our system.

The purpose of derogation is to encourage competition but the Minister has now removed that and we have the anomaly whereby VIVAS will benefit from a derogation but other companies will not.

Mr. Bradford: Has the Minister, her junior Minister or officials met representatives of the Quinn group since its announcement some weeks ago? Has the Minister held discussions with them on their future plans in the market?

I am deeply unhappy with the proposed legislation. I am on the record of this House and elsewhere in recent years as expressing grave concern

over the concept of risk equalisation as it is practised in this country. Risk equalisation is a bar to competition and to consumer choice. Since the Health Insurance Act opened up the market in 1996 there has been minimal interest in entering the Irish market. If the Bill is passed tonight, it will ensure no new company will enter the Irish market.

The Minister referred in her contribution to the unique situation in the Irish health insurance market due to its size but it is also unique that one company is so dominant. The VHI owns 80% of the market and that is the fundamental problem. Until that is tackled we will not have sufficient consumer choice and competition. I favour community rating. It can happen if there is sufficient choice and a variation on risk equalisation. The practice in this country, however, has driven away new companies and tonight is another nail in the coffin as far as new entrants to the market are concerned.

Will the Minister bring forward the reports? We have all heard rumours about the contents of the Competition Authority report and the Health Insurance Authority report and they seem to pose grave questions about the current system of risk equalisation. The reports will be available soon but we now propose to pass legislation that will block new entrants. This is a bad night for the Irish consumer because we are putting an end to competition. I appreciate that the unexpected has occurred in recent months but this is a poor response.

An Cathaoirleach: I am sure five minutes will be enough for the Minister to reply so I will call two other speakers who have two minutes each.

Mr. Glynn: The Government cannot do other than what it is doing. Without community rating and risk equalisation, the private insurance market would be cherry-picked. The Government has responded with alacrity to ensure affordable health insurance is available to the old and the sick. The abolition of the three year exemption will make it possible for new entrants to come into the market, it will level the playing field.

Having listened to the debate in the other House, it is clear to me that the level of private insurance premium in this country compares favourably with that obtaining elsewhere. This is the only way the Government can go and it is a responsible reaction to a situation that threatens affordable insurance for the old and the sick.

Mr. Bannon: It is rushed legislation brought in at the 11th hour.

Mr. Glynn: There are none so blind as those who will not see. The usual lack of logic obtains.

Mr. Norris: There is a note of farce about this because we have not been told the reason for it. I am happy to accept the Bill if it closes off a

[Mr. Norris.]

loophole and is urgently and legally necessary but we have not been given any reason, we have simply been informed that the Attorney General says it is necessary. We are entitled as a House to be treated with respect and to be fully informed.

Mr. B. Hayes: Exactly.

Mr. Norris: Most reasonable people would agree that the phoenix syndrome should be prevented, where companies could be formed in Dublin and, when they must meet their tax liability, collapse and a new paper company formed. We had this situation in the entertainment industry and apparently it now exists in the health service. I believe the Department was aware of this possibility and it should have acted earlier. If it stops companies profiteering, as BUPA did to the greatest possible extent——

Mr. Glynn: Correct.

Mr. Norris: ——I support it. We need a service for the sick and elderly, those who need it, and if this provides it, I am all for it but we entitled to be told why there is such unseemly haste.

Mr. Ryan: To say this Bill is the consequence of peculiar decision making is to put it generously. The fundamental problem is the belief that competition is the remedy. In my view, good regulation is the solution and we have never had that. There was a cosy consensus, an easy relationship, between the VHI and public and private hospitals. They effectively made deals which made fortunes for private and public hospitals and it was all handed on to the consumer. It could have been dealt with by ensuring that there was real pricing and we were not subsidising easy-going private and public hospitals through the VHI when things were cheaper. This is an appalling and unnecessary rush and a terrible derogation of the Oireachtas responsibility, coming from a Department whose reputation for drafting sloppy legislation gives us all good reason to be nervous.

Minister for Health and Children (Ms Harney): The current risk equalisation model was introduced by a Fine Gael Minister for Health, Deputy Noonan, in 1996. Until Senator Bradford spoke this evening, I thought Fine Gael supported risk equalisation. Why do we need to have risk equalisation? Community rating means that people pay the same rate for the same products regardless of how sick or old they are. That cannot be done without a transfer of payments from younger people to older people.

Mr. Browne: Why not break up the VHI?

Ms Harney: VHI has three younger members for every old member. BUPA has 18 young members for every older member. Clearly fair

competition cannot take place in that scenario. Why the rush this evening? When the Quinn Group acquired BUPA, it did not acquire BUPA Insurance. It acquired BUPA Ireland, which is a service company servicing the insurance company. Therefore it needed to apply for authorisation. That application will probably be considered by the Financial Regulator on 28 February and thereafter it would need to be registered by the Health Insurance Authority, which would probably happen early in March.

However, VIVAS Health made it known that if the Quinn Group were to avail of this loophole, it too would use a similar vehicle. Unlike the Quinn Group, VIVAS Health did not need to apply for authorisation. It could have approached the Health Insurance Authority before 5.30 this evening or after 9 o'clock in the morning and reregistered, allowing it to avail of a further three years' exemption. That would mean community rating would collapse and no money would be paid until the end of 2010, which is in nobody's interest. We cannot continue to maintain community rating without having risk equalisation.

In response to Senator Bradford's question, both the HIA report and the Competition Authority report have been published. Nobody has suggested eliminating our current risk equalisation model.

Mr. Bradford: Not eliminating but amending.

Ms Harney: No. The HIA suggested that the phasing-in period should be changed from three to four years, with payments of 25% in year one, 50% in year two etc.

Mr. Bradford: The Minister is now eliminating the three-year rule.

Ms Harney: I will outline the reason for eliminating the three-year rule. If we allowed companies not to pay any tax for the first three years, clearly they would use various corporate structures to keep changing their status to avoid paying tax. The advice is that for as long as the three-year exemption exists, companies could use what is called in the business the hit and run scenario. They would do business for three years with a lot of young customers and then exit. That scenario does not give any clarity, certainty or fair competition. I was not advised last July. This issue arose in the context of the court case. We took legal advice, which recommended the law should not be changed until the judgment was given. It was given at the end of last year at which point legal advice was sought. The former Minister for Health and Children, Deputy Martin, was not aware of this loophole nor was anybody else because it was never envisaged that a company would sell a service company and not sell its insurance business, which is what has happened in this case.

The Government is committed to competition and unlike Senator Ryan, I believe that competition brings more innovation and we get better value for money.

Mr. Ryan: The Minister should consider the United States — 16% of gross domestic product.

Ms Harney: A monopoly market with a single player does not promote innovation. We want competition, but it must be on the basis of community rating. It must be fair competition.

Mr. Browne: When will the VHI be broken up?

Ms Harney: When I receive the Barrington group report in March, I will bring proposals to Cabinet in April to address all the issues. It is not fair to suggest we have not addressed the status of the VHI. Recently the Government agreed to commercialise the VHI and put it on the same commercial footing as its competitors, which means it would be required to meet the solvency requirements of its competitors.

Mr. B. Hayes: When will that legislation be introduced?

Ms Harney: I very much regret that was not done ten years ago.

Mr. Bradford: Has the Minister met representatives of the Quinn Group since its announcement?

Ms Harney: I asked my officials to contact the Quinn Group last week when I knew I would be bringing proposals to Cabinet yesterday. I met Mr. Quinn and his chief executive officer on

Monday. I welcomed that the group had entered the market. I informed them that we had a loophole that we could not sustain. I was not in a position to tell them or anybody else what we would do. I did meet the Quinn group on Monday evening. I felt that it would have been discourteous when I was about to bring in legislation not to have met the only player to come into the market. I had met all the other players on many occasions, Vivas and the VHI and so on.

Mr. Browne: What happens if it leaves?

Ms Harney: I hope it will not leave. Nobody more than I wants to see it and others in the market. There will be more entrants into the market because I and the Government are determined to create the conditions to encourage that, on the basis of community rating and fair competition.

Mr. J. Phelan: The Minister has not acted on this for the past ten years.

An Cathaoirleach: As it is now 11.55 p.m., I am required to put the following Question in accordance with an amendment to the Order of Business: “That notwithstanding anything in Standing Orders the Bill is hereby read a second time; the sections not disposed of are hereby agreed to in Committee; that the title is hereby agreed to in Committee, and the Bill is accordingly reported to the House without amendment; that Fourth Stage is hereby completed and the Bill is hereby received for final consideration and that the Bill is hereby passed”.

Question put.

The Seanad divided: Tá, 26; Níl, 12.

Tá

Brady, Cyprian.
Brennan, Michael.
Daly, Brendan.
Dardis, John.
Dooley, Timmy.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Hanafin, John.
Hayes, Maurice.
Kenneally, Brendan.
Leyden, Terry.
Lydon, Donal J.

Mansergh, Martin.
Minihan, John.
Mooney, Paschal C.
Morrissey, Tom.
Moylan, Pat.
Ó Murchú, Labhrás.
O’Brien, Francis.
O’Rourke, Mary.
Phelan, Kieran.
Scanlon, Eamon.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bannon, James.
Bradford, Paul.
Browne, Fergal.
Burke, Paddy.
Coghlan, Paul.
Cummins, Maurice.

Feighan, Frank.
Hayes, Brian.
Norris, David.
Phelan, John.
Ryan, Brendan.
Terry, Sheila.

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

Question declared carried.

Business of Seanad.

Mr. B. Hayes: On a point of order, it is worth pointing out that the division finished at 12.08 a.m. and yet the entire health system has not collapsed.

An Cathaoirleach: I do not know if that is a point of order.

Mr. Ryan: On a point of order, is it in order for the Leader to give us a reason we had to finish, which was that this Bill had to be passed before midnight and then for us to sit for ten minutes after midnight to have the Bill passed?

An Cathaoirleach: Senator Ryan, the Bill is now passed.

Mr. Ryan: I do not believe the Leader deliberately misled us but I believe she was misinformed by those who were advising her and she often talks to those who advise her.

An Cathaoirleach: The Bill has now passed.

Health Insurance (Amendment Bill) 2007: Motion for Earlier Signature.

Ms O'Rourke: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Health Insurance (Amendment) Bill 2007, on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to her.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Ms O'Rourke: Tomorrow morning at 10.30 a.m.

An Cathaoirleach: The Leader means later this morning.

Ms O'Rourke: Yes, that is correct.

Adjournment Matters.

Schools Building Projects.

Ms O'Rourke: After the end of a very long day we very much appreciate that the Minister is present. I rise to inquire about the current situation in regard to Wilson's hospital school in Multyfarnham, County Westmeath. This school was mentioned last week when the Statute Law

Revision Bill 2007 was debated. Many schools, particularly the ERASMUS trust schools, had asked that the legislation setting them up would not be removed from the Statute Book as, I understand, it would affect the trust under which they were set up.

Be that at it may, this school is one of great renown and tradition. It is a boarding and day school for boys and girls. Many years ago the management came to me with a request for a new buildings and they got the famous Preston Building. On that occasion it opened its doors to day pupils from the rural Multyfarnham area. Heretofore it was a boarding school for boys and girls. It is a very good school with a huge tradition behind it but with a modern curriculum. It is a well-run school. I know it well and am a great supporter of it. It provides a niche type of education where it is needed but it does so in a modern democratic way.

I urge that the decision to go ahead with the expansion programme be granted and I look forward to hearing what the Minister has to say.

Minister for Education and Science (Ms Hanafin):

I thank the Senator for raising the matter of Wilson's hospital school, Multyfarnham, County Westmeath. The Senator will be aware that Mullingar has been identified as an area of rapid development and such areas get priority within the Department of Education and Science for our building programme. The building programmes this year comes to €540 million with €4.5 billion set out over the term of the national development plan. This year 1,500 schools building projects will be delivered.

The school planning section of the Department of Education and Science is looking at the future educational requirements of Mullingar and the wider area at primary and post primary level. Factors being considered include population growth, demographic trends, current and projected enrolments, recent and planned housing developments and the capacity of existing schools to meet the demand for places into the future. That examination will be completed shortly.

In regard to Wilson's hospital school an examination of the school's long-term projected enrolments is being carried out by staff in the school planning section of the Department. Once the long-term projected enrolment is established and agreed with the school the Department will draw up a schedule of overall accommodation for the proposed additional accommodation and it will then be possible to progress it further. It is important that the long-term projected enrolment is signed off with that school. I thank Senator O'Rourke for raising the matter.

Special Educational Needs.

Mr. Morrissey: I thank the Minister for being here at this late hour to hear this matter on the Adjournment. I will not delay the House too

long. While I accept that much has been done in the lifetime of this Government in respect of special needs education and additional teachers, I have raised this matter to get an update on the area of north Dublin in particular. Many people come to me who are distraught because their children have special needs. They are looking at where they go from primary to secondary school and fear the assistance that might be available to them at primary school level may not be in place at secondary level. I look forward to hearing the Minister's reply.

Ms M. Hanafin: I thank Senator Morrissey for raising this issue on the Adjournment. While the Department of Education and Science does not hold the specific information about areas like north county Dublin, there are more than 200 special classes for children with special educational needs in Dublin city and county. Of these, approximately 40 cater for children on the autism spectrum. In addition, the Department has sanctioned four stand-alone facilities providing an applied behavioural analysis, ABA, methodology response on a pilot basis in the Dublin area. There are also 40 special schools for children with disabilities in the Dublin area. In addition, 1,954 special needs assistants support the care needs of children in primary schools in Dublin and 344 special needs assistants provide similar support in second level schools.

As Senator Morrissey acknowledged, enormous progress has been made over recent years in respect of increasing the number of teachers in schools who are specifically dedicated to providing education for children with special educational needs. One in five primary school teachers works directly with children with learning difficulties and special needs. At second level, more than 2,300 whole-time equivalent additional teachers are in place to support pupils with special educational needs, with 534 of these being learning support teachers. In addition, there are in excess of 8,200 special needs assistants in primary and post-primary schools. This is up from approximately 300 special needs assistants in the space of only five or six years. More than €50 million was spent in 2006 on the school transport costs of children with special educational needs.

The Department provides a wide range of supports and additional resources to support children who have been assessed as having special educational needs, including children in the Dublin north county area. These services are determined by the nature of the special educational need and include additional teaching support where a child is fully integrated into a mainstream school; reduced pupil-teacher ratios where the child is in a special class attached to a mainstream school or a special school; special needs assistant support for a child who has care needs; assistive technology where this is recommended; specialist equipment such as modified desks and chairs, as

required; and specially adapted school buildings where necessary.

Primary schools are also supported by means of a general allocation which provides additional teaching support to enable schools to cater for pupils with high incidence special educational needs, such as dyslexia, and those with low attainments. Second level schools continue to be supported by the allocation of additional teaching hours, where appropriate, for each pupil enrolled who is assessed as having a special educational need. Special needs assistant support is allocated, as appropriate, to all schools where there are confirmed assessed care needs in respect of students.

Senator Morrissey may be aware that I recently announced that 31 additional psychologists are to be recruited to the National Educational Psychological Service, NEPS, in 2007. This will increase the total number of psychologists in NEPS by 25% to 158. In the last school year, my Department also funded more than 4,000 private assessments at a cost of €1.3 million. The extra 31 psychologists who will be recruited in 2007 will mean that more schools will have a direct service from NEPS.

The National Council for Special Education, through the 75 local special educational needs organisers, known as SENOs, is responsible for processing applications from primary and post-primary schools for special needs supports. These include some of the supports I have already outlined. They are an essential point of contact for both parents and schools. I am also very committed to the work carried on in special schools and special classes, recognising the unique contribution they make. I announced a 30% increase in the already enhanced capitation rates in respect of pupils attending special schools and special classes to recognise the clear importance of all these children, these schools and the work they do.

We have also commenced a review of the role of special schools and special classes in the context of the continuum of special needs education. It is obvious to the Senator that the Department and I have prioritised the area of special needs education. It leaves us open to criticism that we have not met targets in other areas, but anybody in this House would agree that children with special needs need to be our greatest priority.

Tionscadail Tógála Scoile.

Mr. Ryan: Cuirim fáilte roimh an Aire. Tá brón orm gur chomh déanach san oíche is atá sé ach ní orainne atá an milleán sin.

Táimid ag iarraidh a fháil amach cad ina thaobh go bhfuil moill ann faoin dul chun cinn atá ceadaithe ag an Roinn Oideachais agus Eolaíochta do Ghaelscoil Chloch na Coillte, a bunaíodh i 1994 agus a fuair aitheantas buan i 1997. Is scoil lán-ghaelach í, faoi phátrúnacht Fhoras Pátrúnachta na scoileanna lán-Ghaeilge. Bhíos

[Mr. Ryan.]

féin i mo bhall de bhord an Fhorais Pátrúnachta i lár na nóchaidí.

Scoil réasúnta mór is ea í. Tá 230 daltaí sa scoil agus 25 fostaithe go lán-aimseartha inti, ach is trua go bhfuil sí lonnaithe i gcónaí i seomraí réamh-dhéanta. Níos measa ná san, tá costas €330,000 á íoc astu siúd gach bliain agus dualgas ar thuismitheoirí na ndaltaí 5% dá seo a bhailiú. Cheannaigh an Roinn suíomh agus tá sin ina seilbh aici. Fuair an scoil litir ón Roinn, dár dáta 12 Meán Fhómhair 2006, ag cur in iúil go bhfuil an tionscnamh réidh le dul go dtí an chéad chéim eile — pleanáil agus dearadh. Ach níl faic tarlaithithe le ceithre mhí.

Tá an-bhuaireamh ar thuismitheoirí agus ar fhoireann na scoile faoin moill seo. Tá ceisteanna eile curtha acu ormsa. Tá ceisteanna faoi shábhacht agus slándáil na ndaoine ins na foirgintí réamh-dhéanta atá ag dul in aois agus tá ceist faoi airgead atá á chaitheamh ag an mbord bainistíochta chun an áit a choimeád tirim ón mbáisteach. Caitheadh €68,000 anuraidh amháin chun an áit a choimeád tirim.

Tá sé de dhualgas ar an Aire agus ar an Roinn cinneadh a dhéanamh, an rud seo a shoiléiriú agus a chinntiú go bhfuiltear chun leanúint leis an bhforbairt agus na hacmhainní a chur ar fáil chun an scoil nua atá tuillte agus atá ag teastáil a thosnú go luath.

Minister for Education and Science (Ms Hanafin): Gabhaim buíochas leis an Seanadóir Ó

Riain as ucht an cheist seo a ardú. Aithníonn an Seanadóir an tábhacht a bhaineann leis an gceantar seo de bhrí go bhfuil an daonra ag méadú go han-tapaidh ar fad. Mar a luaigh an Seanadóir, tá Gaelscoil Chloch na Coillte bunaithe le roinnt mhaith blianta agus níl suíomh buan aici go fóill. Mar is eol, tá sár iarracht á dhéanamh againn chun foirgintí scoile go léir a fheabhsú. Tá infheistíocht de €540 milliún á dhéanamh i mbliana agus déanfar infheistíocht de €4.5 billiún de réir an phlean forbartha náisiúnta. Beimid in ann an-infheistíocht a dhéanamh chun na scoileanna a fheabhsú agus chun cinn nua a fhorbairt.

Ina measc san tá scoil chomhoideachais, Gael-scoil Chloch na Coillte. Is cosúil, de réir na bhfigiúirí, gur fhás rollachán na scoile seo faoi thart ar 20% sna cúig bliana a d'imigh tharainn. Tá socraithe déanta ag rannóg fhoirgníochta scoileanna na Roinne gurb é an leibhéal cuí cóiríochta le soláthar na cion príomhoide agus dáréag múinteoirí gnáthranganna, chomh maith leis an gcóiríocht choimhdeach chuí. Cúis áthais dom a chur in iúil don Seanad go bhfuil láthair oiriúnach faighte anois, mar sin an rud is mó a chuireann moill ar fhoirgneamh. Tá láthair faighte anois chun gur féidir scoil 12 rangsheomra a thógáil a dhéanfaidh freastal ar riachtanais na scoile san fhadtréimhse. Ós rud é go bhfuil an láthair faighte, tá géar-aire á tabhairt do chur chun cinn an tionscadail seo sa Roinn, i gcomhthéacs an chláir um thógáil agus nuachóiriú scoileanna ó 2007 ar aghaidh.

The Seanad adjourned at 12.25 a.m. until 10.30 a.m. on Thursday, 22 February 2007.