

SEANAD ÉIREANN

—
Dé Máirt, 20 Márta 2007.
Tuesday, 20 March 2007.
 —

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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Paidir.
Prayer.
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Business of Seanad.

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

The need for the Minister for the Environment, Heritage and Local Government to take action to prevent the planning permissions of many wind farms from expiring owing to, in almost all cases, delays in grid connection offers; the proposals, if any, he has to deal with these cases; and if he will convey his intentions to all local planning authorities given the potential loss of capacity of renewable energy to be generated at these sites.

I regret I have had to rule this matter out of order because the Minister for the Environment, Heritage and Local Government has no official responsibility in this matter.

Order of Business.

Ms O'Rourke: The Order of Business is No. 1, Prisons Bill 2006 — Report and Final Stages, to be taken on the conclusion of the Order of Business and to conclude no later than 4 p.m.; No.2, Education (Miscellaneous Provisions) Bill 2007 — Second Stage, to be taken at 4 p.m. and to conclude no later than 6.30 p.m., with contributions of spokespersons to be 15 minutes, those of all other Senators ten minutes and the Minister to be called upon to reply no later than ten minutes before the conclusion of Second Stage; No. 3, Pharmacy Bill 2007 — Order for Second Stage and Second Stage, to be taken at 6.30 p.m. and to conclude no later than 9 p.m., with contributions of spokespersons to be 15 minutes, those of all other Senators ten minutes and the Minister to be called upon to reply no later than ten minutes before the conclusion of Second Stage; and No. 4, Roads Bill 2007 — Committee Stage, to be taken at 9 p.m. and to conclude no later than 10.30 p.m.

Mr. B. Hayes: When is the Leader proposing that the Education (Miscellaneous Provisions) Bill be taken? I did not hear the time.

Ms O'Rourke: It will be taken at 4 p.m. A revised Order of Business was issued to everyone.

Mr. B. Hayes: One of the lessons all Members of the House believed had been learned from the Judge Curtin affair was that there was a need to put in place legislation for a judicial council, a code of ethics for judges and a fair and open system of investigating complaints made about judicial conduct. That was recommended by a report of Mr. Justice Keane as far back as 1995 and the Government said it would take such legislation through both Houses but I now learn that it will not see the light of day before the end of this session. Can the Government put on the record of this House why this legislation is not forthcoming? There has been media speculation that the Minister for Justice, Equality and Law Reform has not brought it forward because he has yet to receive from the Chief Justice a full submission on a proposal he made some years ago. The Houses of the Oireachtas have been in dereliction of their duty in respect of this issue for many years and it will be appalling not to have dealt with the issue some 13 or 14 years after the first case was brought to our attention.

In 1977 a commitment was given that a minimum of 3% of those employed in the public sector would be people with a disability. Information has been given to me in the past few days to the effect that one third of local authorities, some 30 years after that commitment, have yet to reach that minimum threshold, though in some excellent local authorities 5% or 6% of employees have disabilities. If we are serious about the Disability Act 2005 and the sectoral plans the public sector must lead by example because the private sector will not do so. We must ensure the threshold is enforced throughout all local authorities.

Ms O'Rourke: I wish to make a correction to what I said earlier and to apologise to Senators Brian Hayes and Ulick Burke. The Education (Miscellaneous Provisions) Bill 2007 — Second Stage, will be taken at 5 p.m. The Roads Bill 2007 — Committee Stage, is to be taken at 9 p.m. to conclude no later than 9.30 p.m. I thank the Cathaoirleach for allowing me to make that correction and the apology.

Mr. O'Toole: The House will have noticed today that the first major decision of the recently partially privatised Aer Lingus was to increase prices for luggage and other items. I make the point to remind Senators that some in the House argued that its privatisation would make the industry more competitive and drive prices down. When we set up the new structures in Eircom we had great hopes for what it would achieve but finished up with a duopoly instead of a monopoly

[Mr. O'Toole.]

and a couple of dozen new multimillionaires, as well as the most expensive call costs in Europe.

Mr. Norris: Hear, hear.

Mr. O'Toole: In addition, broadband is unavailable to half the country. It is very important to bear that in mind. Does anybody seriously believe that divesting the ESB of its network of wires and distribution will somehow create more competitiveness and make it cheaper for the consumer? When people in the trade union movement raise questions about this they come from bitter experience. I would like a debate on where we are going with regard to this issue. Members on the other side of the House have given serious thought to the subject and will be aware that one of the issues focused on in the White Paper on energy is security of supply. How does divesting the ESB of its distribution network create security of supply? This academic, theoretical model of competition, which we tried to apply to the two cases to which I referred, just does not work. I ask for a debate so that Members can give their honest views, based on their experience of what they have seen in other places. I do not have a problem if somebody can convince me this is the way to proceed. I am of the view that it is being done for academic and cosmetic reasons and in a way which indicates that we are doing it properly. As regards the latter, experience shows that the opposite is the case. This is not the way to go.

Mr. Ryan: I enthusiastically support Senator O'Toole's pragmatic view on how we should do things. Insanity is being piled upon insanity in this country. For example, there are proposals to break up the VHI because it has too large a share of the market. At the same time, however, a company involved in the provision of cable television is about to develop a monopoly throughout the entire country. I presume that ten years from now some genius from the Competition Authority will propose that the company in question should be broken up because of the lack of competition.

Would it be possible to consider what works in other countries and adopt it as a model to be used here instead of allowing people who have barely any work experience in the private sector and who possess particular ideological views to hold dominant positions in bodies such as the Competition Authority? The Health Service Executive is obliged to negotiate with individual pharmacies regarding the provision of drugs, either under the GMS or the drugs repayment scheme, because the IPU is not permitted to negotiate collectively on behalf of pharmacies. We have been pushed up this cul de sac as a result of the idiocy of the Competition Authority. Senator O'Toole is correct in that we desperately need a debate in which we can be informed as to why people believe

these things will work because they have not done so up to now.

Second Stage of a major item of legislation, the Pharmacy Bill, which has been fairly well received, is being taken today. However, I discovered that I was supposed to have tabled my Committee Stage amendments by 11 a.m. today. The Bill will not be formally introduced until this evening. We are not going to stand for that sort of behaviour. I do not wish to mention names but those responsible for this development informed the person who assists me in drafting amendments that my amendments should have been tabled by 11 a.m. today. On behalf of the Labour Party, I wish to state that I will not accept such behaviour. I do not introduce amendments until I have heard the relevant Minister make his or her initial contribution and also his or her reply to Second Stage.

Senators: Hear, hear.

Ms O'Rourke: I agree with the Senator in respect of that matter. I do not know from where the direction he received came.

Mr. Ryan: In addition, it is unacceptable that only two and a half hours — between 12.30 p.m. and 3 p.m. — will be devoted to debating Committee and Remaining Stages of the Bill on Thursday. I am not used to such behaviour on the part of the Leader.

Ms O'Rourke: We can certainly lengthen the debate on Committee and Remaining Stages.

An Cathaoirleach: We will deal with Thursday's Order of Business on that day.

Mr. Ryan: They are related because, officially, I am supposed to have already tabled my amendments. We need to resolve this matter. I will bet that not one Government amendment has yet been tabled.

Ms O'Rourke: The direction the Senator received did not come from my office.

Mr. Ryan: I accept that.

An Cathaoirleach: The Cathaoirleach has the right to accept amendments and I did not——

Mr. Ryan: I can only report to the House what was indicated to me by people whom I believe to know what they are saying. I am not trying to start a row, I am merely placing on the record what was said to me.

This is the fourth anniversary of perhaps the worst decision taken by an American President during my adult life, namely, the invasion of Iraq. I do not wish to let the opportunity pass to mention the 150,000 to 800,000 Iraqi civilians who have died because of one man's obsession with another's dictatorship, the appalling carnage that

has happened and, perhaps, the destruction of the reputations of a good man in Britain and a less saintly one in the United States.

When one refers to the health services in this House, one sounds like a broken record. This country has good reason to boast about its achievements in the areas of infant mortality and maternal mortality. However, it has emerged that a major maternity hospital is delaying women's first antenatal visits because there are insufficient numbers of consultants and midwives and this shows that one further part of the health service is beginning to fall apart. It has also emerged that another hospital has stopped taking urological appointments because people are being obliged to spend two years on the waiting list. Apparently, in order that the figures can be fiddled, one cannot have waiting lists of longer than two years. Therefore, they just do not accept any more appointments and the people are now being redirected to another hospital which, presumably, will shortly have a two-year waiting list as well. We know why there are problems. There are not enough urologists, midwives and gynaecologists. We know all this and nothing is happening. We must start a rolling debate in the House on the health services because every week yet another mess arrives on our plates.

Visit of New York Delegation.

An Cathaoirleach: Before I call on the next speaker, I am sure that Members of the House will wish to join me in welcoming the delegation from the New York City Council led by the Speaker, Ms Christine Quinn. On my behalf and on behalf of all 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).

Dr. Mansergh: It is amazing that there are still people in this country who do not realise that in cases of rape, it is the victims who suffer a life sentence. My learned friends say that there are many disadvantages with mandatory sentences. Is it the position that they do not work and, presumably, suspended sentences work better? This matter should be debated in the context of forthcoming justice legislation because it is legislation that expresses the will of the people and should determine the limits of judicial discretion.

Mr. Coghlan: I strongly support my colleague, Senator Brian Hayes, in his quest for information from the Government and from the Leader of this House on the long-promised judicial code of conduct. There is a judicial institute, but the code is a separate matter and, presumably, will have a legislative basis.

When will the MacEntee report, which has been delivered, be published? It deals with the 1974 Dublin bombings and the alleged involvement of British military intelligence in these

matters. Does the Leader envisage that we will debate the report in this House? I formally request that we hold a debate on that all-important report before the dissolution.

When will the Government make the appointment to the new statutory position of inspector of prisons? Would it not be fitting if the present incumbent, whom we know well and who has served the State well, was the first appointed to that statutory position?

Mr. Leyden: I express my appreciation to the Taoiseach and to our delegates from the Seanad and Dáil who fought for the undocumented Irish in the United States of America. Our friends from New York would be well disposed towards our undocumented people. I make specific mention of the late, great Paul O'Dwyer, who was one of the greatest friends Ireland ever had, whose son is a member of New York City Council and with whom I had dealings in New York in the 1980s. It is fitting that the delegation is present today so that we may thank them for their efforts on behalf of the undocumented Irish.

It will be difficult, if not impossible, for the Leader to find time before the general election, but when it is called, we might have more time for a few weeks to discuss issues.

Ms O'Rourke: Here?

Mr. Leyden: If we get an opportunity between now and the Easter recess, the Leader may be able to fit in a debate on Palestine. I welcome the formation of the Palestinian national unity government which is approved by the Palestinian Legislative Council. It contains Hamas and Fatah representatives under President Abbas. The late Brian Lenihan was the first foreign minister in Europe to recognise the right to self-determination of the Palestinian people, and the right of the Israeli state to exist. We can continue the great work we have done in that regard through the Minister for Foreign Affairs, who has welcomed the formation of the unity Government. I call on the European Union to formally recognise the unity Government established by the Palestinian people.

Mr. Ryan: Hear, hear.

Mr. Leyden: The Israelis should release the 40 members of the Palestinian Legislative Council who are in jail and, in turn, the Palestinians should use their influence to release the Israeli soldiers being held in Palestine. That would help to create a sustainable solution to the crisis in the Middle East. A significant opportunity has arisen to bring about a settlement in the Middle East and Ireland, as a neutral state, has a responsibility to lobby the European Union to restore financial support to the Palestinian state. I commend the people of Norway, who have recognised the establishment of the new Palestinian Govern-

[Mr. Leyden.]

ment. Their representative has been snubbed and boycotted by the Israeli Government as a result of that decision.

An Cathaoirleach: Senator Leyden's point has been eloquently made.

Mr. Leyden: I thank the Cathaoirleach for his tolerance.

Mr. Coghlan: He is on a world tour.

Mr. U. Burke: What about returning to Roscommon for the Senator's next stop?

Mr. B. Hayes: Does the Cathaoirleach remember the programme "Where in the World"?

Mr. Leyden: It is an important issue for the people of Ireland. As far as we are concerned, Palestinian self-determination is vital and it is a great opportunity for me, as convenor of the Friends of Palestine Oireachtas group, to raise this issue on the Order of Business.

Mr. B. Hayes: I thought he was spokesperson for Hamas.

Mr. Norris: I agree with my colleague, Senator Ryan, that we should recognise this terrible and shameful day, the fourth anniversary of the declaration of what this House has described as an illegal, immoral and unjustifiable war. The regime which made that declaration has since shown itself to be deeply criminal and shameful in terms of the way in which the values of the West have been destroyed or undermined. It is inexcusable that attempts were made to undermine the United Nations, subvert the Geneva conventions and introduce legislation to justify torture. Equally inexcusable was the depiction of this country by President Bush as having provided support. The people of Ireland did not wish that, nor did the 100,000 protestors who took to the streets of Dublin. Today, the United Nations rapporteur has pointed out the abject failure of the world to recognise the humanitarian disaster that is taking place in Iraq. I speak as somebody who consistently opposed Saddam Hussein and who went across the desert at the risk my own life to beard Tariq Aziz in his den on the subject of human rights.

We should have a debate on the health service. I have suspended criticism of the Minister for Health and Children, Deputy Harney, because I believe she is a courageous woman who has put her head into the lion's mouth. However, given the events of the past few weeks, we need to debate what is clearly becoming a two-tier system. This week, a woman spoke on television about her smear test, which was delayed for six months because she was a public patient.

An Cathaoirleach: Order.

Mr. Norris: Was I doing something wrong?

An Cathaoirleach: I was not referring to the Senator.

Mr. Norris: How unusual.

An Cathaoirleach: I was bringing the House to order, not the Senator.

Mr. Norris: I wish the Cathaoirleach could bring the health service to order. The aforementioned women was basically sentenced to death by our system for the crime of being poor and unable to afford health service treatment through private means. That should not be tolerated. It is a reproach to us, as representatives of the people, that the life expectancy of those with cystic fibrosis is ten years shorter here in the Republic than it is 90 miles up the road in the North of Ireland.

I call for a debate on the Abbey Theatre, an issue on which I have put down a motion. I have just learned from the radio that the Government is proposing to provide €750,000 to refurbish the theatre's foyer. As it has already announced its intention to shift the theatre from its historic site, that seems an absurd and imprudent waste of money. Let us have a debate about the appropriate site for the theatre. Let us not have it whisked off to some middle class financial services centre on the docks which the decent people of Dublin will not bother to attend. The spirit of Sean O'Casey would turn in his grave at the idea that this historic site is being abandoned and the theatre is not being relocated to the Carlton site. Why are the provisions of the Constitution that provide for the common good not applied? Why are those buccaneering capitalists not being pushed off the Carlton site so that it can be used it for the good of the people of Ireland? Andrews Lane Theatre is gone and the Olympia Theatre has been turned back into a music hall, which means there is almost nothing in the city centre. What will happen to the site of the Abbey Theatre? Why will the Government not take up the offer of the late Daithí Hanly who kept the stones of the entire building? They are available to the people. Rebuild the old Abbey and make it a site for a theatre museum in a city that has so often celebrated drama.

Mr. Glynn: I support the call for a debate on the health services. With regard to Senator Ryan's comments on nurses' training, it is important to recall that one of his own party members was responsible, as Minister for Health, for the closure of many small schools of nursing which were not replaced. In the midlands, we had to wait until Deputy Cowen became Minister for Health and Children for a college of nursing. No training was available in the region for more than 20 years and both general and psychiatric nursing

training are now provided as a result of Deputy Cowen's initiative. The Senator should get it right.

Ms O'Rourke: It is in Athlone.

Mr. Coghlan: Not in Mullingar.

Mr. U. Burke: I endorse the call by many colleagues for a debate on the health services but for a different reason. The Health Service Executive, HSE, is seeking a review of funding of more than €500 million for what are termed front-line services, comprising primary care, community care and continuing care, on the basis of value for money. If front-line services are affected to this extent, what will be left for anybody in need of care? This brings us back again to the dirty dozen cuts. Last week the Minister for Health and Children stated through the HSE that an ambulance service will not be available for patients, except those in special categories who seek transport on an ongoing basis. It is proposed to withdraw the reimbursement of moneys paid by primary care patients for drugs. Front-line services are being dismantled. It is of the utmost importance that the Minister should come to the House and state whether she is in charge of the health service or whether the HSE is doing it its way.

Ms Feeney: The House did not sit on 8 March, which was International Women's Day. This was also the day a young man found guilty of rape walked out of court without a custodial sentence. A young woman in Ennis had to give up her right to anonymity to tell the nation about her horrific case. There was uproar with people from all walks of life commenting on the case and every news programme discussing it. We have had debates on domestic violence and other forms of violence but I would like the House to examine seriously the introduction of a mandatory minimum sentence for rape, not only of women, but also men. It is sad that this young woman had to waive her right to anonymity to seek justice, as she saw it. We owe it to her and other victims of rape to do something about it because we have the power to do so.

Dr. Henry: I support the call for a debate on the health service but we would need days for one because of the serious number of problems in it. I call for perhaps a more manageable debate on the reports of the prison visiting committees. Some Ministers are not enthusiastic about debating reports but the Leader believes they should be debated. There are several years of reports which have not been looked at by either House. It would be worthwhile doing so here, even for an hour or two.

Labhrás Ó Murchú: We owe an immense debt of gratitude to journalists who go to the trouble spots in the world and endeavour to give us the

facts. I do not mean as embedded journalists with any of the protagonists but as a broadcasting service with a humanitarian role showing the world precisely what is happening. One example of that was the invasion of Iraq. Those of us who opposed and condemned that invasion from the very beginning could see it would end in disaster. The problem now is the humanitarian fall-out and the hundreds of thousands of people who are suffering as a result. For some reason, we are not getting the details or the facts in this regard.

Another difficulty with a huge humanitarian impact for so many people is the new Palestinian unity government. That government was on offer from day one following Hamas's success in the elections. However, because of outside interference and obstruction, it was not allowed to progress. What is now happening would be almost comical if it was not so serious. The American Administration has said it will negotiate and communicate with the Ministers of that government who come from the Fatah party but not with those who come from the Hamas party. That makes no sense. It is time for every democratic legislature in the world to cry out in horror at what is happening, apparently in the name of democracy. I am especially uncomfortable when I see that type of manipulation continue. I hope that even in the last days of this Seanad, there will be an opportunity to put our views on the record.

Mr. Browne: I agree with what other speakers said about the Pharmacy Bill. I understand the Minister for Health and Children is to bring forward amendments which are not available.

Ms O'Rourke: She will not do so tonight.

Mr. Browne: The amendments, which will have a bearing on us tabling amendments, are not yet available to us. Serious issues are contained in the Bill. When will the Government amendments be available? I presume we can table our amendments before 11 a.m. tomorrow instead. If we do not get through all the amendments on Thursday, could we defer the Bill until next week? It is a very important Bill and we should not rush it.

I overheard the other House discuss the fact it was *Seachtain na Gaeilge* last week. The country is now very rich in terms of the diversity of languages spoken and it is not just two languages that are spoken. The Fine Gael leader, Deputy Kenny, asked the Taoiseach about translation facilities in the House for Irish. Perhaps it is time we looked to expand the translation service to include other languages.

There are people working in this country whose first language is not English. They are entitled to write to any of us as Members of the Oireachtas and are entitled to a reply. If we were to get letters from the large number of people working, paying taxes and making a contribution to society, we should be able to reply to them in their own languages. As I said, they are making a

[Mr. Browne.]

valuable contribution to every aspect of Irish life. The purpose of democracy is to include people from all backgrounds.

Mr. Lydon: I agree with Senator Norris about the lobby of the Abbey Theatre. I knew Daithí Hanly well and he was a great friend of mine. The stones are preserved and numbered. There is much interest abroad in this issue and the lobby should be incorporated into any new Abbey Theatre that may be built.

Recently, there has been much disparity in judgments made in the courts, whereby a person might walk free in one case while in another he or she is not even allowed to appeal. The training of judges must be examined more carefully.

I am aware the Leader has stated the amount of legislation before the House means there is not much time for debate. However, in the coming weeks she may be able to make time for a general debate on the Middle East. In common with previous speakers, I condemned the war at the time by stating it was immoral and illegal. Be that as it may, it is still with us and must be considered. In a recent semi-private visit to Lebanon and Syria, in each country I met the President, Vice President, speaker, foreign minister and others. Having so done, I am convinced we in the West have a jaundiced and biased view of all Arab culture and politics, which has been fostered by western so-called democracies. I have viewed and discussed the Golan Heights from both the Israeli point of view and the other side. There are aspects of Middle Eastern policy about which Members have very little understanding.

An Cathaoirleach: Does the Senator have a question?

Mr. Lydon: I would welcome a debate on these matters at the earliest possible occasion.

Mr. Ross: I wish to raise a matter that has been raised in the House many times previously and is particularly topical this week, namely, the situation in Zimbabwe. I congratulate the Minister for Foreign Affairs, Deputy Dermot Ahern, who has already protested about the unrest and the deprivation of human rights there. However, the situation is now becoming critical. All Members will be aware the opposition leader has been arrested and tortured while in detention and that there has been at least one killing by the so-called police in Zimbabwe. As Ireland punches above its weight in foreign affairs, it can initiate a diplomatic offensive, both within and without the EU, to demonstrate to the world and to President Mugabe himself that he is a dictator whose respect for human rights is zero.

Mr. Norris: Hear, hear.

Mr. Ross: I see no reason the Minister and the Government should not go on a solo run to make that protest, and not simply within the EU. Ireland has an honourable record on the issue of human rights and should capitalise on it. In recent times, events there have been particularly ugly and apart from the action by the Minister for Foreign Affairs, international reaction has been disappointing. One tends to tire of people such as Mugabe. People rationalise that he is an old man who will die eventually and who will be then replaced by someone better. However, there is no such guarantee.

Mr. Coghlan: He has stated he intends to run again next year.

Mr. Ross: Members are aware that he has fiddled his own elections to keep himself in power and that he is torturing opposition to him. It would be honourable for Ireland, as an independent nation, to make a meaningful protest on this issue.

Senators: Hear, hear.

Mr. Moylan: While I welcome the Roads Bill before the House today, I seek a debate on road safety. We have experienced a very sad weekend in respect of the number of people who were killed on the roads. It is very disappointing to discover that some very large chain stores are promoting the sale of alcohol, whereby if one buys 12 cans, one receives 12 cans free. This is simply not good enough. Moreover, people must act responsibly and it is disappointing that some highly prominent people, particularly Members of this House, promote the sale and use of alcohol. As a pioneer, it disappoints me to pick up a newspaper and read about someone promoting the use of alcohol. Many deaths on the roads are related to its excessive consumption.

Ms O'Rourke: Senator Brian Hayes asked why the Bill on judicial conduct and other matters is not coming forward. My information is that the Minister for Justice, Equality and Law Reform is awaiting the advice of the Chief Justice, and when he receives it, he will bring it forward. That is what is stated in the newspapers today and I would guess he must wait for the advice.

Senator Hayes also raised the disability issue on which I have been active. He is correct to state town and county councils do not fulfil their 3% quota. All public bodies are covered by the Disability Act and even before it was enacted they were enjoined to fill such quotas. However, they have not been filled. We hoped to have a full debate on disability in the House but we did not. The point is well made.

Senator O'Toole raised the matter of the increase in baggage handling charges.

Mr. Norris: I wish to ask a point of information of the Leader. She stated the Government was awaiting the advice of the Chief Justice. Is this correct? Would it not be the advice of the Attorney General, if anybody? Does the separation of powers come into play whereby the Chief Justice cannot advise the Government? I apologise if I misunderstood.

Ms O'Rourke: He was asked for his observations but he has not returned with them, or so the newspapers state.

Mr. Coghlan: Can one believe the newspapers?

Ms O'Rourke: It is the newspaper of record so we will go along with it.

An Cathaoirleach: The Leader without interruption.

Ms O'Rourke: Senator O'Toole raised the matter of the increase in baggage handling charges at Aer Lingus and wondered whether it was the result of the famed privatisation and cited other matters. He also raised the issue of security of supply with regard to the White Paper on energy. He does not think separating the electricity grid from the ESB would mean security of supply and called for a debate on the matter.

Senator Ryan discussed the idiocy of the Competition Authority and I am inclined to agree with him. It sees competition gremlins where none exist and goes off on a tangent. I do not know who told the Senator that amendments must be tabled before Second Stage is debated. It was not my office. I never heard of amendments having to be tabled before Second Stage of any Bill. It would be very odd. I advise Senator Ryan to revert to whoever told his assistant because it is not true. I hope somebody is listening.

Mr. B. Hayes: The Cathaoirleach ruled on the matter.

Ms O'Rourke: Excuse me, I apologise. I missed that exchange.

An Cathaoirleach: It is at the Cathaoirleach's discretion.

Mr. B. Hayes: He has sole discretion.

An Cathaoirleach: I made that point.

Ms O'Rourke: I apologise. I missed that exchange. Senator Ryan also spoke about Iraq and I agree with him. It is especially serious now. After four or five other items in news bulletins, one is told 56, 86 or 104 people were murdered in Iraq. It is not even the number one item; it is down the line. It is awful. The hanging of the man there this morning was done for effect. I do not know why. I do not agree with hanging.

Senator Ryan also spoke about one of the major maternity hospitals delaying antenatal visits. I was shocked when I read that. He also raised the matter of urological services and called for a full debate on health services.

Senator Mansergh spoke about the rape victim. Any rape victim suffers a life sentence and Senator Mansergh called for a debate on maximum and minimum sentencing in the context of the upcoming justice legislation. While I never comment on judges, women and men were highly alarmed and astounded at the decision.

Senator Coghlan supports the comments of Senator Brian Hayes on judges. He also wondered when the report into the Dublin bombings would come out and called for a debate on it prior to Easter. The Cabinet is to consider it today and it will come out forthwith. We will debate it if we have days available to take debates.

Mr. Coghlan: Can we be sure it will be discussed forthwith?

Ms O'Rourke: Our main function is to discuss legislation. I would like to debate it. The Senator also asked about the new statutory position of inspector of prisons and expressed the hope that our esteemed friend, whom we both know with his Kerry connections, would be considered for that position. I did not state his name.

An Cathaoirleach: I should have mentioned on Senator Coghlan's contribution that it is not our job to say who should be appointed to such positions.

Ms O'Rourke: Excuse me?

An Cathaoirleach: The Seanad has no control over the matter. That is what I want to point out.

Ms O'Rourke: Yes, I know. That is all right.

Mr. Coghlan: It is just an interest.

Ms O'Rourke: Senator Leyden spoke about the undocumented Irish and thanked those who had helped with the issue. He would like a debate on Palestine and the new government there, which Norway has recognised.

Senator Norris spoke about Iraq as an abject failure of the world, which it is. I have studied and taught history, and it is the worst failure of which I am aware. Nobody thought of the aftermath, they just went gung-ho into the country to get the glory. The Senator also spoke about the Minister for Health and Children and expressed a fear about a two-tier system of health, citing one of the "Prime Time" programmes from last week.

He asked why the Abbey Theatre is being refurbished for almost €750,000 when it is proposed to move it to another site. I assume it is because of the large crowds that attend its plays.

[Ms O'Rourke.]

As the Senator and I know, one can hardly budge there at times.

Mr. Norris: The seats could be repaired.

An Cathaoirleach: Order.

Ms O'Rourke: Senator Glynn spoke about the schools of nursing and the fact that there was none in the midlands until the Minister, Deputy Cowen, set up a third-level school in the institute of technology in Athlone. He congratulated the Minister because the school is well patronised and wonderful people are being educated there.

Senator Ulick Burke spoke about the review which has been called for moneys being taken from the front line. Again the paper of record told us today that the revenue yielded by the review will go to the front line and not be taken from it.

Senator Feeney indicated that we should have a serious and reasoned debate on rape, which we should.

Senator Henry stated we would need day-long debates on the health service and requested a debate on the reports of the prison visiting committees. She has been requesting such a debate for a long time.

Senator Ó Murchú spoke of the increasing desperation in Iraq and how we are not getting the full details. Equally, the US has graciously stated it will speak to Fatah ministers in the unity government in Palestine but not to Hamas ministers.

I take Senator Browne's point on the Pharmacy Bill but I would think whoever deals with it tonight will in the course of the discussion spell out the Government amendments, which is what the Senator wants. The Senator also raised a good point about receiving letters from people from other lands in their language. I received such a letter and rooted out somebody who knew the language and had it translated. Such a facility would be useful in the Oireachtas Library.

Senator Lydon spoke of Daithí Hanly, who kept the stones of the original Abbey Theatre and had them numbered and annotated. The Senator wondered if these materials could form part of the new theatre. He spoke of the disparity in the judgments of judges and about the Middle East debate, having recently been in Syria and Lebanon.

I agree with Senator Ross's points about Zimbabwe and that awful Mr. Mugabe, and I do not mind saying so. One can see him strutting across the stage on television, squaring his shoulders, and he marched into the EU, despite restrictions against him. I think it is because they are of another colour that people do not want to think it is an horrific country, but the manner in which the opposition is being treated there is horrific. Ireland, which always had a stake in such countries, through proselytising or whatever, should

be in a position to make a protest on the matter. We should do this as a State, and not just as part of an EU protest.

Senator Moylan sought a debate on road safety and noted the supermarkets which offered 12 free cans of alcoholic drink with every 12 purchased. That is wanton carry on because it will eventually lead to mishaps. Drinking at home or in a pub is the same if one drinks too much. It can be equally harmful to people, their health and their safety on the road.

A gremlin got into my Order of Business. Committee Stage of the Roads Bill will be taken from 4 p.m. until 5 p.m. and from 9 p.m. to 9.30 p.m. I am sorry, but it was a gremlin with a capital "G".

Order of Business agreed to.

Prisons Bill 2006 [Seanad Bill amended by the Dáil]: Report and Final Stages.

An Cathaoirleach: I welcome the Tánaiste and Minister for Justice, Equality and Law Reform, Deputy Michael McDowell. This is a Seanad Bill that has been amended by the Dáil. In accordance with Standing Order 103, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments. The Tánaiste will deal separately with the subject matter of each related group of amendments. I have also circulated the proposed groupings and Senators may contribute once on each grouping. The only matters that may be discussed are the amendments made by the Dáil. I call on the Tánaiste to speak on group No. 1.

Question proposed: "That the Bill be received for final consideration."

Tánaiste and Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I accepted amendment No. 1 when it was proposed in the Dáil by the Labour Party. While it is not strictly necessary to the meaning, its inclusion means there can be no doubt the definition of "prison rules" refers to a rule in force at a particular time, even if the rule has been since repealed. Amendment No. 10 is a technical Government amendment and amendments Nos. 15 and 17 are also technical amendments.

On group No. 2, amendment No. 2 is an official drafting amendment clarifying that visits from health care professionals will not be included when prohibition of visits generally is imposed as a sanction on a prisoner for a breach of prison discipline under section 13. The amendment addresses concerns first raised in this House, namely, that the original wording might preclude

persons visiting for the purpose of providing psychological treatment. It was not intended that a sanction prohibiting visits would preclude persons from providing, for example, dental or psychological services.

Regarding amendment No. 3, the principle was agreed on Committee Stage in the Dáil in response to a Labour Party amendment that public representatives would not be excluded from visiting prisoners on whom a sanction prohibiting visits generally had been imposed. This wording was subsequently tabled to address the issue.

Amendment No. 5 is on foot of amendments tabled by the Labour Party to include the United Nations Committee against Torture in a list of persons in section 13(1)(d)(ii) from whom visits are not prohibited, and to ensure prisoners would not be prevented from sending or receiving documentation in respect of postal voting.

Mr. Cummins: I welcome the amendments, in particular amendment No. 2, which addresses a matter raised by me on Committee and Report Stages in this House, namely, a prisoner's right to see a doctor or other health care professionals if necessary. I am glad it has been accepted at this late stage. It was necessary to amend the Bill in this way in light of the reservations I expressed on Committee and Report Stages. I also welcome the other two amendments which were mentioned by the Minister.

Acting Chairman (Mr. Moylan): The amendments in Group 3 relate to the report of the rapporteur and the Minister's observations on the development of prisons.

Mr. M. McDowell: Amendments Nos. 6 and 7 were made to Part 4 of the Bill, which relates to planning provisions. Amendment No. 6 replaces the words "consider only" with the words "take account only of" in section 23(2) of the Bill. This new wording better reflects the role of the rapporteur, which is to receive written submissions and observations and to prepare a report for submission to the Minister, based on the submissions and observations received within the six-week timeframe that is specified in section 21E of the Bill.

Amendment No. 7 inserts an additional subsection in section 26 to provide that when a decision is made to proceed with the development, construction or extension of a prison under Part 4 of the Bill, the Minister shall, under section 26(1), move a draft resolution in both Houses of the Oireachtas seeking approval to proceed with the development. Section 26(2) requires the Minister to ensure that certain documents, which are set out in the legislation, are laid before the Oireachtas in advance of the moving of the draft resolution by him or her. Amendment No. 7 also provides that the Minister may lay a further document, containing his or her observations on any

of the documents mentioned in section 26(2), before the Oireachtas before he or she moves the draft resolution. This provision should facilitate and assist the Members of the Oireachtas in their consideration of the draft resolution. It will also give the Minister the right to outline his or her views on the issues raised in the submissions made to the rapporteur.

Mr. Cummins: I welcome these amendments, which will strengthen the Bill. I am glad this issue, which was raised in the House on Committee Stage, was addressed in an amendment that was proposed at the select committee and approved by the Government. I am glad these amendments, which we readily accept, were tabled.

Acting Chairman: Group 4, which includes amendments Nos. 8, 9 and 11 to 14, inclusive, relates to the functions of the Inspector of Prisons.

Mr. M. McDowell: I accepted amendment No. 8 when it was proposed by Deputy Ó Snodaigh in the other House. It clarifies the meaning of the word "record", as used in this section of the Bill. I was advised that the amendment was not entirely necessary, but I decided to accept it because it provides consistency by reflecting the wording of section 10(3) of the Bill, which relates to access to records, documents, etc., by an officer who is appointed to monitor the performance of a contractor that is providing prisoner escort services.

Amendment No. 9, which was proposed in the other House by Deputy Ó Snodaigh, adds the words "arising out of an inspection" to this section of the Bill. It is a reasonable amendment.

Amendment No. 11 is a Government amendment which will oblige the Minister to lay both reports of the Inspector of Prisons made under this legislation before the Houses of the Oireachtas and to have them published. The Bill, as initiated, provided for the publication of the reports. When this section was amended during proceedings in this House to provide a timeframe for the laying of the report and its publication, the words "and to be published" were inadvertently omitted from the amended section. This amendment reintroduces the words and reconfirms that it is intended to provide for the publication of the reports.

Amendment No. 12 is a drafting amendment which improves the text of an amendment that was proposed during the debate in this House and which I accepted at the time. It provides that while the Inspector of Prisons may not examine or adjudicate on individual complaints from prisoners, he or she may examine the circumstances surrounding such a complaint.

Amendment No. 13 is a Government drafting amendment, which confirms the application of section 32(4) to the laying before the Houses of the Oireachtas and publication of the annual report of the Inspector of Prisons. Section 32(4)

[Mr. M. McDowell.]

states that the provisions of sections 31(4) and 31(5), which relate to reports on inspections of individual prisons, will also apply to the annual report of the Inspector of Prisons.

Amendment No. 14, which is another drafting amendment, ensures that the Minister will be obliged to lay both of the annual reports of the inspector before the Oireachtas and to have them published.

During the debate in this House and the other House, Members asked about the status of the current Inspector of Prisons, whose term in office will end on 23 April next. I am examining my options in relation to the appointment of an inspector on a statutory basis under this legislation if it is operational by that time. I intend to commence this Bill with effect from 1 May 2007, and the appointment of an Inspector of Prisons will take place shortly thereafter. I have previously indicated my appreciation of the work of Mr. Justice Kinlen. I hope he will serve a further period in office.

Mr. Cummins: I welcome these amendments, which relate to issues which were discussed at length in this House. I also welcome the Minister's statement that he will ask Mr. Justice Kinlen, who is doing an excellent job as Inspector of Prisons, to continue in that position. I hope Mr. Justice Kinlen will accept the position that will be offered to him in May.

Acting Chairman: The amendment in Group 5 prohibits the unauthorised possession or use of mobile telecommunications devices by prisoners.

Mr. M. McDowell: A person who, without the permission of the governor, possesses or uses a mobile telecommunications device, or a person who supplies such a device to a prisoner without such permission, is to be made guilty of an offence. He or she will be liable on summary conviction to a fine not exceeding €5,000, or a prison term not exceeding 12 months. He or she will be liable on conviction on indictment to a fine not exceeding €10,000, or a prison term not exceeding five years, or both. The provision being introduced in this way, which will prohibit the use and possession by prisoners of mobile telephones and prohibit the supply or attempted supply by persons of those telephones, is seriously needed.

Over the weekend, Senators will have read, as I did, about the seizure of a huge number of mobile telephones in a prison. I do not want to talk about the arrests which were made in that context recently. I have to be careful in what I say. It struck me that people who breach the prison rules by facilitating the unlawful transmission of messages in and out of prisons should be given serious penalties. Therefore, I introduced this amendment to ensure the possession or use by a prisoner of a mobile telephone without permission, or the supply of such a telephone, shall be an

arrestable offence, and that a person found guilty of such an offence shall be punishable. It is obvious that we have to provide for certain exceptions — the governor could, in some circumstance, give permission for the use of a mobile telephone. I can envisage that it might be intelligent in a particular case for an officer to bring a mobile telephone to a prisoner in order that he or she can speak to somebody as a matter of urgency. Subject to such exceptions, it is my intention to prohibit and prevent the use of mobile telephones in prisons. The Department is working on a programme that will lead to the use of suppression devices throughout the Prisons Service. It is not simply a matter of making it a criminal offence — it is also a matter of making the use of mobile telephones within prisons impossible.

Mr. Cummins: I welcome the Minister's comments on mobile telephones. I raised this matter on Committee Stage after I listened to a radio programme. I thought it was most unusual that a prisoner was able to use his mobile telephone to make a call to that programme. I am pleased steps are being taken to suppress the use of mobile telephones. We agree that prisons should be drug-free. I am glad the Minister is talking about making prisons mobile-free, other than in exceptional circumstances.

Mr. J. Walsh: I understand the need for this provision. There is anecdotal evidence of prisoners being able to conduct the business of their crime gangs from within the prison walls, which is unacceptable. It has been reported that prisoners can obtain mobile telephones for €1,000 on the inside, which is not very satisfactory. I agree with the provisions of the amendments which are being made in this regard. Is a distinction made if a prisoner gets a mobile telephone from somebody, conceals it and uses it to keep in touch with family, for example? A person who is incarcerated may feel the need to make contact with family members. He or she may not use it for reasons which relate to criminal intent. The sentences which will apply to this offence are very severe. I can understand the reason the sentences and penalties that will apply to this offence must be severe, particularly where hardened criminals generate considerable criminal activity from using their mobile telephones. I compare such an offender to an individual who finds himself or herself in prison, which can be a difficult regime if the individual is not a hardened criminal, and uses a mobile telephone for what he or she considers reasonable needs. Perhaps judicial discretion takes account of this matter.

Ms Tuffy: Did the Minister have discussions with prison governors on how they might ensure the implementation of this provision? Are they of the view it is likely it to be enforced?

Senator Jim Walsh made the point that not every prisoner who would use a mobile phone would use it for malicious or criminal reasons. Many of us believe we cannot survive without a mobile phone, although that is not the case.

It is important that the Minister provides the necessary facilities and resources in prisons to ensure prisoners have opportunities to participate in education, workshops and so on. The Minister mentioned the inspector of prisons and I welcome the statement made. However, the inspector usually raises the issue of the need to provide facilities and resources for prisoners to participate in classes and training to ensure that on their release there is a better chance they will not reoffend.

Mr. M. McDowell: Prisoners who are not in close confinement are given access to telephones, which are monitored, to make domestic telephone calls on an agreed basis within prison. It is not a matter of people being unnecessarily held *incommunicado* in prison. I do not want to elaborate more at this stage other than to say I have every reason to believe that serious criminals have used mobile telephones clandestinely to operate and direct criminal activities outside prisons. That is a fact, which is deeply regrettable.

Senator Tuffy asked how this provision will be enforced. The first step is to ensure telephones are not brought into prisons and the second step is to have detection and suppression equipment within prisons, which is currently being rolled out across the prison service. Probably the best means of stopping the abuse of these telephones is to make them useless inside prison areas, which is what we are attempting to do.

However, the ingenuity of people knows no bounds. Therefore, it is a purpose of this section to ban people from bringing into prison any kind of telecommunications device and to make it illegal for a prisoner to have any such device in a prison. As long as there is one charged mobile telephone in a prison, prisoners can use their individual SIM cards which are compatible with that telephone. Once that is the case, as everybody is aware, such cards can be easily concealed in virtually any place on the body, in a cell or anywhere else in a prison. The key step is to get the handsets and to have in place a counter technology to prevent the use of these telephones within prisons by people who are directing crime.

Senator Tuffy raised the question of rehabilitation and education in prisons. It is my strong view that the rehabilitative side of Irish prisons must be dramatically developed and I intend to do that. The first step I had to take was to stabilise the economic situation in our prisons, as the prison budget was being cannibalised by overtime expenses. We have done that now and have brought to bear rationality. The second step is to bring the physical facilities in prisons up to a decent standard. Far more sophisticated education, training, skills and courses can be provided if there is security within a prison.

However, if prisons are old, antiquated and crime-ridden, that is another matter.

I wish to record my concern for the safety of prisoners. One of the issues about which I am most concerned is that many prisoners are brutalised, bullied, stabbed or threatened with the carrying out of such actions on a fairly routine basis. I was in Savannah in Georgia for St. Patrick's Day and while there I visited a local county prison in Chatam County. I noticed that all prisoners there are frequently required to go through scanners to facilitate the detection of metal objects and the like. This is considered to be part of a safety regime in prisons there. The use of such scanners should also be part of our safety regime. That prisoners can have knives, iron bars and other weapons imperils other prisoners and increases the likelihood of violence in a prison context.

On the proportionality issue, one of the problems is that, for example, if a person is convicted of a serious gangland crime and if that person is able to direct violence on other people outside prison or able to make arrangements via a mobile telephone to corrupt or threaten people within the prison or to demand that contraband goods be sent into the prison, all such activities tend to compromise the security and authority of the prison regime. It would be a serious matter if a member of staff was compromised and participated in breaking the rules in these circumstances. The system relies on the majority of the prison officers being decent, law abiding and loyal members of staff who would not dream of breaking the rules. However, if there is a small minority who are breaking the rules, they must be rooted out very effectively.

Prison inspectors in the United Kingdom gave a high percentage for the number of prison officers whom they believe are regularly involved in compromising the security of prisons by conspiring with prisoners to smuggle in items and the like. I hope, and would like to believe, the number here is a much smaller fraction of that percentage. One matter is certain, we must have a regime in prisons in which prison officers, who are well paid and trusted, have every incentive to believe that upholding the high standards that are expected of them is the right course to take and that any of their colleagues who break those rules take the consequences for doing so.

Question put and agreed to.

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

Tánaiste and Minister for Justice, Equality and Law Reform (Mr. M. McDowell): I thank Senators for the debate on this Bill and for the helpful amendments brought forward in this House. The Senators will realise that not only did I accept amendments in the House but I also indicated that I would accept amendments brought

[Mr. M. McDowell.]

forward in the other House based on remarks made by Senators in this House. The Bill was published last November and it has been moved through both Houses quickly, for which I am grateful. I am grateful to my officials for the way in which they transformed the earlier Bill which was abandoned in favour of this Bill.

As I previously stated, this legislation is a significant step forward in the modernisation of our prison service and I intend to commence the Act at the earliest possible date; 1 May is my target date. The provisions dealing with planning and the new inspector of prisons will be commenced shortly. The provisions dealing with a new appeal regime and with miscellaneous matters, including the conducting of hearings by videolink, will need a short lead-in time to put the necessary structures in place but should be commenced in the coming months. I am confident that the provisions of the Bill will result in significant improvement and reform in our prisons. I am grateful to Members of the House for their constructive input to this legislation.

Mr. Cummins: I thank the Minister for accepting several amendments from this side of the House during the discussion on the passage of the Bill through the House.

I compliment the Minister's officials who have done a tremendous job of work on this Bill. I hope that when enacted, the Bill will realise the wish of the House to have in place an excellent prison service in which the punishment fits the crime and is seen to do so.

The Minister referred to the subject of rehabilitation within prison and this is badly needed. I have spoken on this topic in my contributions on the Stages of the Bill. There must be proper rehabilitation within the service and until this is in place, the other measures will not be successful. The carrot and stick method must be used. I urge the Minister to ensure rehabilitative measures are put in place and improved upon.

Ms Tuffy: I thank the Minister and his officials and I thank him for accepting some of the amendments tabled by the Opposition, including those tabled by my party, and for making amendments on foot of some of the issues raised on this side of the House.

Mr. J. Walsh: I too wish to compliment the Minister and his staff on the introduction of this Bill which will have a beneficial effect on the administration of the prison service. I compliment the manner in which the Minister attends debates, gives them his full attention and is prepared to accept sensible amendments which strengthen legislation. This is a hallmark of the Minister. While crime gets such publicity in the media, it is a pity this is not balanced by the reporting of some of the debates in the House which focus

on various aspects of the Garda Síochána or the prison service.

This Bill will allow for significant reforms. The Minister has acknowledged in the debate the importance of the rehabilitation of prisoners which will be a fundamental aspect of his programme. It was stated on Second Stage that prison should be a penalty of last resort. I refer also to the Criminal Justice Bill which contains a number of innovative proposals which will give confidence to the public that fundamental steps are being taken for major reform. This has not been highlighted to the desired extent. It may act as a deterrent to people from going the criminal route.

Question put and agreed to.

Sitting suspended at 3.55 p.m. and resumed at 4 p.m.

Roads Bill 2007 [Seanad]: Committee Stage.

SECTION 1.

Acting Chairman (Mr. J. Walsh): Amendments Nos. 1 and 11 are related and may be discussed together by agreement.

Mr. P. Burke: I move amendment No. 1:

In page 3, between lines 12 and 13, to insert the following:

““barrier-free tolling” means any mechanism or system whereby motorway or other road tolls can be collected without the need for the obstruction, slowing, stopping or other delaying of the vehicle being tolled;”.

Amendment No. 11 is a technical amendment and proposes a pass system, such as E-Toll or E-ZPass, which can be used on all roads. The present system, in which there is one payment mechanism for some toll roads and another for other roads such as the Dublin Port tunnel, is not driver-friendly.

Minister of State at the Department of Transport (Mr. Gallagher): The law as it stands does not impede the establishment of barrier-free tolling. The whole purpose of this Bill, as I outlined on Second Stage, is to strengthen the enforcement mechanisms to facilitate the introduction of barrier-free tolling on tolled national roads. While I appreciate Senator Paddy Burke's point, amendment No. 1 would make barrier-free tolling compulsory on every tolled motorway in the State regardless of the circumstances. The legislation will allow us to do that but will also allow us to be selective, enabling us to introduce it where it is necessary. If I were to accept the amendment it would cut across the statutory independence of the National Roads Authority, which was established under the Roads Act 1993, and contractual arrangements entered into with all toll operators. The Bill is designed to strengthen the legislation

but roads in the west are different from those in the north.

The amendment relating to the inoperability of electronic toll cards is equally important and very practical. It makes sense to use one card for all roads. The National Roads Authority is addressing the inoperability of electronic toll cards in this regard among various toll operators and I can confirm to the House that a fully interoperable electronic card will be available within not too many months. I hope that is acceptable to the House and to Senator Paddy Burke and I ask him to withdraw the amendment in that context. I have no difficulty with the principle of the amendment but negotiations are ongoing and will shortly result in one electronic toll card for all roads.

Mr. P. Burke: I welcome the Minister of State's confirmation that one card will suffice for all roads, whether they be the Dublin Port tunnel, the M50, the N4, the N5 or the N7.

Mr. Gallagher: I confirm it will apply to all roads in the State.

Amendment, by leave, withdrawn.

Section 1 agreed to.

NEW SECTION.

Mr. P. Burke: I move amendment No. 2:

In page 3, before section 2, to insert the following new section:

2.—The Minister shall be politically accountable to Dáil Éireann for the activities and actions of—

- (a) the National Roads Authority,
- (b) the Road Safety Authority, and
- (c) the proposed Dublin Transport Authority.”.

We have tabled this amendment on a number of occasions. It puts the responsibility for answering parliamentary questions onto the Minister because the situation which now obtains is not satisfactory. When a Minister is asked a question on the National Roads Authority he passes the buck by saying it is the responsibility of the authority. Such a situation also applies in regard to the Health Service Executive. When local authority or Oireachtas Members ask questions relating to the HSE the Minister for Health and Children similarly passes the buck. The amendment makes the Minister for Transport accountable for the National Roads Authority, the Road Safety Authority and the proposed Dublin transport authority by compelling him to answer relevant questions. It is a reasonable amendment whereby such bodies would be made accountable to the Dáil, which represents real democracy.

Mr. Gallagher: The amendment refers to political accountability. As Senator Paddy Burke has pointed out, the issue has arisen in respect of many other bodies, such as An Post or the HSE, where the respective Ministers are politically responsible for their activities. In this case, the Department of Transport is responsible for the National Roads Authority and the Road Safety Authority. The Minister has political accountability and regularly answers questions on matters of policy relating to those bodies, as well as on any other matters for which we have statutory responsibility. Specific questions are a matter for the National Roads Authority, NRA, the Road Safety Authority, RSA, or the proposed Dublin transport authority.

We set out the policy in respect of roads in the national development plan and, more specifically, Transport 21. Detailed implementation of that policy is a matter for the Road Safety Authority or the National Roads Authority. In his or her role as the appointing authority for the boards of these bodies, the Minister of the day is also accountable for their general performance.

Under the public service modernisation programme, which predates the current Government, it has been the practice to clarify the roles, responsibilities and accountability of Ministers, civil servants and public agencies. The Public Service Management Act clearly distinguishes between the respective roles of Minister and, for example, Secretary General. The proposed amendment would turn back the clock to a time when organisations similar to the NRA and RSA were part of Civil Service Departments and had no scope to take independent technical and professional decisions.

I appreciate the issue raised by Senator Paddy Burke. When I entered the Houses, one tabled questions regarding when a specific road might be approved, when a telephone might be installed, etc. However, the position has changed now. I assure the House that I will ask the various agencies to ensure queries from Members of the Oireachtas are responded to within a reasonable timeframe. Heretofore, if a question was submitted in writing to the Minister of the day, it would be answered within a number of days. Under the old system, and depending on the number of questions tabled for oral reply, a Minister could be expected to answer questions in the House for weeks on end and, consequently, it took much longer to obtain replies. I hope there is a balance between that system, which was in place in the 1980s, and that which obtains now.

All the relevant agencies are anxious to ensure that questions tabled to them or representations made to them will be responded to within a reasonable period. I will be raising this matter with the Minister, Deputy Cullen, and the various agencies at our next meeting. If I were to accept this amendment, I would be obliged to go beyond matters relating to the NRA, the RSA and the Dublin transport authority. The system in place

[Mr. Gallagher.]

came about on foot of a major policy decision that has been supported by successive Governments since we departed from the old regime. I regret that I am not in a position to accept the amendment.

Mr. P. Burke: Like other Oireachtas Members and local authority representatives, I feel strongly about this issue. Accountability to the Dáil reflects the real heart of democracy and the Minister of State realises that. While he did his best to appease me in his reply, I do not believe I can accept it because I feel so strongly about this matter. Oireachtas Members have seen their powers eroded over the years and this represents

a further erosion. We have an opportunity here to regain some of the ground that has been lost over a long period. It is not too much to ask to make the agencies in question accountable to the Dáil. I intend to press the amendment.

Mr. Wilson: It is important that these agencies should be accountable to the Minister when he requests answers from them. I understand from where Senator Paddy Burke is coming in respect of this matter. However, the onus should be on the authorities to answer any specific questions put to them by Oireachtas Members or the Minister. The latter should not be responsible for answering questions from Members.

Amendment put.

The Seanad divided: Tá, 10; Níl, 30.

Tá

Bradford, Paul.
Burke, Paddy.
Burke, Ulick.
Coghlan, Paul.
Cummins, Maurice.

Hayes, Brian.
Henry, Mary.
O'Toole, Joe.
Ross, Shane.
Ryan, Brendan.

Níl

Bohan, Eddie.
Brady, Cyprian.
Brennan, Michael.
Callanan, Peter.
Cox, Margaret.
Daly, Brendan.
Dardis, John.
Feeney, Geraldine.
Fitzgerald, Liam.
Glynn, Camillus.
Kenneally, Brendan.
Kett, Tony.
Kitt, Michael P.
Leyden, Terry.
Lydon, Donal J.

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

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

Amendment declared lost.

Section 2 agreed to.

SECTION 3.

Acting Chairman (Dr. Henry): As amendment No. 3 in the name of Senator Paddy Burke involves a potential charge on the Revenue it is being ruled out of order.

Amendment No. 3 not moved.

Section 3 agreed to.

SECTION 4.

Acting Chairman: Amendment No. 4 is a Government amendment. Amendments Nos. 6, 12 and 19 are related and, with the agreement of

the House, amendments Nos. 4, 6, 12 and 19 will be discussed together.

Government amendment No. 4:

In page 6, line 1, to delete "service of".

Mr. Gallagher: These are drafting amendments and technical changes, and there is a minor consequential change. Amendment No. 4 is a drafting amendment to remove the words "service of" in page 6, line 1 of the Bill, as these words are superfluous. Amendment No. 6 is a drafting amendment to section 7(a). Amendment No. 12 is a technical change so that the subsections will appear as subsections (5) and (6) of the new section 12 proposed under amendment No. 8. Amendment No. 19 is a minor consequential change to section 19 of the Principle Act. This amendment is necessary to correct a typo-

graphical error in the originally published version of the Bill.

Amendment agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

SECTION 6.

Government amendment No. 5:

In page 8, to delete lines 8 to 10 and substitute the following:

“(a) in the case of a county council — in its administrative area, other than the administrative area of any borough or town referred to in Chapter 2 of Part 1 of Schedule 6 to the Local Government Act 2001 situated within the county of the council, and”.

Mr. Gallagher: This is a technical amendment intended to bring the section more precisely into line with local government legislation following the Local Government Act 2001.

Amendment agreed to.

Section 6, as amended, agreed to.

SECTION 7.

Government amendment No. 6:

In page 8, paragraph (a), line 24, to delete “subsections (1) and (2)” and substitute “subsection (1)”.

Amendment agreed to.

Section 7, as amended, agreed to.

Sections 8 to 10, inclusive, agreed to.

NEW SECTION.

Acting Chairman: Amendments Nos. 7 and 8 are related and amendment No. 18 is consequential to amendment No. 8. Therefore, amendments No. 7, 8 and 18 may be discussed together by agreement.

Mr. P. Burke: I move amendment No. 7:

In page 15, before section 11, to insert the following new section:

11.—(1) A local authority may make a bye-law under Part 19 of the Local Government Act 2001, to regulate parking for mechanically propelled vehicles in a specific area within its functional area.

(2) Such bye-law shall specify—

(a) the specific area covered by the bye-law,

(b) the persons or category of persons who are covered by the bye-law,

(c) the occasions on which the bye-law shall be in force,

(d) the length of time for which the bye-law shall be in force on each occasion, and

(e) such other factors as the Local Authority may deem appropriate.

(3) A local authority shall exercise its functions under this section where it deems it necessary to restrict parking referred to in subsection (1) to residents of the specific area only.”.

I have raised the issue which amendment No. 7 seeks to address on several occasions, including on Second Stage of a previous transport Bill. My amendment deals with areas such as the streets around Croke Park, where people are prisoners in their own homes during football matches, concerts and other major events. The issue has been brought to my attention by Councillor Pascal Donoghue, who has been repeatedly contacted by residents of the Croke Park area. These residents have a terrible time and feel under siege during sell-out events in Croke Park.

The people of the area deserve some peace, so I hope the Minister of State accepts my amendment. However, I note that he has tabled a similar amendment. The Minister for Transport assured me on Second Stage of the previous transport Bill that he would address the issue in this Bill but I am disappointed that he did not do so. Amendment No. 8 was probably introduced in response to my amendment.

Mr. Gallagher: Government amendment No. 8 encompasses the principles expressed in Senator Paddy Burke’s amendment. We are anxious to find a practical solution to the difficulties that arise in terms of parking on public roads, whether adjacent to Croke Park or around O’Donnell Park in Letterkenny, where Donegal plays Kerry next Sunday.

Mr. P. Burke: Donegal is doing well at the moment.

Mr. Gallagher: One glove does not fit all hands. Amendment No. 8 introduces a framework which, as the Minister, Deputy Cullen, indicated on Second Stage, will allow local authorities to take the necessary actions. Subsidiarity should be considered in this context and I do not believe any Member would wish to introduce legislation in micro-form. Local councillors should be able to introduce bye-laws to address issues of parking congestion on public roads or the environs of sports stadia. The amendment gives local authorities the power to introduce bye-laws regarding parking at entertainment events and sports fix-

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tures. I acknowledge Senator Paddy Burke's contribution on this issue.

It is not a question of forgetting to address the problem. The imposition of restrictions of prohibitions and restrictions on parking on public roads is a complex matter and advice had to be obtained from the Office of the Attorney General. The new section provides for a prohibition on parking around specified venues or events, the issuance of permits to residents, regulatory traffic signs, consultation with the Garda and general public, publication of notices and various ancillary matters. It will also make three minor amendments to the Road Traffic Acts, two of which are typographical while the third is technical in nature. Amendment No. 18 is consequential to amendment No. 8.

While I do not accept Senator Paddy Burke's amendment, amendments Nos. 8 and 18 fully reflect his intentions. I hope, therefore, that the amendments receive cross-party support. They introduce a framework, after which it will be a matter for local authorities to act on a case-by-case basis.

Mr. P. Burke: The Minister of State states that amendment No. 8 encompasses my amendment. Our main concern should be to allay the fears of the people living adjacent to Croke Park and other venues by helping them to cope with the problems they face during major events. They have suffered significant trauma on many occasions and it is not the nicest experience to be a prisoner in one's own house every weekend. I welcome the introduction of amendment No. 8 and hope it will empower local authorities to deal with traffic at events.

Amendment, by leave, withdrawn.

Section 11 agreed to.

NEW SECTIONS.

Government amendment No. 8:

In page 15, before section 12, to insert the following new section:

12.—(1) The following sections are inserted after section 36 of the Road Traffic Act 1994:

36A.—(1) A road authority may, in respect of a specified event or events (such as a sporting or entertainment event) at a specified venue or venues, in the interests of safety of road users and preventing traffic congestion, make bye-laws in accordance with this section for the purpose of prohibiting or restricting the parking of mechanically propelled vehicles on all public roads in specified areas or on a specified public road in its functional area.

(2) Bye-laws made under this section shall specify—

(a) the event and venue to which the bye-laws apply,

(b) the nature and description of the event,

(c) the public road or area to which the prohibition or restriction applies,

(d) whether a prohibition or restriction on parking applies,

(e) the period of the prohibition or restriction on parking, and

(f) the mechanically propelled vehicles, or classes of such vehicles, to which an exemption from the prohibition or restriction is to apply.

(3) Where it is proposed to exempt mechanically propelled vehicles from the application of bye-laws made under this section in accordance with subsection (2)(f), the bye-laws shall specify—

(a) the persons who may acquire the exemption,

(b) the conditions, if any, to be applied in respect of the exemption,

(c) the means of identification of mechanically propelled vehicles that are to be subject to the exemption,

(d) the manner of keeping or display of the means of identification on the vehicle, and

(e) the fee, if any, payable to the road authority concerned in respect of the exemption.

(4) Where bye-laws made under this section provide for an exemption to the prohibition or restriction to be imposed, the road authority shall provide, on application, the means of identification referred to in subsection (3)(c) to a person who may acquire the exemption.

(5) Different bye-laws may be made under this section—

(a) in respect of different areas within the functional area of a road authority,

(b) in respect of different classes of vehicles,

(c) for different circumstances, and

(d) in respect of different periods of time.

(6) Where a road authority makes bye-laws under this section it shall provide a regulatory traffic sign specified in regulations made under section 95(2) of the Principal Act to indicate the application of the bye-laws.

(7) The traffic sign referred to in subsection (6) shall—

(a) be provided on the road or on all roads at the entrance to an area to which the bye-laws apply, and

(b) in advance of the operation of the bye-laws, be accompanied by an information plate indicating details regarding the date or day and period of the operation of the bye-laws.

(8) Before making bye-laws under this section, a road authority shall—

(a) consult with the Commissioner of the Garda Síochána,

(b) publish a notice in one or more newspapers circulating in the area to which the bye-laws relate and, where the road authority considers the event to which the byelaws relate is of national importance, in one or more newspapers published in and are circulating in the State —

(i) indicating that it is proposed to make bye-laws under this section,

(ii) indicating the times at which, the period (being not less than one month) during which and the place (being a place within their functional area) where a copy of the draft bye-laws may be inspected,

(iii) stating that representations may be made in writing to the road authority in relation to the draft bye-laws before a specified date (which shall be not less than 2 weeks after the end of the period for inspection), and

(iv) stating that a copy of the draft bye-laws may be purchased on payment of a fee, if any, not exceeding the reasonable cost of making such copies,

and

(c) before deciding whether to make the bye-laws and determining their content, consider any observations made to them by the Commissioner or any representations made to them under paragraph (b)(iii).

(9) The making of bye-laws under this section and the consideration of observations or representations under subsection (8)(c) is a reserved function.

(10) As soon as may be after the making of bye-laws by a road authority under this section, notice of their making and of the place where copies of them may be purchased, obtained or inspected shall be published by the road authority in—

(a) the Iris Oifigiúil,

(b) one or more newspapers circulating in the area to which the bye-laws relate, and

(c) where the road authority considers the event to which the bye-laws relate is of national importance, one or more newspapers published in and circulating in the State.

(11) Where a mechanically propelled vehicle, not exempted under bye-laws made under this section, is parked on a public road at a time immediately in advance of the coming into operation of bye-laws made under this section applying to the road, the vehicle must be removed from that road before the commencement of the operation of the bye-laws as indicated by the traffic sign referred to in subsection (7).

(12) (a) A person who contravenes a bye-law made under this section or who does not comply with subsection (11) is guilty of an offence.

(b) Where, in relation to a mechanically propelled vehicle, there is a contravention of a bye-law under this section or a failure to comply with subsection (11), each of the following persons is guilty of an offence—

(i) the registered owner of the vehicle,

(ii) if the vehicle is the subject of a hire-drive agreement on the occasion in question, the person to whom the vehicle is hired under the agreement, and

(iii) if the person who parked the vehicle is not its registered owner or the person to whom it is hired under a hire-drive agreement, the first-mentioned person.

(13) Where a person charged with an offence under subsection (12) is—

(a) the registered owner of the vehicle concerned, it is a defence for him or her to show that the vehicle was being used on the occasion in question by another person and that—

(i) such use was unauthorised, or

(ii) the vehicle was on that occasion the subject of a hiredrive agreement,

or

(b) a person to whom the vehicle concerned stood hired at the time of the commission of the offence, it is a defence for him or her to show that the vehicle was being used on the occasion in question by another person and that such use was unauthorised.

(14) Any fees paid under this section shall be disposed of in such manner as the road

authority concerned may by resolution determine.

36B.—(1) A member of the Garda Síochána or (other than for the purposes of paragraph (b)) a traffic warden may request the driver or person in charge of a vehicle—

(a) parking the vehicle in a place where restrictions or prohibitions on parking apply, or

(b) entering, driving on or otherwise using or leaving a road where restrictions or prohibitions apply to a vehicle,

under regulations or bye-laws under this Part, to allow the inspection by the member or warden of a permit exempting the vehicle and, if applicable, the driver or person, from the restriction or prohibition.

(2) Where a member or warden inspecting a permit under subsection (1) is of the opinion that—

(a) the permit is no longer in force,

(b) the permit does not apply to the circumstances or vehicle in which it is being used,

(c) the person using the permit is not entitled to use it, or

(d) the permit is altered or forged,

he or she may detain it.

(3) Where a permit is detained under subsection (2) and it is subsequently shown to be valid it may be returned to the holder or suspended or revoked as the local authority or person issuing it sees fit according to the circumstances of the matter.

(4) The driver or person in charge of a mechanically propelled vehicle who—

(a) fails to keep or display a permit or other means of identification as specified in the permit or regulations made under section 35 or bye-laws made under section 36 or 36A, when the vehicle to which the permit relates is being driven, parked or otherwise being used by the person under it in respect of the exemption or permission concerned,

(b) uses a permit other than in accordance with its terms or conditions, or

(c) fails or refuses to allow or obstructs the inspection of a permit under this section,

is guilty of an offence.

(5) When the driver or person in charge of a mechanically propelled vehicle who contravenes subsection (4)(a) or (b) is not the registered owner of the vehicle but authorised to drive or use the vehicle by the owner

and the vehicle is not the subject of a hire-drive agreement, then the registered owner is also guilty of an offence.

(6) In this section—

‘permit’ means a permit issued under regulations made under section 35 or the means of identification of an exempted or permitted vehicle specified in bye-laws made under section 36 or 36A;

‘traffic warden’ means a traffic warden within the meaning of the Local Authorities (Traffic Wardens) Act 1975 or section 103 (19) (inserted by section 11 of the Road Traffic Act 2002) of the Principal Act.”

(2) Section 42 (inserted by section 10 of the Road Traffic Act 2006) of the Road Traffic Act 1961 is amended, with effect from the commencement of the said section 10—

(a) in subsection (2)(p), by inserting “and the disposal of such fees” after “licence”, and

(b) in subsection (4), by deleting “, in particular and without prejudice to the generality of subsection (1),”.

(3) Section 101B (inserted by section 9 of the Dublin Transport Authority (Dissolution) Act 1987 and as amended by section 49(1)(j) of the Road Traffic Act 1994) of the Road Traffic Act 1961 is amended—

(a) in subsection (2), by substituting “35, 36 or 36A of the Road Traffic Act 1994” for “35 or 36 of the Road Traffic Act 1994”, and

(b) in subsection (8)(b), by substituting “section 35, 36 or 36A of the Road Traffic Act 1994” for “section 35 or 36 of the Road Traffic Act 1994”.

(4) The Road Traffic Act 1994 is amended—

(a) in section 2(1), by substituting for the definition of “reserved function” the following: “ ‘reserved function’ is to be read in accordance with section 131 of the Local Government Act 2001;”,

(b) in section 35—

(i) in subsection (2), by substituting for paragraph (t) (inserted by section 26(1) of the Road Traffic Act 2004) the following:

“(t) the issue of a permit by a local authority, or any other person authorised by the Minister in the regulations, subject to any terms or conditions attached to the permit as prescribed in or permitted by the regulations, for the purposes of—

(i) exempting the permit holder from restrictions or prohibitions on parking applied under this section,

(ii) permitting the parking of a vehicle by the permit holder at specified locations, or

(iii) exempting the permit holder from the application of prohibitions and restrictions applied under this section to specified traffic from entering or using specified roads, upon payment of a prescribed fee, if any, and the disposal of such fees and different fees may be prescribed in respect of different classes of permits.”,

and

(ii) by deleting subsections (7) and (8) (inserted by section 26(2) of the Road Traffic Act 2004).

(5) Section 5(1) of the Road Traffic Act 2006 is amended in paragraph (c) by substituting “millilitres” for “milligrammes”.

(6) The Road Traffic Acts 1961 to 2006 and this section may be cited together as the Road Traffic Acts 1961 to 2007.”.

Amendment agreed to.

Acting Chairman: Amendments Nos. 9 and 10, are ruled out of order as they involve a potential charge on the Revenue.

Amendments Nos. 9 to 11, inclusive, not moved.

Government amendment No. 12:

In page 16, lines 29 to 34, to delete subsections (2) and (3).

Amendment agreed to.

Section 12, as amended, agreed to.

SECTION 13.

Acting Chairman: Amendment No. 20 is related to amendment No. 13 and both may be discussed together.

Mr. P. Burke: I move amendment No. 13:

In page 16, before section 13, to insert the following new section:

“13—(1) The Minister may, by order, introduce mandatory testing for any intoxicant that he or she deems appropriate.

(2) In making an order under *subsection (1)*, the Minister shall have regard to Part III of the Road Traffic Act 1994 and any regulations made under it.

(3) Any testing under regulations under this section shall be carried out in the same manner as is prescribed in *section 4*.”.

This amendment relates to drug testing and drug driving and it would give the Minister the power to implement regulations for the drug testing of drivers. The National Advisory Council on Drugs and the chairman of the Road Safety Authority, Gay Byrne, have raised this issue in recent weeks. While I do not agree with Mr. Byrne regarding the legalisation of certain drugs, he has raised the issue of drug driving, which is also a problem in other countries. When members of the Oireachtas Joint Committee on Transport visited Australia, we saw at first hand the work being done on drug testing, particularly in regard to long distance lorry drivers who take drugs to stay awake. The Australians have successfully implemented testing for a number of drugs. Whether the Government is unwilling or unable to provide for such testing, the amendment would facilitate its introduction. I hope the Minister will seriously consider accepting it because I am sure the incidence of people driving under the influence of drugs is high. We could be well surprised by the number of accidents caused by drug driving if testing were introduced and the Minister of State should examine the proposal.

Amendment No. 20 is a technical amendment.

Mr. Gallagher: The Road Traffic Act 2006 provides for an appropriate form of roadside mandatory alcohol testing to increase the chance of being breathalysed and to provide an increased deterrent effect. I was happy to learn from the Garda that it has acted as a deterrent, despite the number of fatalities over the weekend, including five in my own county. I would like to sympathise with the families involved. This is not the time to speculate on the reasons for these accidents and that process will take its course but the weekend was a stark reminder to us of the dangers of driving on our roads under the influence of an intoxicant, with excessive speed, without using a safety belt or while fatigued. I call on the motoring public to observe the simple rules in place and, hopefully, that will ensure the number of fatalities will reduce. One is one too many. Many families have suffered heartbreak as a result of road accidents. Who knows? Our own fate could be around the next corner. However, the introduction of mandatory alcohol testing has resulted in fewer road fatalities this year compared with last year. That does not give solace to the families who have lost loved ones but if their tragic and untimely deaths ensure others will be more focused in the future, they will hopefully not have died in vain.

The Garda has successfully operated MAT checkpoints since July 2006 when the relevant legislation was enacted. More than 30,000 drivers have been tested every month and the increased deterrent effect has been reflected in the reduction in road fatalities and collision rates since last August. Section 49 of the Road Traffic Act 1961, as inserted by section 10 of the Road Traffic 1994, clearly prohibits the driving of a

[Mr. Gallagher.]

mechanically propelled vehicle by a person while under the influence of an intoxicant, which includes alcohol and drugs or a combination of both. Enforcement of the law on drug driving is a matter for the Garda. When a member of the force suspects a motorist is driving under the influence of an intoxicant, he or she may arrest the suspect under section 49 of the Road Traffic Act 1961. Unlike alcohol, for which legal limits are set out, no such limits are in place for drugs. While it might be perceived the law does not deal with those driving under the influence of a drug, legislation is in place to deal with them.

No feasible basis is in place for the introduction of a scheme of preliminary roadside testing for drugs, which would allow for mandatory testing similar to mandatory alcohol testing. Testing devices are still in the prototype stage and, therefore, the Department of Transport and the Medical Bureau of Road Safety are keeping abreast of developments in this area. We will keep the matter under review. The primary purpose of the Bill is to provide the necessary statutory basis to facilitate the implementation of the free flow open road tolling or barrier free tolling on toll-based national road schemes through the provision of an appropriate deterrent for non-payment of tolls. However, that does not prevent the Government or the Opposition from tabling amendments unrelated to the principal purpose of the legislation. We are in ongoing contact with the Medical Bureau of Road Safety and we are keeping abreast of developments but no feasible basis is available in Europe for the introduction of a scheme. However, if a garda is of the view a person is driving under the influence of an intoxicant, which can be a drug or alcohol, that can be dealt with under section 49 of the Road Traffic Act 1961. The public would like a mandatory drug test to be introduced and I am not opposed to it, but it is not feasible currently.

Mr. P. Burke: I agree with the Minister that the public would like such a test to be introduced. He stated that a test has not been introduced in Europe. Does that mean the test would have to be introduced in Europe before it could be introduced in Ireland?

Mr. Gallagher: No, a feasible basis for the introduction of a scheme for roadside drug testing has not been established but the Department and the Medical Bureau of Road Safety are monitoring developments.

Amendment, by leave, withdrawn.

Acting Chairman: Amendments Nos. 14, 15 and 17 are related and amendment No. 21 is consequential on all three. The amendments will be discussed together by agreement. Is that agreed? Agreed.

Mr. P. Burke: I move amendment No. 14:

In page 16, before section 13, to insert the following new section:

13.—(1) The Minister shall, as soon as may be practicable after the commencement of this Act, by order—

(a) put such structures in place as he or she deems necessary to ensure that the standard of driving in Ireland is maintained and improved,

(b) put such pre-conditions in place as he or she deems necessary, for candidates who wish to take the driving test, and such pre-conditions may include, *inter alia*, a requirement that candidates undergo a prescribed number of driving lessons before being allowed to sit the driving test.

(c) review and update the driving test and driver theory test so that—

(i) each examination conforms to international best practice,

(ii) the driver testing process reflects safe driving practices,

(iii) each examination has regard to persons who—

(I) are hearing impaired,

(II) do not speak Irish or English as defined by the Official Languages Act 2003,

(III) have literacy difficulties, or, in the case of the driver theory test, difficulty operating a computer, or

(IV) have a physical disability,

and

(d) a detailed report of the results of test, including all of the following:

(i) whether the candidate passed or failed the test;

(ii) where he or she made errors;

(iii) what areas the candidate could improve;

(iv) in the case of a candidate who has passed, what further actions he or she must take to obtain a licence; and

(v) in the case of a candidate who has failed, how he or she can reapply for the test,

is made available to each candidate.

(2) On a regular basis, the Minister shall cause a drivers' training manual, to be produced and updated, and such manual shall contain—

(a) the Rules of the Road,

(b) advice on safe driving, and

(c) such other information as he or she deems necessary and appropriate.”

The purpose of amendment No. 14 is to reform the driving test. Everybody agrees it should be reformed and there is much scope for so doing. There is no reason our driving test should not be as good as those elsewhere in the world. I ask the Minister of State to look seriously at this because we really need to reform the driving test.

Amendment No. 15 gives the Minister power to require motorcyclists and learner drivers to do a certain amount of tuition before they do a driving test, which is not the case at present. It is a natural requirement that motorcyclists and learner drivers do a certain amount of tuition. In some cases they receive tuition but in many others, they do not. Tuition should be mandatory.

Amendment No. 17 proposes to regulate driving instructors. At present there is no regulatory body or regulation in regard to driving instructors. Amendment No. 21 relates to driving testing regulation. I ask the Minister of State to accept these amendments.

Mr. Gallagher: The driving testing service operates under the provisions of section 33 of the Road Traffic Act 1961 and in accordance with the regulations made under it. The driving test is also governed by requirements of EU directives which stipulate the manoeuvres to be carried out which are also set down in regulations under section 42 of the Road Traffic Act 1961.

The Road Safety Authority, RSA, is responsible for the operation of the driving testing service, in accordance with the regulations, and for the operation of the driving test theory. The standards for the delivery of these services by the Road Safety Authority already take account of the matters raised in the amendments proposed by Senator Paddy Burke.

In regard to preconditions being imposed on candidates for driving tests, such conditions would have to be set out in regulations. The Minister has already made appropriate amendments to the Road Traffic Act 2006 and to section 42 of the Road Traffic Act 1961 to provide that regulations may be made requiring that provisional licence holders undergo training before a driving test.

In regard to driving standards, the RSA is responsible for ensuring as part of the operation of the driving testing service that a uniform standard of driving test is delivered. The RSA also has a general duty as set out in section 6 of the Road Safety Authority Act 2006 to promote better driving standards.

In regard to driving instruction, the RSA will be designated as an approved body to issue instruction certificates in accordance with regulations made under section 18 of the Road Traffic Act 1968, as amended by section 19 of the Road Traffic Act 2002. The RSA has completed a consultation process on the designation of instructors

and is in the process of establishing a register of driving instructors, with registration of new instructors to commence on 1 July 2007 and the registration of all instructors to commence on 1 July 2008. There was a long consultation process and details and regulation in this regard will be brought forward sooner rather than later.

There is no power in the Road Traffic Acts to regulate driving schools as the provision in section 18 of the Road Traffic Act 1968, as amended by section 19 of the 2002 Act, is intended to regulate individuals while giving driving instructions. This will achieve the objective ensuring a proper standard of instruction is delivered, whether by an individual driving instructor or through a driving school. The question will be dealt with in a short period now that consultation has taken place. Instructors will be checked at regular intervals and if found not to meet the required standard, they can be removed from the register. It will be a matter for the instructors to take appropriate steps to bring their standard of instruction up to the required standard.

The main purpose of the Bill is to provide the necessary statutory basis to facilitate the implementation of free-flow open road tolling. It is important, however, that these matters are raised by Senator Paddy Burke and that I respond giving the current position. Progress is being made and the 2006 Act gives the Minister power to introduce regulations as we move forward. We listen attentively to the RSA which, as the Senator possibly knows, will present the Minister with its 2007 strategy.

Mr. P. Burke: The Minister of State said the consultation process on driving instructor regulation was over. Is there a timeframe for the regulation of driving instructors? Will it be in the next few weeks? Will a new Government introduce it?

Mr. Gallagher: I expect it will be introduced quite soon because from 1 July 2007, a person wishing to become an instructor for the first time must undergo the registration process. That will involve proving one is a person of good repute. A person must pass a test of knowledge on driving theory and an extended driving test. There is a lead-in time. The 1 July 2007 date is written in stone. Existing instructors must comply by 1 July 2008.

Mr. P. Burke: Will the Department of Transport look after this?

Mr. Gallagher: The Road Safety Authority will.

Amendment, by leave, withdrawn.

Amendment No. 15 not moved.

Acting Chairman: Amendment No. 16 is out of order as it is outside the scope of the Bill.

Amendments Nos. 16 and 17 not moved.

SECTION 13.

Government amendment No. 18:

In page 16, subsection (2), line 39, to delete “section 12” and substitute “sections 12 and 13”.

Amendment agreed to.

Section 13, as amended, agreed to.

SCHEDULE.

Government amendment No. 19:

In page 18, between lines 37 and 38, to insert the following:

“

Section 19	The substitution in subsection (2) of “paragraphs (a) to (c)” for “paragraphs (a) to (e)”.
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Amendment agreed to.

Question proposed: “That the Schedule, as amended, stand part of the Bill.”

Mr. P. Burke: I refer to the increase of speed limits from 100 km/h to the maximum of 120 km/h on roads such as the Naas dual carriageway, the N4, the N6, the Ennis bypass or the Buncrana bypass. Many roads are dual carriageway standard but the speed limit on them has not been changed to the maximum speed limit. The Minister said on Second Stage that this legislation would allow for that. Will the Minister of State outline the timeframe in which the speed limits will be changed? Does this Bill give the power to local authorities, the National Roads Authority or another body to do so?

Mr. Gallagher: This legislation will allow us to redesignate high quality dual carriageways to motorways. I cannot give the Senator an exact timeframe. It is being dealt with by the National Roads Authority. I will prevail upon it to act as quickly as possible taking into consideration any practical issues which may arise.

Question put and agreed to.

Amendments Nos. 20 and 21 not moved.

Title agreed to.

Bill reported with amendments.

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

Mr. Wilson: Next Tuesday.

Report Stage ordered for Tuesday, 27 March 2007.

**Education (Miscellaneous Provisions) Bill 2007:
Second Stage.**

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

Minister for Education and Science (Ms M. Hanafin): I am pleased to have this opportunity in the Seanad to debate the Education (Miscellaneous Provisions) Bill. I believe there will be substantial support for its general purpose and main aim, which is to give effect to a key recommendation of the task force on student behaviour, namely, that section 29 of the Education Act 1998 should be revisited with a view to amending it to stress the rights of the compliant majority to learn while at the same time protecting the rights of the individual student to an education.

I established the task force on student behaviour in early 2005 to examine the issue of disruptive behaviour in our second level schools, to consider effective strategies already employed, to advise on best practice in fostering positive behaviour and to make recommendations on how best to promote an improved climate for teaching and learning in our schools. The report of the task force, School Matters, put forward a number of recommendations to place schools in a stronger position to meet the challenges of motivating and catering for their entire student cohort, including those, “whose troubling behaviour is reflective of a wider societal breakdown of acceptable norms of courtesy and civility”. In early 2006, I announced an implementation strategy following publication of the report of the task force, which is now well advanced.

At the core of the task force’s recommendations was the putting in place of a national behaviour support service, NBSS. The service is now in place and has already commenced its engagement with schools and intensive work will begin shortly with a number of schools most in need of this intervention. As part of this initial engagement, the NBSS invited schools across the country to formally make application to benefit from its services. As a result, it has completed its consideration of 124 applications that were received from individual schools for support from the service, including the establishment of behaviour support classrooms. The applicant schools are drawn from each of the school sectors and represent a good geographic and gender profile mix.

Based on careful consideration of each application, 50 schools have now been identified to receive support as part of a phased roll-out of activity under the new service. Each of these 50

schools has been notified of their participation in the first phase and a progressive roll-out of services to these schools commenced immediately after the mid-term break with the service's teams conducting in-house briefings with school staff.

The task force report, in its recommendations to schools, also provided valuable insights into strategies and approaches for dealing with disruptive students. It set these in the context of a whole school approach to the issue of discipline and I am sure that the report itself will be a useful tool for schools in developing their responses to this issue. It is inevitable, however, that some students by their behaviour will leave their schools with little option but to use the last resorts of long-term suspension or permanent exclusion. It is vitally important that these sanctions remain avenues of last resort and are not taken lightly.

In such circumstances, the appeal system under section 29 of the Education Act 1998 has, since it commenced in 2001, provided parents and students over the age of 18 with an avenue of independent review when this difficult situation arises. Section 29 of the Education Act provides that an appeal may be made to the Secretary General of the Department of Education and Science against a decision by a school's board of management to permanently exclude a student, suspend a student for more than 20 days cumulative in any school year or refuse to enrol a student.

The task force, in dealing with section 29, outlined the concerns expressed by school representatives regarding their experience with what it termed, "this evolving aspect of the new legislative framework". However, the task force also drew particular attention to the view of the National Educational Welfare Board, "that the advent of the appeals system has been positive for schools [and i]t has prompted schools to re-examine and review their policies, and to ensure, as far as possible, that policies and procedures are balanced, fair and transparent".

In this respect I am glad to report that the National Educational Welfare Board is finalising comprehensive guidelines for schools on developing and implementing effective codes of behaviour. The NEWB is currently finalising an implementation and support plan for the roll-out of these guidelines to schools.

The task force recommended that my Department should revisit section 29 of the Education Act 1998 with a view to amending it to stress the rights of the compliant majority to learn while at the same time protecting the rights of the persistently disruptive student to an education. Following a review of the legislation, departmental officials provided briefings for all the education partners on the changes that were being considered to the Education Act 1998 and, in particular, the redefinition of section 29 of the Act. There was general welcome for the proposals, as outlined, and the partners indicated broad support for the proposals at the briefing sessions. I

propose, in this Bill, to amend section 29 of the Education Act 1998 to take account of the task force recommendations on the appeals process.

Section 4 of the Education (Miscellaneous Provisions) Bill will require a section 29 appeal committee dealing with an appeal relating to expulsion or long-term suspension to take account of the educational interests of other students in the school, as well as the interests of the student who is the subject of the appeal, when deciding on the case. The Bill sets out a range of factors that an appeals committee will have to consider, in dealing with expulsions and long-term suspensions, including the nature, scale and extent of the student's behaviour that gave rise to the suspension or expulsion, the reasonableness of efforts made by the school to enable the student to participate in and benefit from education, and the educational interests of the student concerned and the desirability and practicality of enabling the student to continue to participate in and benefit from education with his or her peers in the school setting. They will also have to take into account the educational interests of the other students in the school and the maintenance of a classroom environment that is supportive of learning. The safety, health and welfare of teachers, students and staff of the school will be also be among the factors to be considered. The school's code of behaviour and any other relevant policies will also be looked at.

The aim of the Bill is to provide a clearly stated statutory framework within which an appeals committee must determine an appeal and provide for a balancing of rights between the educational interests of the student who is taking an appeal and the educational interests of the school community as a whole. In so doing, the Bill sets out a delicate balance of factors, each of which an appeals committee must take into consideration, and which must be weighed, one against the other, in examining the particular circumstances surrounding the decision under appeal. The proposals set out here do not constitute a menu of independent choices to be selected from at will. Instead, it constitutes an array of interconnecting factors to which an appeals committee must have regard in considering the rights of both the individual student and the wider school community.

The task force also recommended that a protocol should be provided to assist school boards in the preparation for an appeal. This recommendation will be given effect in the revision of the procedures for hearing and determining an appeal. These procedures, currently required and in place under the Act, provide the administrative framework within which appeals are dealt with. The procedures will be revised and expanded to reflect a level of detail that would not be appropriate to the primary legislation but that will be of practical assistance to all parties to an appeal. Consideration will also be given to putting the procedures into the more formally structured

[Ms M. Hanafin.]

framework of a statutory instrument. Further consultations with all the education partners will inform this process. The Bill will allow the Minister to regulate for the suspension of the time limit for hearing an appeal during periods of school closures such as school holiday periods. This was also a specific recommendation of the task force. Appeals are dealt with on a year-round basis and this provision will be expanded in the proposed revision of the procedures for hearing and determining an appeal.

The Bill allows for a section 29 appeals committee to refuse to hear an appeal, or to continue with an appeal, which may be frivolous, vexatious or an abuse of process and to draw inferences from the failure of a party to an appeal to comply with requirements made of it such as requests for information or clarity of a position. This may arise in particular in respect of refusals to enrol where a dispute arises as to whether a formal application was made or a definitive decision was taken on an application.

Specifically with regard to refusals to enrol, the Bill will extend the application of section 29(1)(c) to situations where a child is refused enrolment to an all-Irish division of a school. This addresses an anomaly which exists at present in respect of a school which contains a separate all-Irish division or aonad. At present, a child could be refused enrolment to the aonad but would not have a right of appeal if offered a place in the English language stream within the school. This provision will now permit an appeal, in its own right, in respect of a refused enrolment to an all-Irish division of a school.

The Bill also ensures that a section 29 appeals committee does not hear an appeal which is being or has been dealt with under the appellate functions provided under section 10 of the Education for Persons with Special Educational Needs Act 2004 and *vice versa*. However, the Bill ensures the National Council for Special Education, like the National Educational Welfare Board, will be able to make submissions, as it considers appropriate, to an appeals committee dealing with an appeal under section 29.

A number of minor amendments to other parts of the Education Act 1998 are contained in the Education (Miscellaneous Provisions) Bill. Section 53 of the Education Act permits the Minister to restrict access to information which would enable the compilation of school league tables based on students' academic performance and to information relating to the identity of examiners involved in the State examinations. As the State Examinations Commission, SEC, has operational responsibility for the conduct of State examinations, the Bill will extend section 53 to the SEC.

The Bill will address procedural matters relating to the functions of the chief inspector and will change some of the functions of the inspectorate under section 13 of the Education Act. Certain

functions of the inspectorate in respect of examinations and psychological assessments are now performed by the State Examinations Commission, the National Council for Curriculum and Assessment and the National Educational Psychological Service, respectively, and the Bill will amend the inspectorate's functions to reflect this. The Bill also amends section 13 of the Education Act 1998 to allow the chief inspector to delegate his or her functions to another inspector and permit the Minister to appoint an acting chief inspector in the event of illness or incapacity of the chief inspector.

The Bill will also give effect to the Government decision to establish the Crawford Art Gallery in Cork as a national cultural institution within the remit of the Minister for Arts, Sports and Tourism. In this regard, the Bill provides that the Minister can order the transfer of the lands and property of the Crawford Art Gallery in Cork from the City of Cork Vocational Education Committee to the Office of Public Works.

I sincerely hope Senators will agree with me regarding the positive benefits of this Bill and I look forward to listening to and debating the various provisions with the Members of this House. I commend the Bill to the House.

Mr. U. Burke: I welcome the Minister to the House and I also welcome the Bill. Most people directly and indirectly involved in education are pleased that measures are being brought forward to help lighten the burden on teachers, who are the everyday practitioners in education, and on pupils who wish to work without hindrance in a school environment.

At a time when almost everyone avails of second-level education, it is inevitable that some students will have difficulties. Pupils at second level, and to a lesser extent at primary level, have been identified as having serious problems accepting the curriculum and the work procedures in a school environment where the majority of students aim to achieve the points to continue into third level education. I have experience of pupils with these difficulties as I am sure the Minister has from her former teaching role. However, that experience is not of the extent to which the problem now exists. Anything this Bill can do to lessen the problem is welcome.

The Minister stated the core of the proposal to amend section 29 of the 1998 Act is the establishment of a national behavioural support service. We must be conscious that 50 schools were identified from the 124 schools which made a submission. People will wonder why these schools stigmatised themselves by identifying themselves as having serious problems. I do not see it in that light and I would hate to see anybody use that broad brush on the schools involved and selected for the first phase of implementation of the support service proposed in the Bill.

What sum of money will the Minister will invest to get this service off the ground? If we begin well and have visible positive results, the service will go from strength to strength. Regarding personnel, the structure involves 19 people, including co-ordinators. I am sure the person charged with overall national responsibility is one of the finest who could be found and I wish her every success in her difficult task. However, what was spent during recent years in this area is pence compared with the £450 million invested across the water in such a service. In Scotland, approximately €53 million is spent on this type of service for pupils identified as being in need of support and requiring their educational goals and achievements to be redirected.

We must consider the provision of classrooms if a situation comes to the ultimate decision and somebody must be taken out of mainstream education and placed in an identified support room. Such accommodation is not available in most schools. Did the Minister identify resources for the provision of these rooms? The issue will not arise until this is up and running, which will probably be the start of the new academic year rather than the end of this academic year. Do the 50 schools selected and identified have the space for this core requirement? It is important we know.

Regarding a crisis in discipline and with disruption in schools, less than one year ago the Minister wondered what crisis existed and stated people were exaggerating. Many people agreed with her. Broadly speaking, practically every teacher encounters an element of such disruptiveness on a daily basis. This may not be widespread but is evident in practically every school where there is a broad intake of all ranges of ability and where various outcomes must be anticipated.

Ultimately, those people who cause disruption must be identified and dealt with. I do not believe the best way to do this is to put pupils in a room, sin bin or whatever term will be used. A sin bin is used when people are sent from a playing field as a result of disruptive behaviour. They are off the pitch for a certain period of time, after which they come back.

Leaving aside the playing field, such people can be back in a scenario that can be more provocative to all people. It has a serious influence on the peer group within the school and class context. Perhaps it is unfortunate for a teacher who has had the initial experience and must pass it along to the board of management, principal and others involved in discipline within the school.

Thinking back to what some may term “the good old days” prior to the 1998 Act, the power to suspend or expel lay with the principal, president, teachers and school boards of management. Perhaps some would overreact. The matter would be dealt with and there was no appeal mechanism, which may have been unfair. Children may have transferred to another school and

done well. Perhaps a great disservice could be done to a pupil who would have to go from one school to another and go on to succeed there.

It is important that the process is achieved quickly and that a prolonged assessment and torturous detailing of steps along the line is avoided. Although it is recognised that such a process is important, it is also important for it to be done quickly. This will leave a fair end result. A long and drawn-out process would be seriously detrimental in a case where a pupil is received back into a school.

We must think of cases where students are expelled or suspended for a long time from a school. Another mechanism should be available. The Minister mentioned the welfare system which is there, with the psychological service etc. We must think of an environment outside the existing school scenario. For example, Youthreach has done tremendous work over the years for students identified as having left the system for one reason or another, be it related to discipline or total rejection of the system within which they were initially involved.

I hope the task force would consider cases where a mechanism similar to that of Youthreach would be used with pupils identified in such a way. If a school has a room or area within which one or more of such identified pupils are contained or restrained, there will be serious problems. These will include identification and the prospect of pupils becoming targets for bullying. These and related problems would cause very serious disruption within a school environment.

I strongly support the introduction of this legislation and hope the Minister will clearly identify two or three issues I have mentioned. I hope the matter will quickly become national rather than remain a pilot scheme, for want of a better word, as it is currently. We should have a clearly defined budget relative to the numbers involved and the problem that can be identified.

Some 43 schools made initial submissions, but perhaps the advertisement seeking submissions may not have been fully understood by many schools. Most schools should be issued with a circular from the Department to invite them to make a submission at an early stage so we can have a full and comprehensive understanding of the problems out there.

The matter must be handled with the greatest of care. The initial steps to be taken must be seen to be effective, fair and manageable. We should set a benchmark for the future because what we have now is in some ways unacceptable. For example, it is not acceptable that professionals at work can be treated in some of the appalling ways that have been evident. I will not mention any particular isolated case that may have come to notice through the press.

It is imperative that the pupils who want to go ahead are allowed to do so in a proper environment. Those identified through this mechanism

[Mr. U. Burke.]

must be dealt with fairly and squarely, and they should have a definite opportunity of rehabilitation into a system. They may not necessarily continue within what could be termed a normal class situation.

Ms Ormonde: I welcome the Minister. I am very pleased that this Minister is heading up the education position, knowing that she understands and would be the first to state that it is unacceptable that professionals such as herself, myself and Senator Ulick Burke would have to tolerate disruptive behaviour in the classroom. I believe the Minister has a very clear understanding of the matter.

We must take into account that society has changed over the last number of years, along with family structures. Naturally, these types of problems have escalated to the extent that there are schools that cannot cope with the significant disruptive behaviour existing in them.

This is a very important Bill, with section 29 of the 1998 Education Act being revisited to take into account the rights of disruptive students to learn, as well as taking into account that the majority in the classroom now have the right to be taught and learn. This is key to this area and a core issue.

The Minister has outlined that it will give effect to a key recommendation of the task force on student behaviour. It is only fair that the rights of the majority of good-willed students should not be grossly affected by individual students. That is the reason the Bill is so important.

This task force was set up in 2005 to deal with disruptive behaviour, with its brief to consider what strategies can now be employed to advise on best practice in fostering good behaviour in the school, creating a better environment for our students and a climate for teaching and learning through the Irish school system. Its recommendations were to ensure schools were better placed to deal with all the students, including those having difficulties.

I noted Senator Ulick Burke's comments on the lack of finance, but there is €8 million in this year's budget. He also indicated that he welcomed the new concept of the national behaviour support service, which is a very new idea. It is to be introduced into the classroom and we do not need to repeat the Minister's statement that 50 schools are being piloted to see how this would work. The back-up structures are in place, namely, home-school links, guidance counsellors, Youthreach services and remedial teachers.

There are teething problems with any new structure that is put in place to help students who cannot be contained in classrooms, but I welcome this new concept, in respect of which the National Education Welfare Board will work to determine whether we can improve school retention levels without interfering in the learning of the majority

of students. It is a good move. Will the Minister give more detail about how the teamwork will operate in the classroom structure? This service must be rolled out, as it can work if everyone works together. I see no difficulty in that regard.

There is a problem in the appeals system. I have received letters from the Irish Vocational Education Association stating the system is like a revolving door, that is, those who had been expelled or placed on long-term suspension are able to get back in many cases. I welcome the Minister's acknowledgement of the problems. The Bill is concerned with protecting those who cannot be contained in the system and preserving the normal level of teaching and learning in a school. The new appeals system will take into account these and other relevant factors.

The Minister referred to analysing the nature and extent of the student's behaviour, which would be difficult. I am interested in learning what was meant. I have no difficulty with the provision concerning the reasonableness of efforts made by the school to enable the student to participate in and benefit from education. One must be reasonable, that is, classroom teachers, graded teachers dealing with discipline problems, school principals and all of the educational partners, including the NEWB, must take into account every consideration. Everything must be done to try to contain the young student in the classroom and to have regard to the educational interest of the student. Whether the student could be allowed to stay in the classroom and to work with his or her peer group must be determined under these new arrangements. The safety and health of the teachers and students must also be taken into account.

If there is an appeal, I welcome that the board of management has a structured framework within which to work. Previously, the framework was loose, but there will now be a new procedure to facilitate both parties, namely, the school authority and the appellant. If we get this matter right, the process will become easy. Regarding a school's refusal to enrol a student in its all-Irish division, I welcome the extension of the provision. I also welcome that applications do not need to be entertained if they are frivolous, which many are.

A great deal of work was covered by the Minister's speech. Speaking as a teacher, all aspects of the situation have been taken into account. Many teachers are in the Chamber today and are ready to pounce. They have noted the points that were raised.

Ms O'Rourke: Where will we pounce?

Mr. U. Burke: We have disappointed the Senator.

Ms Ormonde: I welcome that the Minister has moved the issue in this direction, as the appeals system is important. If one clarifies the factors

involved before expelling a student or placing him or her on long-term suspension, one introduces new methods, namely, the national support system the Minister intends to introduce to the classroom.

After ensuring co-ordination and teamwork, we are in the lap of the gods. Some students cannot be contained in the classroom. I hope alternatives are in place when a school reaches that decision, namely, Youthreach for those over 15 years of age, another youth programme for those who are younger or some measure that would allow a student to continue his or her education. Many students have ADHD and, from my experience of dealing with such students, they cannot be contained in classrooms. They are not team players and cannot structure themselves in a classroom setting. It would not be fair to the majority. The core of the Bill is to look after the majority while getting the balance right to protect those who cannot be contained in the classroom. The Minister has got the matter right and I hope it will work after implementation.

Mr. O'Toole: Cuirim fáilte roimh an Aire agus roimh an mBille. Tá sé tábhachtach agus in a lán slite tá muid ag feitheamh leis an Bhille seo leis na blianta. Tá na rudaí istigh ann pléite go maith ag an Aire, againne agus ag múinteoirí sa chéad agus sa dara leibhéal le blianta: na deacrachtaí balance a fháil i gcomhthéacs cúrsaí smachta i scoileanna, go mbeadh cearta na ndaltaí agus cúram na múinteoirí go himhneánach sa scoil.

Leis na blianta bhí i gcónaí deacracht ann go raibh brú ar scoileanna cód smachta a chur le chéile agus na rudaí nach bhféadfaidís a chur isteach ann. Cuireadh deireadh le pionós coirpeach i 1982 agus bhí folús ina dhiaidh sin. Bhí sé deacair ag an bpointe sin aon rud a chur isteach ina áit ach thar na blianta, tharla a lán rudaí.

The most extraordinary event of those years was our dealing with the issue of psychological assessments in one of the Education Acts, a matter that was also addressed in the Education for Persons with Special Educational Needs Act 2004. Having tried every other process, parents could be compelled to agree or their permission would not be required to insist on a psychological assessment. This was a major move forward, as we were afraid to examine the issue for years.

During the 1990s, there was a sense among teachers that the Department did not or could not support them. The Department was more concerned with telling schools, teachers and boards of management what they could not do in an attempt to ensure the children who were compliant with a school's code of discipline were being properly educated without interruption by disruptive pupils. There were all sorts of difficulties at that time. Officials did not speak about sanctions such as detention, suspension and expulsion other than to tell us they could not be used.

I once dealt with an appeal to the inspectorate in the case of the principal teacher of a school in south Leinster who had been severely reprimanded for isolating a student within the classroom. The child, who was very disruptive, had been told to sit on his own by his teacher, who was a responsible, caring and sensitive professional. This case serves as an example of how officials sometimes fail to understand the impact of their decisions. The teacher in this instance did not sleep for six months until his appeal was heard. The inspectorate understood and accepted the man's argument, in fairness, but not before he had undergone a great deal of hardship. The issues of suspension and expulsion were not even on the radar screen at that stage. It is important that now we are providing that they can be considered.

Many factors will have to be taken into consideration when the appeals committee comes to a decision on an appeal against an expulsion or suspension. I spoke ten or 15 years ago in favour of providing for suspension and expulsion in certain circumstances. I said that the nature, scale and persistence of any behaviour should be taken into consideration by a school before it makes a decision. Each school should be judged on the reasonableness of its attempts to deal with the problem child. It is important to consider whether other children in the class are deprived of their right to education if two or three students continually act in a disruptive manner. A balance must be struck. Schools need to accept that they must follow certain processes before they can take the penultimate or ultimate step. Health and safety issues must be considered, for example. Schools are in a better position when they deal with the appeals board if it is clear that they have checked all the boxes and done certain things. The quality of that process also must be examined. This system will give everyone a sense of security. If I was to make any complaint about the Bill, I would point out that it was needed many years ago. Perhaps that would be an unfair criticism, because I recognise that this legislation represents progress.

This Bill will give authority to schools and boards of management. They will know that the decisions which are made can be appealed. When I spoke recently to a group of teachers about the Education for Persons with Special Educational Needs Act 2004, I outlined to them the eight or nine different appeals which will be possible under the Act. Further appeals will be possible under this legislation. It would be helpful if the Department of Education and Science could make training courses available to those who will implement the provisions of this legislation. Such people want to know what will be considered as reasonable, for example. We all know what we consider reasonable, but the official view should be made known. How do we measure the reasonableness of any efforts made by the school to

[Mr. O'Toole.]

enable the student to whom the appeal relates to participate in and benefit from education? I do not suggest that it can be absolutely measured, but what will we look for in that regard?

There will be fewer appeals if this process is structured properly. Appeals tend to occur when people think they will be successful. If schools know that the process could lead to an appeal, they will have to be very careful. Schools should be helped to understand how they can contribute to the quality of the process. That would give confidence to school authorities in facing an appeal or giving evidence to a board of appeal. If the decisions of schools are being appealed, at least their representatives should be able to say that they followed the relevant steps properly. If they do so, the appeals board will have to accept their arguments or give reasons for not doing so. The board might find that the school authorities did not engage in enough consultation with parents, for example, or that they tried to implement other sanctions before taking this step. I think that some clarification would be helpful. While some guidance is being given, it would be nice for it to be a central part of what must take place. It is a matter of time before people decide to go to the courts after an appeal has been rejected.

Ms O'Rourke: Yes.

Mr. O'Toole: The Leader of the House will recall a famous case in County Longford some years ago. A school was taken to court even though it had followed the appropriate process as it understood it. All sorts of comments, letters and statements were issued which caused a great deal of trauma for all involved. The school authorities emerged satisfactorily from the traumatic process which was a huge imposition for them. It was unfair on them. I welcome this Bill because it will make it far less likely for such a case to take place again. If somebody appeals a decision, the first thing the judge will ask will be what domestic remedies were put in place. If those remedies took the form of a process and an appeal, the courts will be slow to intervene. Nothing further will be possible in such circumstances unless people opt for some sort of judicial review. The courts will again be slow to intervene in that case. If people follow the process, I believe it will be soundly held.

We need to focus on what we want to achieve as we try to strike a balance between giving authority and confidence to schools so they can deliver educational services to all their pupils, who must be the focus of our efforts, and putting in place measures for dealing with the problems which can arise in classrooms. We cannot lose sight of the needs of the 30 or more pupils who are not involved in the cases with which we are dealing. We will not mention the issue of class sizes tonight.

Ms O'Rourke: We will put out the Senator.

Mr. O'Toole: We must think of the other children in the class as well. We can only strike the necessary balance if we use an agreed process. This Bill will allow such a process to evolve, develop and work. I do not doubt there will be difficulties with it; there are bound to be difficulties with it. The teachers who have been waiting for a new system to be put in place will be able to deal with it. While we might say that it could have been provided for earlier, it is in our nature as teachers to think that nothing is on time.

It is important to emphasise that when schools draw up codes of behaviour, which do not arrive out of the air, they will consult the entire school community. Codes of behaviour should be taken into account by the inspectorate when it conducts whole school evaluations. The inspectorate will be able to decide whether the codes make sense. It is important that we provide for a stamp of approval at every stage. Each of the partners in the school community — parents, the board of management, the pupils, the principal and the staff — needs to be committed to this process. The inspectorate will be responsible for deciding whether each code is fine and within the terms of the guidelines. Hard decisions can be taken after the various steps have been followed.

I compliment the Minister on her decision to ensure the system is statutorily based, because that will give everybody confidence. It is important that these new provisions are being introduced on a statutory basis, rather than by means of regulation or circular, which is often tempting. If they had been introduced by means of regulation or circular, I would not expect them to last very long before the courts were used on every occasion. We can make progress in this regard on the basis of this legislation.

Fáilte na moltaí atá sa reachtaíocht seo. Tá súil agam go n-éireoidh leis. Tá mé cinnte go ndéanfaidh sé dul chun cinn sna scoileanna. Tá a fhios agam go mbeidh deacrachtaí ar leith ann chun an rud a chur chun tosaigh i dtosach. Bíonn deacrachtaí ann i gcónaí. Tá sé tábhachtach go mbeidh iontaoibh ag múinteoirí, tuismitheoirí, na mbord bainistíochta agus the school community sa chód agus sa phróiseas. I hope they give it a vote of confidence ionas go n-éireoidh leis. Táimid ag feitheamh leis an reachtaíocht seo leis na mblianta, ach tá sé againn anois. Tá súil agam go n-éireoidh leis.

Ms O'Rourke: I welcome the Minister to the House. I am smiling while reflecting on the name of the Bill, Education (Miscellaneous Provisions) Bill. One could continue forever introducing such a Bill, because for every loophole one would close another one would appear. I can only imagine the outcome of doing that. There are varied circumstances in education, as the Minister

is well aware from being a teacher and as Senators Ormonde, O'Toole, Ulick Burke and Kitt are also aware. It is difficult to adopt a template or framework that would deal with all the lacunae that arise. I commend the Minister on taking this opportunity to endeavour to close off many of the loopholes that have arisen and which cause such fraught tenor in a school, a classroom or a community, as Senator O'Toole said.

Section 29 of the Education Act provides that an appeal may be made to the Secretary General of the Minister's Department against a decision by a school's board of management to permanently exclude a student, a provision with which I agree. I want to bring a case to the Minister's attention, although I will not mention any names as I will submit a written appeal to the Secretary General of the Department on the basis laid out in the Act. This case involves a boy whose parents jumped through all the hoops. The school was informed that it lost its appeal and must now re-register the boy but it is refusing to do so. I have not dealt with a case previously where a school adamantly refused over a period of months to re-register a student. The boy in this case has been deprived of his education for that period.

I am compiling a report on this case. I was aware this Bill was to be introduced and I take this opportunity to raise this case without mentioning the names of the parents, the boy or the circumstances involved, as I will give that information to the Secretary General of the Minister's Department, as required under the Act, and I am sure she will reply, having given the case her attention.

The school in question has been obstructive in that the principal or person in charge was not available to attend arranged meetings, but numerous pretexts have been put forward as to why the boy, who won the decision in the appeal, should not be allowed back into the school. The process was followed according to the appeals mechanism outlined in the Act and in this legislation and a full hearing took place at which the school lost its appeal and the boy was deemed to be re-admitted to that school. However, that did not happen and I consider that to be a serious matter. The Minister might indicate when replying — even if I am not present, in which case I can check her reply in the Official Report — if the Act imposes strictures on a school in a case such as this. This school has adamantly refused to re-register a student, even though everything was laid out as to what should be done and both sides adhered to the principles to be followed. The boy in question, who could be almost called a young man, has not been allowed back into that school and has been deprived of his education for many months. I regard this as a serious matter. Clearly, the Department, following the enactment of the Education Act 1998, has made every effort to provide that the right mechanisms are put in place to ensure there will be no escape for either

the school or the pupil, depending on the decision made, if there is a case to be ameliorated or heard. It is disgraceful that a school would refuse to obey the provisions of an Act, which is what this school has done. It has refused to follow the strictures imposed under the Act.

The Minister may say I go around picking up such cases — but I do not — when I relay that I was visited last night by a distressed parent and the circumstances of her case are the opposite to those of the case I have just outlined. This parent was married and is now a single mother. Her son lost his appeal and the school's case was upheld. The mother must now get two second level schools within the catchment area that will refuse to admit this young man. The school he was attending has already refused him admission and the mother is seeking to contact another school. She has now suddenly been offered the use of a facilitator — I do not know if the Act provides for this — who will help her in her quest as to how to proceed with the case and what can be done to allow this young man to get back into the education system.

In the space of a few weeks, I have dealt with two cases which come under the provisions of the Education Act 1998 and particularly the implementation of the 2001 legislation. In one case the parents won the appeal but they have heard that it will not be possible for the person in charge in the school to attend meetings, and meetings that were arranged have been postponed. What means of redress have those parents?

In the second case the parent lost the appeal, the school's determination in the case was upheld and nearly five months following the appeal the parent has received a letter, which I have with my constituency papers, advising her that she will be offered the assistance of a facilitator. I welcome that offer as this parent must determine her son's future and needs the help of a skilled person. The facilitator will provide that skill which is useful. Obviously, that facility is provided for under the Act or the offer would not have been made. I commend the Minister and her officials on the work they have done. It is difficult to mop up various small-scale matters which can lead to difficulty arising under an Act.

Senator Ormonde spoke eloquently on the right of other students to be educated in circumstances where a child or children permanently disrupt a class and do not allow the teacher to teach. In such circumstances the parents of the other children would say the child in question is disrupting the class and their children cannot get a proper education. People will say it is much more difficult for teachers to cope today but I do not believe it is. With human nature being what it is, there always will be difficult, docile and studious students. Every parent's duck is a swan and every parent wants the best for his or her child.

When I was teaching I did not like children to be put out of a class if there was a way to resolve

[Ms O'Rourke.]

the matter in the classroom. The loss of confidence, dignity and stature suffered by such students is huge and way beyond what they thought when they set out on their path of disruptive behaviour. I will write letters tonight to the Secretary General on the two cases I outlined and I hope I will hear back from her. While I would like to hear the Minister's reply to these matters, I have to leave to attend a meeting, but I will be able to peruse the detail of her reply in the Official Report.

I commend the Bill to the House.

Ms Tuffy: I broadly welcome the Bill. I welcome the idea of a national behaviour support service. It is important that it would be properly resourced. I am interested in the idea of behaviour support classrooms and the Minister might explain what those support classrooms would entail. Will these classrooms have staff who are specialists in this area as such teachers would need to be specially trained?

The suspension or expulsion of a disruptive student poses a problem for the schools, pupils and parents concerned as the options are limited as to where such students can go.

6 o'clock They either find another school and similar problems may arise or they go to Youthreach, but there is nothing in between. The behaviour support classrooms might be an interim solution but this might not be appropriate for certain students. In the case of a student with ADHD which contributes to his or her behaviour, would it be possible for such a student to spend a period in a special needs school and then return to the mainstream school? The behavioural problems might be addressed and managed in the special needs school.

Members of the Joint Committee on Education and Science visited a couple of special needs schools in south Dublin a few years ago. One school catered for students of late primary school and early second level age. The principal of the school expressed the view that the school might have a future role in taking students from other schools on a temporary basis in order to address their needs and then return them to their original schools. This proposal should be considered by the behavioural support service.

More work is being done in mainstream schools to provide for students with special needs. The infrastructure of special needs schools may need to be adapted to new needs. The Minister could use the existing infrastructure in special needs schools, where appropriate, to work with mainstream schools which are dealing with disruptive behaviour arising from special needs problems. I ask the Minister to inform me if she has any plans in this regard.

I have frequent dealings with my local educational welfare officer because I am aware of people who seem to have fallen between the gaps

and their children do not have a school place. My community has multiple issues. For example, families coming from another country and looking for a place in a local school are being turned down even though the child may be nearly six years of age. These families are not aware of their rights. I refer them to the local educational welfare officer who visits them and gives them advice. I am also aware of cases where as a result of parents making a decision to move from the area and then returning, the children fall between the gaps and are not at school for a period of time. If families are dysfunctional or if the parents are not well and have psychological or health needs, the education of the children is not being attended to. I refer all such cases to the educational welfare officer or I will inform her of the situation. The local educational welfare officers are over stretched; they need more resources and there needs to be more of them. These officers are often involved in duties outside their role, such as dealing with bullying where a school is not dealing appropriately with the issue. In these cases the educational welfare officer may intervene to help the parents and the child to find another school. However, this may not be the proper solution which should be that the school puts in place procedures to assist the child and the parents. There needs to be more resources allocated to the National Educational Welfare Board because of the needs of the growing local community. The role of educational welfare officers is becoming more significant. They are very busy and they need more help.

I am aware of cases where students experienced bullying but neither they nor their parents were happy with the manner in which the matter was addressed by the school. The procedure for dealing with bullying in primary schools is made clear on the Department's website but the procedure for dealing with bullying in second level schools is not so clearly defined. It appears that a person taking issue with a second level school can make a complaint to the Department of Education and Science but this is not made clear on the Department's website or when one telephones the Department. This matter should be addressed because bullying is equally, if not more so, an issue in second level schools than in primary schools. I am not certain of the statistics but it is definitely an issue in second level schools and there needs to be clear procedures and a clear avenue for parents to choose if they are not happy with the response from a school. I suggest that a person should be available to mediate between a school and a parent or a child if bullying is taking place to avoid the necessity for them to make a complaint against the school. The mediator could be available to provide advice as the educational welfare officer is not the appropriate person and it is not part of the role of the educational welfare officer. These are the issues

I wish to raise with the Minister in the context of this Bill, which I welcome.

Mr. Kitt: I welcome the Minister to the House and I welcome the Bill. It is important to deal with any loopholes in the Education Act 1998. I welcome the task force on student behaviour which the Minister established.

Second level schools vary in their type and size. Students may be spoiled for choice in some instances. They can often move from a large to a small school within the same catchment area. More individual attention for a disruptive child in a smaller school might solve many of the problems referred to in the debate. Disruptive students are often forgotten about in large schools. However, not all problems can be resolved. The rights of the compliant majority of students who wish to learn must be respected while, at the same time, the interests of the individual student must be protected. Students may be spoiled for choice in some areas while in other developing areas it might be difficult to get a place in a second level school and that brings its own problems.

I agree with Senator Tuffy on the National Educational Welfare Board and I have always argued for more welfare officers and resources. When the Minister of the time established the board, the constituency of Galway East did not have a welfare officer. We were supposed to be covered by Galway city, which I could never understand. We were lucky enough to be assigned a welfare officer from Tuam, where there are five second level schools, and that was very welcome development. Before that we did not have a schools attendance officer and gardaí did the job, which would not normally be their job as they should have enough to do without having to check on school attendance. An *ad hoc* committee was set up involving the principals of all the schools in the area, gardaí and social workers. The committee members knew the name of all the students in the second level schools in the area, which was a great achievement on their part. I was disappointed that, when the National Educational Welfare Board was established, it did not incorporate some of the good points of those *ad hoc* committees, as they had expertise that could be still used in the field of absenteeism and early school leaving, which are two major issues at second level.

The issue of bullying was raised, which is also important and was something with which the *ad hoc* committee deal, and I hope the National Educational Welfare Board continues that work. The home school liaison officer is very important in that context because that is the person who keeps in contact with the progress of students who are absent or who leave school early. These points come to my mind when discussing the education of disruptive students in particular.

The Bill includes references to last resort measures and I hope sanctions are used only as a last resort. The Minister has taken a very practical approach, trying to act like King Solomon in looking after the rights of the majority of students as well as those of individual students. It is a very difficult task but the Minister has shown she is able to accomplish that.

Suspension of students is a difficult issue. The Education Act 1998 assumed it would work but it did not, because of various loopholes. All of us have heard of situations on programmes such as RTE's "Liveline" that can be traumatic for students. For example, as Senator Tuffy said, some parents move home and children find themselves in a different environment. The Minister also mentioned an all-Irish division in schools, which was very interesting.

I welcome the Bill as it clears up some of the issues we discussed back in 1998 when debating the Education Act. I hope the loopholes have now been closed, although, as Senator O'Rourke said, others may arise. We should increase resources for the National Educational Welfare Board and the number of welfare officers. Thankfully, gardaí in my county have got onto their bicycles and are looking after law and order issues in the town and in rural areas of County Galway.

Mr. P. Burke: Is that for the election?

Mr. Kitt: They were in the parade last Saturday.

Mr. P. Burke: I welcome the Minister to the House. I recently met a family in Ballina, County Mayo, who had to leave because they could not find a school for their child. The parents had to leave their jobs and uproot to the east coast to get an education for their child, which is regrettable in this day and age.

I will ask a question on special behavioural schools. The Mayo autism group is raising funds to set up a school in the county. It is looking for a site but would the Department of Education and Science be willing to fund the school if it were able to find one? There is not such a school in County Mayo at present.

I welcome the Bill.

Minister for Education and Science (Ms M. Hanafin): Ba mhaith liom mo bhuíochas a gabháil leis na Seanadóirí a ghlac páirt sa díospóireacht seo agus a thug tacaíocht don Bhille.

A number of issues were raised that were of interest. Shortly after I was appointed discipline in schools was one of the first issues to be raised by the unions and I undertook to set up a task force on behaviour to examine the matter. There is not a crisis in our schools. A small number of schools have difficulties and a small number of children are involved. Where there is a problem, however, it can be serious for the children, for

[Ms M. Hanafin.]

teachers and for other people in the school. It is therefore important to come up with a response which enables schools to deal with difficulties in a way which is appropriate for them. Not all schools need a behaviour support classroom and some may be able to deal with the challenges by, for example, offering different subjects or being included in the junior certificate support programme. They can ensure the individual needs of children with special needs are properly met and can put in place appropriate policies for that purpose.

Others need more targeted support. Recognising that, and building on the work of the task force, the behaviour support service was established. I have been very impressed by the calibre of the group, comprising as it does principals, teachers, people with special needs backgrounds and psychologists. It is a very broadly based group which appreciates and understands the varying needs of schools.

Senator Ulick Burke suggested a circular be issued to all schools to come forward but every school in the country was invited to various regional meetings at which the behaviour support service invited them to put forward submissions, following which the schools were invited to apply for assistance. Some 124 applied for assistance across a broad range of areas but 50 who appeared, in the eyes of the behaviour support team, to have the most serious needs, were identified for support in the first instance. The work has already started and the behaviour support teams, whose members have a variety of experience, now work in the schools in question, examining their policies and the range they offer to see how they can support them. Some will be allocated behaviour support classrooms as a result of that work, which I envisage happening very quickly, probably after Easter. It is very important those classrooms do not become a dumping ground and a student should never be in such a classroom permanently. The teams support the student to reintegrate fully into his or her school.

There is no set formula as to how the classrooms should be staffed but, in answer to Senator Tuffey's question, they will be staffed by qualified people. The team will consider what best suits the needs of a particular school. A school that requires a behaviour support classroom might need a teacher who is skilled in technical or practical subjects. It might also require a teacher who is well versed in the area of literacy or it might need a psychologist. However, there is no particular model. In my opinion, that is the best way to approach this because we will be then in a position to ensure we can meet the needs of particular schools.

I did not, at any stage, use the term "pilot". However, in so far as there is a pilot scheme it is designed to identify whether there is a best model

that will work. That is why we are not entering into this with preconceived notions, which is an important point.

The Bill involves the balance between the right of an individual to an education, the right of majority to obtain an education and the health, welfare and safety of everyone within schools. The education of the individual must be our foremost concern because every child has a right to an education. It is important this right should be recognised and acknowledged and that the needs of children should be met. Regardless of whether this happens within the school system, by offering additional supports, by working with education welfare officers in respect of other placements or by working through, for example, a mechanism such as Youthreach, we must ensure children do not become sidelined.

Senator O'Rourke referred to two cases with which my Department's legal officers are extremely familiar. The Department of Education and Science would take very seriously any instances where decisions of appeals boards were not acted upon by schools. If necessary, it would go to the courts to ensure action would be taken and that the rights of children would be upheld.

Students have a range of rights under our Constitution and our laws, particularly the special educational needs legislation. I accept Senator O'Toole's comments with regard to ensuring staff in schools should be properly trained in respect of this matter. In light of the implementation of the legislation and the further obligations being placed on schools, particularly in the context of individual education plans, I have launched useful guidelines for primary and second level schools. I will pass on to the special education council the views of Senators on how teachers need to be supported in their work. In that context, I accept that teachers require support.

Senator Tuffey referred to the role of special needs schools. When discussing children with special needs, there is often a tendency to refer to mainstreaming and integration. This is a wonderful concept but it is not suitable for every child. Special schools do a tremendous job in meeting the needs of children of various intellectual abilities. We are fortunate to have such a range of such schools.

I am not sure about the concept that a child who is not getting on well in his or her school should spend some time at another school and then return. I would not like special schools to be seen as dumping grounds for their mainstream counterparts. There are, however, schools which can deal with those experiencing particular problems. For example, St. Oliver Plunkett special school in my constituency takes children with dyslexia for two years before returning them to the mainstream. In this instance, however, there is a formal programme in place. Benincasa special school deals with children with behavioural difficulties. Again, these children might spend a full

school year or five or six school years in the school. This is probably a more structured and better way to proceed.

We are working with the special education council and are carrying out a study in respect of one school to see how the special schools, which have such expertise and experience, become centres of excellence, not just in their own right but also for schools in the surrounding area to which they might offer the support that is needed. There is no doubt this is one of the major issues facing our schools. I reiterate that this is why we prioritised the requirements of children with special needs before tackling class sizes. It is also why we appointed additional teachers and employed special needs assistants. We targeted children in this area in particular because they were the most neglected.

Senator O'Toole and others gave the impression that every problem in the education system would be solved if we reduce class sizes. Now that we have begun doing so, I look forward to every problem in the education system being solved.

Reference was made to bullying and the importance of dealing with cases involving bullying, which is crucial. Under the Education Act, every school is required to have a bullying policy. As stated earlier, the National Education Welfare Board, NEWB, will be providing guidelines on the implementation of codes of behaviour, etc. In order to be of assistance to schools, particularly those of the second level variety, the Department's website contains a template of what might constitute a good bullying policy. It is suggested that a policy of this nature should be agreed among the principal, staff, students and parents so that from the outset everyone will know what will and will not be tolerated and how the policy will be implemented within a school. I agree with Senator Tuffy that it is not the job of the NEWB to deal with bullying in schools. Where a school has the right policies in place, it will not need to call in outside assistance because the procedures will be clear.

Senator Kitt referred to the good practice that exists in areas. Good practice should be transported from one area into another. If, as the Senator suggested, professionals in Tuam, County Galway, have good relationships with professionals in other areas, it would be important that they should share their expertise. I am not suggesting that everyone should become involved in holding meetings. However, it is important that professionals in different regions who are dealing with children in schools should talk to each other. It obviously would be to the benefit of children if psychologists with NEPS, education welfare officers with the NEWB, those working with the HSE and gardaí were in a position to share information on a professional and confidential basis.

Senator Ormonde referred to the whole-team approach, guidance and the home-school-com-

munity liaison scheme. It is extremely important that everyone in a school should be involved in dealing with this issue. It is only when a whole-school approach is taken that success can be achieved.

The Senator also referred to persistent behaviour. The word "persistent" is used in the Bill, as are those of "nature" and "scale" in the context of someone's behaviour. It can be very annoying to have someone chatting at the back of the class all day. However, this does not constitute a reason to expel a student. Such behaviour might be persistent but it would not qualify under the criteria relating to nature and scale. Equally, somebody might — God forbid — draw a knife on a teacher. This might not happen every day of the week. However, the authorities at a school might consider the fact that it happened once to be sufficient grounds to expel the person involved. These matters must all be taken into consideration.

I have dealt with the main issues raised by Members. The Bill, of which Members were extremely supportive, is designed to ensure an appeals board will have a proper structure within which to work and that it will be able to balance the rights of everyone involved in education while ensuring the quality of education offered in the classroom and the learning environment will be protected. I thank Senators for their interest in the debate.

Question put and agreed to.

Committee Stage ordered for Thursday, 22 March 2007.

Pharmacy Bill 2007: Order for Second Stage.

Bill entitled an Act to make new provision for the regulation of pharmacy, including provision for the dissolution of the Pharmaceutical Society of Ireland and the setting up of a new Pharmaceutical Society of Ireland, for the establishment, constitution and functions of the new society's council, for a new system of registration of qualified pharmacists, druggists and pharmaceutical assistants and of pharmacies, for the creation of certain offences relating to pharmacy and for the setting up of new procedures to ensure that pharmacists are and continue to be fit to practise; and to provide for related matters.

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

Question put and agreed to.

Pharmacy Bill 2007: Second Stage.

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

Minister for Health and Children (Ms Harney):

It has been the intention of my Department, and the wish of the pharmacy profession, to consolidate and expand existing pharmacy legislation in a new Pharmacy Act for many years. Proposals have, however, continually been overtaken by events and in the interim the practice of pharmacy has evolved significantly. Nevertheless, it is clear that without a comprehensive and robust framework of modern legislation, the profession cannot develop and increase its input into the care of patients.

To this end, I received approval from the Government to prepare pharmacy legislation in two Bills. It is the first of these two Bills which is now before the House. In brief, this is a Bill to allow for fitness to practice regulations for pharmacists and pharmacies, and, as a consequence, the removal of restrictions on pharmacists educated in other EU or EEA countries from owning, managing or supervising a pharmacy in Ireland that is less than three years old. It is also proposed to deal with a number of related issues such as an appropriate statutory basis for the Pharmaceutical Society of Ireland and an updated registration scheme for pharmacists and their premises.

The Pharmacy Review Group was established in 2001, principally to examine findings from the OECD on the Irish retail pharmacy sector and the 1996 Community Pharmacy Contractor Agreement. The group consulted widely and submissions were received from a range of sources. The group considered the complex legal and other issues surrounding the OECD's recommendations, as well as contractual and professional issues such as medicines management and greater use of generics. The group recommended the removal, following the introduction of new pharmacy legislation, of the restriction on pharmacists educated in other EU or EEA countries from owning, managing or supervising a pharmacy in Ireland that is less than three years old — the derogation under Article 2.2 of Council Directive 85/433/EEC.

The group's recommendations also included proposals on a number of related issues, for example, a stronger statutory basis for the Pharmaceutical Society of Ireland, including the governance of the PSI, wider non-pharmacist representation on its council, updating regulations with respect to the registration of pharmacists including non-EU and EEA graduates, and some matters concerning the delivery of pharmaceutical services in a community setting, such as linguistic and forensic competence, and experience for supervisory pharmacists.

The second Part of the Bill deals with the setting up of the new pharmaceutical society and the allocation of functions which the society will fulfil in its role as regulator of the pharmacy sector. In particular the role of the society will be to "regulate the profession of pharmacy in the State hav-

ing regard to the need to protect, maintain and promote the health and safety of the public". As with other regulatory legislation the Government has proposed, the public interest comes first here and it is my desire that this should be the main goal for all health sector regulators. This section also sets out in detail the duties of the society in the area of registration, education and qualifications, and the powers the society shall have to conduct its functions in these areas and other related areas.

The principal change provided for in Part 3 is in the area of representation on the council of the society. Currently the council's membership stands at 21, all of whom are pharmacists and, in line with other recent legislation in this area, I propose to increase representation of non-elected members of the council to a majority. A total of 21 members are to be appointed, of whom nine — who would be members of the society — are to be elected by the membership of the society. One academic will be nominated by the colleges engaged in pharmacy education — he or she would also be a member of the Society — and the remaining 11 will be appointed as follows: one will be nominated by the Irish Medicines Board; one will be nominated by the Health Service Executive; one will be nominated by the Minister as being representative of the area of continuing professional education; five will be nominated by the Minister who are not, nor have ever been, pharmacists in this State or any other state; and, finally, three will be persons who have such qualifications, expertise, interests or experience as would, in the opinion of the Minister, enable them to make a substantial contribution to the performance of the society's functions.

It is my intention that the nominated persons, other than those directly elected by the society and the nominee representing a dean of a pharmacy faculty, will all be non-pharmacists. I will ensure that the Bill is amended to reflect this. This approach of widening the representation on the council to include a majority of non-pharmacists is consistent with the approach being adopted for other regulatory bodies in the health sector, for example, the Medical Practitioners Bill 2007 and the Health and Social Care Professionals Act 2005.

This Part also contains important new provisions relating to the making of rules by the society to enable it to carry out the functions assigned under Part 2. In future the rules of the society, as well as being submitted to the Minister and laid before the Houses of the Oireachtas, must be published and comments invited from interested parties. This is an extremely progressive and new development in the opening up of the activities of regulatory bodies to wider scrutiny and a positive step in injecting transparency into the rule-making process for regulatory bodies. Furthermore, the society will have to submit any code of conduct it proposes to the Com-

petition Authority for their opinion on its likely effect on competition and, if the society decides not to accept the authority's opinion, it will be required to attach this opinion, and its reasons for not accepting it, to the draft code of conduct when submitting it for the approval of the Minister. This is an innovative development which will ground in the pharmacy sector an appreciation of the need for proportionate and focused regulation, with an emphasis on patient safety and being mindful of possible disincentives to competition among pharmacy businesses in the delivery of services.

Parts 4 and 5 deal with the registration of pharmacists and pharmacies, and the conduct of pharmacy businesses. Part 4 contains sections dealing with the establishment and maintenance of registers, covering pharmacists and pharmacies, and what constitutes a pharmacy business. A modern and robust registration system, one which allows for the removal of registrants, if deemed necessary and proper, is considered essential by all bodies that have made representations in this regard. The revised registration system will also allow for updating of the registration process for EU/EEA and overseas pharmacists, which has been requested by the pharmaceutical society for some time.

The provisions on registration recognise the rapidly evolving nature of the pharmacy business in recent years, as well as providing a fair and comprehensive system for assessing the qualifications and training of foreign-trained pharmacists who may wish to work in this country. In particular, the regime proposed in the Bill allows not only for the registration of the individual pharmacist but also, for the first time, the registration of pharmacies. This provision stems from the need to recognise and deal with the increasingly complex ownership structure in the pharmacy sector. The inclusion of a registration system for pharmacies is desirable and necessary as the regulation of the business of pharmacy is the last link in the chain of medicinal product control that has not been legally provided for up to now.

Alongside the registration regime, the provisions relating to the conduct of the business of retail pharmacy will ensure that the pharmacy, or the pharmacy side of any business, will be under the personal and whole-time control of an experienced pharmacist with at least three years' relevant post-qualification experience. This provision, and the requirement that registration be an annual process, are important developments in patient safety and in ensuring that responsibility for the conduct of the retail pharmacy business is conducted in an open and accountable fashion. It is important that those in charge of the pharmacy are easily identifiable to all those availing of its services, and to those supervising the procedures in the sector. I am also making it clear that it is an offence to hold oneself out to be a registered

pharmacist, or registered pharmaceutical assistant, or to provide what may be termed "skilled pharmaceutical assistance" or to allow someone to do so, knowing that he or she is not so registered. However, this will not interfere with the provision for registered pharmaceutical assistants to provide cover for registered pharmacists, in their temporary absence.

Under Part 6, pharmacists will be subject, for the first time, to fitness to practice provisions. In keeping with the aim of the Bill to extend regulation to the pharmacy business as well as to the individual practitioner, both will be subject to a complimentary and integrated process.

Broadly, the fitness to practice provisions are based on the general template developed for the Health and Social Care Professionals Act 2005. However, the provisions under that template refer to the practice of the individual only. Both the Pharmaceutical Society of Ireland, PSI, and the Irish Pharmaceutical Union, IPU, have expressed reservations about such a narrow focus for their profession. They consider such a fitness to practice system will be unworkable if the practice of pharmacy, as it refers to the business of pharmacy, is not also regulated or, at the very least, if a licensing and registration system for pharmacies is not also introduced. They argue it is not sufficient to deal with fitness to practise of the pharmacist alone because a problem may arise due to practices within the pharmacy business. The two bodies make the point that a pharmacist is more likely than medicine, nursing or other health care professionals to work in a commercial enterprise and, even if disciplined for a problem related to the carrying out of his or her profession, this may have been the result of the practice of that particular business. Removing or disciplining the individual pharmacist would not therefore deal with the underlying problem and the business could continue to operate as before without penalties or sanctions. Accordingly, given the strength of feeling expressed to the effect that the pharmacy sector is unique in the interaction of corporate ownership and professionals in running pharmacies, I have accepted that the registration process and the fitness to practice regimes need to be linked in order that remedies and sanctions, if judged necessary, can be applied evenly to those responsible for the provision of the service and not just to the individual pharmacist.

Part 7 gives the council of the society, through the appointment of authorised officers, the powers it requires to police and investigate whether any offence under the Act, any breach of a code or any professional misconduct has been committed. This section is based on the similar powers given to authorised officers of the Irish Medicines Board and the proposed powers are wide enough to allow the thorough investigation following a complaint or production of evidence of professional misconduct. The searching of

[Ms Harney.]

premises and the taking of samples are also provided for if necessary. These provisions will give the Pharmaceutical Society the means to ensure the proper professional practice of pharmacy and the protection and safety of the public.

The remaining sections of the Bill deal with largely technical and procedural matters, such as the staffing, meetings and accounts of the society. These provisions are based on best practice and similar provisions contained in recent legislation in the regulatory area.

In tandem with the introduction of new pharmacy legislation, the restriction on pharmacists educated in other EU or EEA countries from owning, managing or supervising a pharmacy in Ireland that is less than three years old, which is a derogation granted under Article 2.2 of Council Directive 85/433/EEC, will be removed. This was recommended by the pharmacy review group and I am delighted to facilitate it by repealing the Pharmacy Act 1962. Ireland will now have one of the most competitive markets for pharmacy professionals in the EU. This can be only good for the profession and it will ensure that overseas trained Irish graduates and non-Irish EU graduates will find it easier to establish themselves in the Irish pharmacy sector. I am confident their different perspectives and competitive impact will keep the sector vibrant and energised in the future within a modern robust and progressive regulatory regime for the 21st century.

There clearly has been rapid growth in the pharmacy sector in recent times, with many possible interactions arising between prescribers and dispensers. The majority of professionally qualified pharmacists and other medical practitioners adhere to the highest standards in carrying out their professional duties. However, it would be remiss of me not to recognise that unacceptable practices may occasionally arise between professionals. The Government has accepted the view of the pharmacy review group on the issue of conflicts of interest between those who prescribe and those who dispense drugs. Therefore, subject to legal consideration, I intend to introduce an amendment on Committee Stage which will address any possible conflicts in a fair and proportionate manner.

The provisions contained in this Bill are intended to put the regulation of the profession of pharmacy in the State on a firm, modern and robust footing, having regard to the need to protect, maintain and promote the health and safety of the public. The Bill, if enacted, will put the society to the forefront of the processes involved in supervising the pharmacy profession and the retail pharmacy business in Ireland. While the Bill deals mainly with these areas, I would again emphasise that concern for the public and safety are its guiding principles. The proposed repeal of all previous Acts with the enactment of this Bill means that a new coherent and all-encompassing

legal regime will now be put in place for the society, pharmacy professionals, pharmacies and the public. I am honoured to be able to bring such comprehensive legislation before this House and I urge a thorough and considered examination of its provisions, with a view to its early enactment.

Mr. Browne: Fine Gael welcomes this Bill as a way of meeting the challenge of guaranteeing public safety. The past number of years have brought significant changes to the role of pharmacies in Ireland and we need to plan for the future.

The Minister stated her intention to introduce amendments on Committee Stage. However, we have not yet seen these amendments. It would be helpful to us if we could have them as soon as possible because it would allow us to determine whether we need to bring our own amendments on certain issues.

The original pharmacy legislation dates from 1875 and was updated in 1890 and 1962. This Bill represents a further step in that process.

As I listened to the Minister's speech, I began to question the effectiveness of this House. When we debated the Irish Medicines Board (Miscellaneous Provisions) Bill 2005, we discussed the issue of illegal drugs. Cocaine, heroin and other illegal drugs are imported on a daily basis and we are hitting only the tip of the iceberg in terms of controlling them. The Internet sale of drugs has also given rise to problems of control. It is all fine and well to pass this Bill but, unless we deal with these wider issues, we are only fooling ourselves. They will not be easy to resolve and I am not sure of the solution. I have long been puzzled, however, as to why this island nation cannot have more control over illegal drug imports. Unfortunately, when people are sick, they will turn to anything they think will make them better. At the very least, taking medicines will have no effect but at worst people could actually become sicker. We have to make people aware of the risks of buying drugs over the Internet. Solving that problem will present a major challenge for everyone but there is no point in deluding ourselves that this Bill will solve all the problems. The Bill addresses the easy aspects but the bigger problem is the illegal drug trade and Internet sale of medicines, over which we have very little control.

What is the composition of the membership of the council and how often will it change? Will ministerial appointees automatically fall at the end of a Government's term in office?

Ms Harney: Members will serve a five-year term. I assure the Senator they will not be political appointees.

Mr. Browne: I did not see that provision in the Bill. Fine Gael would have preferred the Minister to have established a public patient safety auth-

ority, which would have given patients a stronger voice and better safeguards.

Conflict of interest is a key issue for this Bill. A doctor's centre will open in Carlow presently which will include a pharmacy. We need to ensure that any pharmacy located in a doctor's centre will not give rise to a duty-free type of scenario. In airports, passengers must pass through duty-free shops to reach their terminals. Patients should have the option of remaining with their family pharmacists if they so wish. At present, a prescription is valid for any pharmacy in the country. If I visit a doctor in Carlow today, I can fill my prescription in Donegal tomorrow. However, many people are not aware of that. I am aware that the HSE is introducing guidelines with regard to clearly stating on prescriptions that they can be filled anywhere. As we move to primary care teams in which doctors and specialist therapists share buildings with pharmacies, we must ensure the pharmacy has a separate entrance because patients should not be required to pass through it to access the building. It also must be made crystal clear to patients that they are not under an obligation to buy the drugs in the pharmacy and they have the right to choose any pharmacy they wish.

Clarification is needed regarding nursing staff who are permitted to prescribe drugs. Given that they have not prescribed drugs thus far, will the Minister clarify why that is the case because I expected that to have happened by now?

Private sector interests are looking on with interest as the legislation is debated and they will be keen to know that the amendment to be tabled by the Government on the conflict of interest issue is not vague. They would like clear guidelines to be drafted and they do not want the issue to be adjudicated on by the IPU because that could cause problems down the line. Clarity is needed on the Government amendment and that is why I am keen to see it as soon as possible.

I refer to the number of medical cards in the State, which is linked to this legislation, because the number of patients attending doctors who do not have medical cards has reduced. The original target was that 40% of the population would have medical cards and the percentage is nowhere near that currently. Those aged over 70 automatically qualify for the medical card and that has distorted the figures. What percentage of the population has medical cards, excluding those aged over 70?

Ms Harney: People are 70% better off in take-home pay. This is about earnings, not percentages.

Mr. Ryan: What has that to do with anything?

Ms Harney: It has to do with reality.

Acting Chairman: Senator Browne without interruption.

Mr. Ryan: Doctors are 70% more expensive. Their fees increased——

Ms Harney: The Senator would probably give a medical card to everybody.

Acting Chairman: Senator Ryan should refrain from interrupting. He will have an opportunity to contribute shortly.

Mr. Ryan: I am responding to the Minister.

Acting Chairman: The Senator is not entitled to do so.

Mr. Ryan: Perhaps the Chair will deal with the Minister the same way he is dealing with me.

Acting Chairman: I am sorry, neither the Minister nor the Senator is allowed to interrupt.

Mr. Ryan: I was picked on by the Chair.

Acting Chairman: The Senator attracted my attention. Senator Browne should be allowed to continue without interruption by the Senator, the Minister or any other Member.

Ms Harney: I apologise to Senators.

Mr. Browne: That is okay. The Minister is very well behaved compared with the Minister for Finance when he was in the House two week ago.

Acting Chairman: The Senator should not invite debate.

Mr. Browne: The role of hospital pharmacists is another issue. I was amazed to learn such people exist. I visited St. Luke's Hospital in Kilkenny recently and I saw its huge pharmacy. I did not know hospitals had pharmacies, which dispense not only within the hospital but also to smaller hospitals nearby. Hospital pharmacists have reservations about the legislation and they are wondering whether they will have to re-register because the Bill provides that such pharmacists should register as a retail pharmacy business. Is the Minister aware of their concerns? If so, have they been addressed? Many of the hospital pharmacies have been operated by pharmacists for years who do not have university qualifications. The legislation will provide for them to re-register but will they be phased out over time? This will not be a difficulty for pharmacists who have obtained a university degree but if one has worked in a pharmacy for 50 or 60 years——

Ms O'Rourke: They are called chemist assistants.

Mr. Browne: The problem is years ago people could train to be a pharmacist by doing an apprenticeship and, therefore, a different system was in place. Are many people who came through

[Mr. Browne.]

this system still in the industry? While they may not have the qualifications required nowadays, they can still make a significant contribution. There is concern that they will be forced out of business because of the legislation.

Ms Harney: Does the Senator want me to permit people who are not qualified to practise as pharmacists?

Mr. Browne: No, but pharmacists have achieved their qualifications in different ways. A significant number attended college and obtained a degree in pharmacy before working in the industry but some entered the industry many years ago having taken a different route, especially those in hospital pharmacies.

Ms O'Rourke: I have never met these people.

Mr. Browne: From the information I have been given, people who work in hospital pharmacies may have different qualifications. Will their qualifications and experience be recognised by the new body?

The pharmacy industry has a good system in place in New Zealand. Pharmacists sit down with their patients to discuss the prescribed medicine and how it should be taken. It is all fair and well for a doctor to prescribe medicine and a pharmacist to dispense it but if the patient does not take it, that is counterproductive. It is difficult to ensure a patient is taking the prescribed medicine correctly. Perhaps the New Zealand model should be embraced.

I welcome the provision whereby people from outside Ireland can own and operate a pharmacy but this is not reciprocated for Irish pharmacists who move to Northern Ireland. I appreciate this issue is outside the Minister's control but it may be worthwhile for her to take it up with her Northern Ireland counterparts. She should discuss with them whether this could be extended to allow Irish pharmacy graduates to open a pharmacy in Northern Ireland. That would be an example of cross-Border co-operation. Given that such a provision will be introduced under this legislation, why should the Northern Ireland authorities not do likewise for our citizens?

Mr. Glynn: I welcome the Minister. I commend her on introducing this important legislation, which is in keeping with her reforming role within the Department. She has stood into the breach where others have feared to tread. A review of the existing pharmacy legislation was needed, since it has been on the Statute Book for more than 130 years. A Bill was introduced in 1962, which provided for restrictions on those who practised pharmacy. Given that Ireland is now a multicultural society and it is a member of a large political bloc, it is ludicrous that the provisions of the 19th century legislation should still be in vogue.

A number of issues have prompted the introduction of this legislation, not least of which is the question of separating responsibilities, to which the Minister referred, and we have all received representations about the conflict of interest issue. It would be highly improper if those who prescribe could also dispense. The PRG recommended that this should not happen and this was underwritten and endorsed by the IPU. I am delighted, therefore, that the Minister has taken on board the recommendation. The terminology of the proposed Government amendment will be interesting but I am sure it will be appropriate, given the Minister's thoroughness in other areas.

I refer to the issue of ordering drugs on-line. While the Minister proposes to deal with this under new legislation concerning the Irish Medicines Board, war must be declared on this practice. I have spoken to a number of pharmacists who believe that the entities supplying drugs on-line are perpetrating a clear fraud. They augment drugs with certain established components to achieve a specified effect and while batch A might be fine, batch B could comprise totally different components and may not be effective. In other words, if one wants medicines, one goes to a doctor for a prescription which is dispensed by a qualified pharmacist. It will be difficult to stop the practice but if there is the political will, it can be done. It will involve all agencies.

The Bill clears the way for people from outside the country to participate in the pharmaceutical profession, which is very important. This is now a multicultural society. There is much expertise in mainland Europe of which we can avail, which is very important.

Section 2 defines "retail pharmacy business" as excluding a medical or dental practice. Should that not also include a veterinary practice? This is especially important since the definition of "medical product" includes veterinary medical products.

Section 7(2)(b) states that the society shall have power to impose sanctions on pharmacists or pharmacy owners. It is not compulsory under the fitness to practise provisions laid out in the Bill for the society to have an inquiry. Can it impose sanctions without holding an inquiry and under what circumstances?

Where the council draws up codes of conduct for pharmacists, why must it submit a draft to the Competition Authority for its opinion? What expertise does the Competition Authority have on the ethics of pharmacy? Can a convicted criminal, who is not a pharmacist, own a pharmacy?

Section 18(1)(k) states that pharmacies must have counselling areas. Does this apply to new pharmacies only? Are the regulations retrospective? Are existing pharmacies supposed to install counselling areas? If so, how long will they have

to do so? Does section 29(f) conflict with section 17(5)(a)?

In regard to section 35(2), should a complaint made to the council not be in the form of a sworn affidavit? In regard to section 38(4), is it not compulsory under High Court rules for the pharmacist or pharmacy owner to give the committee information?

In regard to section 46(1)(d), is there a lifetime of admonishment? Does it disappear off the record after a period of time? Will an admonishment be held against the pharmacist if he or she tries to move to another state? In other words, will he or she pay *ad infinitum* for the sins of the past?

In regard to section 64, notice shall be given for a full inspection or audit. It is acceptable to have a spot check without notice but not a full inspection. These are some of the questions which arise in respect of this Bill with which I am sure the Minister will deal in the fullness of time.

The Minister said it all in her contribution, including what the Bill will do and how it will move forward. The Bill gives details of membership, governance, accountability, registration, the carrying out of retail pharmacy business, pharmaceutical assistants and holding oneself out to be a registered pharmacist. People take time out of their lives to undergo a very protracted course, namely, pharmacy, and their professional qualification should not be undermined by chancers. The removal of the derogation is a very important component of this Bill. The Minister alluded to the amendment she proposes to table and Senator Browne and I repeated that, if only to underline it. This is very important legislation which, as the Minister said, brings pharmaceutical practices in this country into the 21st century.

Dr. Henry: I welcome the Minister and the Bill. One can see how badly needed it is when one sees the dates of some of the Acts being repealed, such as 1790 and 1870. It is astonishing that we still must use these Acts, so it is good to see them repealed.

The Pharmaceutical Society of Ireland, for whom I have great regard, is both a regulatory and a representative body. The Minister continues this in the Bill. It is the situation in the United Kingdom but I gather it is thinking of trying to separate the two parts of the society. Has the Minister read its thoughts on that? The situation with the Medical Practitioners Bill is different because the regulatory and representative aspects of the medical profession are represented differently, as I am sure the Minister knows only too well. The Veterinary Practice Act, brought in by the Minister for Agriculture and Food, separates the regulatory and representative aspects of that profession.

I am glad the Minister will deal with the conflict of interest between prescribing and dispensing. This has worried many people recently with

the changes in the health care centres being set up. I read that the Taoiseach said it had not been envisaged that there would be pharmacies in the health care centres when set up, which I had also thought. In the past — apart from a very small number of dispensing practices in parts of rural Ireland — it was essential that there was clear blue water between those who prescribed and those who dispensed. The pharmacy review group also made that very clear when it reported in 2003.

When one looks at the sixth Shipman report, one can see why, in practice, it is so important that there are vigilant pharmacists keeping an eye of what prescribers — members of my profession — are doing. It stated that it is now generally accepted that the involvement of a pharmacist in the process of providing medication to a patient acts as a safety check against error. It further stated that where prescribing and dispensing functions are carried out by the same person, or within the same commercial or professional entity, there is a potential for loss of professional objectivity or even abuse. In the case of Dr. Harold Shipman, it was reckoned that there had been far too cosy a relationship between the pharmacist supplying the injectable opiates and Dr. Shipman. This led to a great deal of trouble.

The situation in regard to health care centres is very worrying. In centres being set up by four or five doctors, tenders are being invited for a pharmacy in the centre. I heard that key money of €1 million or more is being asked in some cases and that rents of €150,000 to €300,000 are being asked. If this is the case, the doctors will rely on rent from the pharmacist, which is not a good relationship. I do not know whether the Minister thought this would happen.

It has been brought to my attention that in one area, the Health Service Executive is involved in selling the land for the new health care centre. I had envisaged, as I am sure many others did too, that there would be social workers and occupational health workers — probably people employed by the State — in these centres rather than giving someone a huge commercial advantage over others in the area. As I said, this could lead to a really serious conflict of interest between the dispenser and the prescriber. I hope the Minister addresses that very carefully.

Apparently, the Minister will clarify the definition of a “retail pharmacy”. I gather it will cover hospitals but will it cover all hospitals? There is no definition in the Bill of a “hospital”. Will it cover private hospitals or day hospitals? We really need to know what hospitals will be covered. Will it cover fertility clinics? Some of these places supply pharmaceutical products directly to the public. I am not saying there is anything the matter with what they are doing but they supply pharmaceutical products directly to the public and we need to know who will be allowed to prescribe. Will methadone clinics be

[Dr. Henry.]

covered? It is very important that major hospitals have the right to do so because they are trying to do things like increase the incidence of having chemotherapy administered at home in order that patients with cancer, whose immune systems are compromised, are not obliged to run the risk of going to hospital and contracting infections. Important matters must be addressed in this regard and HIV and AIDS patients are also generally encouraged to take the treatment at home. Moreover, pharmaceutical companies will only supply some drugs for schizophrenics and so forth through hospitals because of their side-effects such as changes in blood counts. The companies want to ensure that pharmacists can induce patients to report to the phlebotomist immediately to reduce, in so far as possible, any side-effects that may arise.

I am unsure whether pharmacists working in industry are covered by this Bill. Moreover, trainee pharmacists also should be included. As the registered pharmacist cannot have eyes in the back of his or her head all the time, the latter group should be included. What is the issue regarding pharmacists who are involved in industry? In addition, from the perspective of the three-year registration period that will be needed before one can set up a pharmacy, it is very important to include hospital pharmacists. Otherwise, no one will work in hospital pharmacies which are vital because, frequently, such people perform postgraduate research work of enormous value. Moreover, medical teams would be sorely compromised if they did not have such people involved in their clinical trials and so forth.

Senator Glynn raised the issue of the risks associated with the Internet, and he is correct. However, Members must also consider the risks regarding counterfeit drugs. The description of the premises that the Minister's inspectors will be permitted to inspect should be very wide. For example, the legislation should allow for the inspection of boats and aircraft as counterfeit drugs are getting into Ireland and there is a huge market for them. This must be addressed and it is most important that these matters are properly covered.

The three year rule is very important as people should have experience before starting a pharmacy. In addition, this must also apply to EU graduates because many Irish people have been obliged to qualify abroad owing to the high points needed for pharmacy, which is caused by the serious limitation in places. However, Senator Browne was correct to state that while someone from Newry will be able to practice in Dundalk and to start a shop, the reverse is not true. The rest of the EU should follow Ireland's current actions.

In addition, although the Bill states a person must have linguistic ability, it says nothing about an examination. Members encountered trouble

when this issue was discussed in respect of nurses coming to Ireland. I have been informed that were nurses who come from other EU countries obliged to take an examination to ensure their English is good enough, Irish people would also be so obliged. If this is what is required, so be it. One hopes they would all pass.

At present, the Bill describes the pharmacy schools as pharmacy faculties. I presume this is a mistake because we have schools of pharmacy and there are no such faculties at present. In addition, the Pharmaceutical Society of Ireland should be allowed to continue to do things it did in the past, such as awarding honorary fellowships. The Minister and I might be able to get one from it one day and it would be a pity if it were unable to award them. People who have received such awards have regarded them highly. They are usually given to those who have been involved in research work, teaching or something similar.

Ms O'Rourke: That would be nice.

Mr. Minihan: It would.

Ms Harney: The Senator and I should propose each other.

Ms O'Rourke: The other Members would go along to applaud.

Dr. Henry: The Competition Authority has been mentioned. While I can understand why the Minister would want to refer matters to the Competition Authority, the society should have sent its code of conduct to the Minister first. Thereafter, if the Minister believed it was necessary, she could have referred it to the Competition Authority.

The Bill does not mention recertification, on which the Minister was very keen in respect of the Medical Council. Drugs change almost hourly and I seem to have *MIMS Ireland* to hand continually, trying to look up drugs that are mentioned to me. While this may be a matter for the future, it will be an important issue for the Minister to address.

I am also concerned about the establishment of registers on the Internet. While openness and transparency are desirable, I am unsure whether the names of pharmacists and pharmaceutical assistants should be listed. I presume their addresses will not be included. Has the Minister discussed this proposal with the Garda Commissioner, Noel Conroy? He spoke the other day about draft rules for pharmacies to try to improve safety. The lives of pharmacists and their assistants could be in danger because drug addicts do not merely want to get hold of illegal drugs. They also want perfectly legal ones, such as opiates, steroids, anxiolytics, any sort of analgesics and even codeine cough bottles. I am really concerned about including people's names like this because it would be all too easy to establish, for example,

that a particular person would be the keyholder every third night. Moreover, apart from putting that person at risk, the risk of theft of drugs would be much higher. The Minister should reconsider this measure.

The Bill also makes some very good points that may be difficult for existing pharmacies to adhere to at present. I hope this will not mean they will be obliged to go out of business. For example, I refer to the requirement for a private area to which one could take a person to discuss his or her medication. While this is an excellent idea, I was in a pharmacy this afternoon in which it was obvious that the pharmacist wanted to talk privately to another person who was waiting for a prescription. While she did her best to take him to one side to talk, it would be very difficult for the pharmacy in question to acquire immediately a private area. One cannot bring people behind the counter to where the drugs are kept as that would be open to abuse all too easily. I hope existing pharmacies will not be closed down simply because they are unable to fulfil this requirement. They should be required to do so when they are being reconfigured or being built. However, such an obligation would be very onerous on them.

I welcome the Bill. I have prepared many amendments that I intend to table next Thursday and I hope the Minister will receive some of them very well.

It is important to emphasise the existence of those who are known as shadow directors. They have been problematic in the past in other businesses. When dealing with directors, managers and so forth, the Minister must ensure that shadow directors, that is, those who act as directors without being listed as such, are also dealt with. There is much money in the pharmaceutical business and a great deal of it could be at stake if one had people who were in any way involved with any sort of *laissez-faire* attitude towards what was going on there. The Minister should ensure that such people are also covered by these necessary regulations. I am sure they will be welcomed by the medical profession as well as the pharmaceutical profession. However, I am especially anxious that the Minister would provide clarity on the position in respect of prescribers and dispensers. This is a road we have never gone down before and I would like to see it made into a cul-de-sac.

Ms O'Rourke: I welcome the Minister to the House, as well as the production, at last, of this highly important Bill. I believe it is one of two the Minister hopes to introduce. I hope the second Bill will also be receiving an airing in both Houses, if the Minister has time, because although this Bill contains some admirable measures, in the main it appears to me to be a mechanism for the establishment of the regulatory body. I listened to all of the speakers because

I am interested in the topic. We waited a while for this Bill and I am glad the Minister brought it to this House first because it is getting an interesting and knowledgeable airing here, as most topics do. I wish to comment on pharmacists but not because the Visitors Gallery is full of them. They are the most unsung heroes and heroines of the world today.

In my local pharmacy I meet people who are worried, distraught or upset about their ailments and the prognosis on their states of health or those of their families. They have their prescriptions and are waiting to meet the chemist and hoping to catch his or her eye. This is why I was extremely interested in the discussion about a counselling or advice area. Most pharmacies do not have an area to which a person could be brought quietly and his or her fears talked through.

One cannot simply close the chemist shop. The one I go to does not have an inch of space and it is covered in merchandise. A most admirable pharmacist is in charge and when he is not there somebody else is. I do not know where anybody will go to have their angst addressed in this particular "chemist shop", as we always called it long ago.

They cannot be closed. Perhaps planning permission could be obtained to add on a small room where one could receive advice. People have great faith in pharmacists, sometimes more than they have in doctors. I apologise to Senator Henry. I do not know why this is. People seem to believe the gospel from a pharmacist's mouth. I have seen people leave much brighter than when they went in, clutching their packages with whatever is in them.

I know from my own experience that pharmacists have a moderating influence in society which is never strongly spoken or written about. It is a remarkable influence. In old history books one read about pharmacists making brews and I was not surprised to hear Acts dating from 1790 and 1890. One can imagine what was being dispensed then when quaint notions were held about what one needed, such as applying leeches and blood letting which has a modern context in the haemochromatosis debate.

This is a good Bill. However, I am also concerned about a matter raised by Senator Henry. We will open our gates to pharmacists from other countries to come here and practice. We had a Senator's meeting today at which Senator Feeney was asked several questions on this and it was of great interest. What will happen if a nice young Spanish woman or man works at a pharmacy here with spoken knowledge of English but not with the proficiency to go into great detail?

How will we ensure linguistic ability if we open our doors? We must address this. They are very welcome and I do not put up any barriers against it. However, how will it work in practice? Their qualifications will be recognised and they will be

[Ms O'Rourke.]

working here. It will not be managed well if we have little counselling bivouacs but the person providing the counselling is not proficient in the language.

Why are Irish pharmacists not allowed go to Spain or the Slovak Republic to practise their profession? Is Ireland the only country to open up? Will other countries be compelled to do so? I am all for an open Europe with no barriers and services available everywhere. However, these are the minutiae which arise when we declare we must open up our borders.

I like the idea of having non-professional pharmacists on the board which the Minister will appoint. I attended a meeting with medical people in Mullingar about the Medical Practitioners Bill. They are up in arms about having non-medical people on the board. I could not get behind their objections. I was not able to probe it and they could not tell me why. I suggested ordinary people would supply a lot of common sense.

Ms Harney: Senator Feeney was an excellent member of the august body and she is not a doctor yet.

Ms O'Rourke: She was full of common sense and she still is.

Mr. Ryan: They will never let her be a doctor now.

Ms O'Rourke: They did not like the idea that non-professional people should be on these boards. I see the Minister will change the membership and authorise such heinous people as those who are not pharmacists to be on the board and it is worthwhile. They bring a different perspective. Come to think of it, we should have politicians who are not politicians as Members of the Dáil and Seanad. That would be rather good.

History tells us this is a profession as old as time and the Minister will place it in a modern framework with the regulatory body. It will be fit for Europe, the world and the Ireland of the 21st century. It is well past time we had it and it is good that we will have it. This Bill will only realise half of the objectives of the Pharmaceutical Society of Ireland. The second Bill will be required to bring coherence to their being, strategy and future. If the Department prepares it the Seanad will facilitate it at whatever hour and seek to give it its imprimatur prior to the general election.

The Minister will be well remembered for introducing the Bill in a modern, coherent form and for having it debated here and in the other House. I wish it well and look forward to hearing Senator Henry's amendments. I am sure they will be like herself, practical and full of common sense.

Mr. Ryan: I am tempted to use my time to debate with the Minister about the relationship between economic growth and the underprovision of medical cards, but I will not. Perhaps I will have another opportunity to do so. It is one of the great failures of the Government but it is not for tonight's debate.

As a member of one self-regulating profession married to a member of another self-regulating profession I am aware that the public is more than a little sceptical about the degree to which professions are allowed, encouraged or enabled to regulate themselves. However, subject to a number of the caveats I will make, I do not think an alternative exists other than having peer group reviews of standards, performance and quality. The mass of regulation and bureaucracy necessary to regulate professions is enormous.

Some of the distinctions between professions and trades have been lost because of the upskilling of trades. However, we do not have a similar self-regulatory format for trades. The trade unions are neither willing nor able to do it. I am wary of self-regulating professions. A more extreme example is not the pharmacy, medical or engineering professions but another eminent profession divided in two — I will put it like that and not state any more — which is not a great advertisement for self-regulation. There is an enormous capacity to define the public interest as the barrister's interest, for example, and anything that threatens their position is always a threat to at least one of the institutions of State, if not more. That is the language used.

The Bill is very welcome but I would begrudgingly say it is a little late. I met representatives of the pharmacy profession about a year ago and there appears to be a degree to which underperforming pharmacists, to put it generously, are poorly regulated, if not unregulated. It is almost impossible to prevent somebody not fit to practise from continuing to work, which is alarming. It has been to the credit of the profession that by informal means, if not others, it managed to dissuade the more badly performing members from continuing to practise when it did not have the powers to do so. The Bill is welcome in that regard.

We must recognise that the practice of pharmacy is entirely different now from what it was 25 or 30 years ago. The days of pharmacists making up medicines and putting together individual ingredients are part of history. They have instead become the gatekeeper between the medical profession and the public, as they are a point of referral in both directions and a point of quality assurance. My other half would not thank me for suggesting pharmacists have a role in checking the inadequacies of the medical profession but pharmacists might take a different view of doctors also. Nevertheless, they have a major role to play.

It should also be said the profession has changed. For all my childhood and until recently in my adult life, pharmacies were run by one person or a family. They were very much part of a local community; even in cities this was true. They have now, essentially, become part of multinational organisations which bring with them both advantages and disadvantages. They bring advantages of scale and capacity in having a range of products and perhaps expertise. That is the good side but the bad side is that they remove the personal aspect such as knowledge of families, the history of individuals, the relationship with doctors and familiarity with the styles and prescribing patterns of doctors. This is particularly evident outside the big cities where it perhaps never occurred. It is lost with multinationals because their capacity to be more efficient is based, to a degree, on homogenisation. The Bill genuinely endeavours to grapple with the issue but it is very difficult to provide for the same regulation of a profession which was based on an individual owning an individual pharmacy and which now has most of its professionals as employees of a multinational. We must read it carefully. That is the reason I wish we had more time to deal with it. I do not wish to start an argument but we are trying to regulate the profession. Nominally what is being said is the same but there are different organisations.

There is a third role for pharmacists which does not arise in this instance but of which I would be aware. In the manufacturing of pharmaceuticals there are international regulations relating to having qualified pharmacists involved in the production process. I would have liked to pursue that issue. That said, the legislation is welcome.

I have dealt with the issues of regulation and registration. Another area of importance is the professional qualifications directive, etc. I wish to make a related point to the Minister and the House in general. This legislation, like all legislation, contains a list of Acts. I am almost fed up making this point after 25 years. Although it is 50 years since the first of the European treaties was signed, we still do not have a similar part indicating related European directives. Some 70% of our legislation originates either directly or indirectly from within the European Union, yet we still pretend it is all our own. I cannot pick up a piece of legislation and see which directives of the European Union it may well refer to. I knew a directive was referred to in this Bill but I had to search through it to find the reference. I would be put to the pin of my collar to find a copy of the directive and put further to it to even understand it. Whatever about our legislation, European directives are profoundly difficult. I believe they are written by people determined to ensure the rest of us do not understand what they are doing. The directives are difficult to comprehend.

I ask the same question raised by other Members as to why the mutual recognition of

qualifications at the core of this matter does not apply in both directions.

Ms O'Rourke: Yes.

Mr. Ryan: The argument made to me by the profession seems extraordinary in that a pharmacist qualifying in Britain can practise in Dundalk but a pharmacist qualifying in this State cannot practise in Newry. To put it crudely, it is not fair and is a barrier to trade. It means multinationals can operate here but nobody can set up an Irish multinational unless he or she employs pharmacists qualified in other countries. This must be resolved. The profession would be entitled, if it so chose, to head for the European Court of Justice to insist that the anomaly be ironed out. It seems to be entirely unfair.

There are many issues of detail in the Bill to which we can refer on Committee Stage. I welcome some aspects, in particular. Having a lay majority is a very good idea. If the medical profession decides to bear down on me between now and the Seanad elections — I may have 6,000, 8,000 or 10,000 eligible to vote for me — so be it. It is time they learned that lay people are not a threat to the professions. My own profession would be terrified if the regulatory body for engineers had a lay majority. There is a difference between having a lay majority and having lay people who are the agents of others. The first loyalty of members of a body such as the Irish Medical Council, the Pharmaceutical Society of Ireland or a similar organisation would be to the profession. Such persons cannot serve two masters.

Ms Feeney: Hear, hear.

Mr. Ryan: That is extremely important.

I refer, in particular, to Schedule 1 to the Bill. I have asked this question before but have never received an entirely satisfactory answer. Schedule 1 states “a person who discloses confidential information obtained as a result of involvement with the Society, shall be guilty of an offence”. I have a problem with the definition of confidential information and always have had. Confidential information includes “information declared by the Council to be confidential” and “proposals of a commercial nature or tenders submitted to the Council”. That is standard.

To go back to the composition of the council, is a representative nominated by the Health Service Executive precluded from discussing business with the HSE? This is very important. Would the first loyalty of such a person be to the profession of pharmacy or the HSE? If it is to the HSE, he or she will be in breach of the law; if it is not, what is the point of having the person concerned on the council, unless he or she has certain good qualities or understands the thinking of the HSE?

It cannot be a two-way system. One should not tell the five genuine lay people they cannot talk

[Mr. Ryan.]

to anyone without being in breach of the law while those nominated as representatives of bodies can. Either something is confidential for everyone or not. If it is confidential for the public, it must be so for everyone, including the Minister.

People say the idea of the nominating agency not knowing what its nominee is doing is ludicrous, but it is not. If the loyalty of the individual to the profession is not written clearly, the council will not be what it should, namely, a body looking after its profession. It would juggle the conflicting views of a Government, which may want to regulate costs, and the HSE. The council also includes a medical practitioner, whose loyalty is primarily to the council as long as it operates within the law.

An Leas-Chathaoirleach: The Senator has one minute remaining.

Mr. Ryan: Regarding the famous conflict of interest, it is not sufficient to say doctors cannot own pharmacies and pharmacists cannot own medical practices. Headline stories of €1 million in key money allowing a pharmacy to locate in a medical centre——

Ms O'Rourke: Is that hello money?

Mr. Ryan: Yes. People are talking about €1 million. That practice is profoundly unhealthy and should be prohibited. If it is allowed to occur outside large urban areas, such as in Mallow, Mitchelstown, my home town of Athy or Dingle, which has a single health centre, it would threaten the existence of other pharmacies and would be anti-competitive and unfair. People should have a choice. For good or ill, all our health services have been based on choice, but to allow a single pharmacy that sort of physical monopoly is to do the opposite.

This difficult matter, in respect of which I have proposed a six-page amendment, must be confronted. If it is not, there will be serious issues regarding how pharmacy will develop as a practice, that is, it will become a monopoly within health centres. We could discuss other matters, but I will deal with them on Committee Stage.

Mr. Minihan: I wish to declare an interest at the outset in that, while I am not a qualified pharmacist, I own a community pharmacy. I welcome Senator Henry's proposal to offer honorary fellowships or degrees. I hope something could be organised for myself in the short term in case the situation in the weeks ahead does not work out as I expect it to.

Ms O'Rourke: We will get one for the Senator.

Ms Feeney: He would need to be inducted.

Mr. Minihan: It could be handy, but I do not know whether the Bill would allow me to practise. Perhaps we could examine the matter.

Ms O'Rourke: The Senator could wear his mortar board in the House.

Ms Harney: It would be more difficult for the Senator. He would be also regulated.

Mr. Minihan: I welcome the Minister and compliment her on bringing this legislation before the House. The pharmacy profession has been waiting 130 years for it and it is delighted the Minister has seen fit to commit to enact the legislation soon.

Prior to being a Member of the House, I managed and worked in a pharmacy for seven years. In that time, I saw the vital role played by pharmacists and their unnoticed work in delivering our health care. Their knowledge of pharmacology and medications and their interactions with people with chronic illness are vital. Often, I despair at people's lack of knowledge about the role of a pharmacist, how he or she checks medications, interactions and side effects and how he or she counsels patients. For the pure pharmacists, those working in the community area, it is not a question of sales or profit. It is about providing an important service.

Pharmacists could keep a daily log of the number of times they must interact with general practitioners to correct prescriptions. A pure retail business would be concerned with selling and bringing in money, not checking or interacting. In reality, a locum doctor might not be up to speed with a patient's medication and some patients do not disclose their medication. For example, they may not say they are asthmatics because they do not consider ventolin or becodite to be a drug. This would have implications for what the doctor prescribed, but when the prescription arrives at the pharmacy, the pharmacist, who has built a relationship with the patient, knows. He or she will contact the doctor and the prescription will be changed. If a log were kept by pharmacies, one would be amazed by the number of times the professional training and expertise of the pharmacist is exercised daily by spotting such irregularities.

With interest, I noticed how the role of community pharmacies has expanded in other jurisdictions. The legislation we are considering will provide a framework for developments in the public interest and will ensure that patients who interact with pharmacists on a daily basis will be protected. However, we must be aware of the points made by previous speakers regarding the situation in Europe. The removal of the derogation will be of benefit to the many pharmacists trained outside this country, but an Irish pharmacist is not allowed to open or operate a business in other jurisdictions. We must level the European pitch.

A traditional feature of community pharmacy is the personal relationship between the patient and the pharmacist, which is based on trust, confidence and historical association. It is important to keep the connection. Like previous speakers, I am concerned about the relationships developing between pharmacists and health centres. It is seldom that I agree with anything Senator Ryan says, but his point on health centres was vital. There must be a clear distinction between the pharmacist's role as the dispenser and the prescriber's role. If one pays significant money, be it key or rental money, to a prescriber upstairs, one is being driven by profit and turnover. That is not what we want from pharmacists because it would not be in the interest of the patient or the public.

Whatever amendments are to be tabled, they will prop up the Bill and prove how successful it will be. We must ensure there is patient safety, regulation and no associations. We have all heard of examples and it works both ways in certain cases, but there cannot be any association.

We have to consider the community pharmacies throughout the country. Everybody talks about the profits being made by people, but it must be understood that more than 75% of the drugs which are dispensed through the general medical services scheme are paid for by the State. When one considers that under the drug payment scheme, the State pays everyone for expenditure on medicines in excess of €85 a month, it is clear the State probably pays for between 85% and 90% of drugs. We often hear about the profit margin of pharmacists on the private dispensing of medicines, but they make no profit on drugs which are dispensed under the general medical services scheme. Those drugs are dispensed at cost price, with a dispensing fee. It is a misnomer to suggest otherwise. The 2005 figures for the income earned by pharmacists from dispensing fees are interesting. Some 23% of pharmacists earned less than €60,000 in that year and a further 27% earned between €60,000 and €100,000. There is a myth about the earnings of pharmacists, particularly in the communities.

We have to be careful to protect the link between community pharmacy and patients. I was somewhat disappointed to note that the Bill refers to "retail pharmacy". I would be much happier if we referred to "community pharmacy" rather than to "retail pharmacy". That is one of the many issues I will raise on Committee Stage. The term "community pharmacy" reflects better the role played by such operations. It makes a distinction between community, hospital and industrial pharmacists. The Competition Authority has a role in this regard. Over many years, I have pointed out to those involved in the pharmacy profession that politicians, legislators, the media and the Competition Authority view them as retailers rather than professionals who play an integral part in the delivery of health services. We have to get the right message across. The pro-

fession has endeavoured to do that in recent years by informing politicians and the public of its unique role.

I hope we can turn the tide by developing a fantastic relationship between pharmacists and the Health Service Executive, which can provide many services. The amount of contact between the public and the health profession is not more than the amount of contact between the public and the pharmacy profession. Each person visits a pharmacy 20 times a year, on average. The connection between pharmacists and the people should be used properly in areas like screening and medical advice. Advances have been made in many parts of our medical regime, such as the manner in which medication is managed. It would be in the greater interest of the HSE to view pharmacists as professionals, to avail of their services and to use their contact with the public to develop various aspects of the health strategy.

I would like to speak briefly about the role of pharmacists in society. While I welcome the Minister's proposals in this regard, she should ensure that language proficiency is to the fore in the new fitness to practice system. We can ensure that pharmacists have qualifications, examinations and certificates, but we should also ensure they can communicate. If they cannot do so, they will be driven back to the dispensary upstairs or in the back of the shop, which is not what we want. Pharmacists should be in the front of the shop, where they can deal with customers and patients by advising them about drugs. If they are not proficient in the English language, will they be able to provide the advice and service we need? I accept that Senator O'Rourke's Spanish pharmacist might be very welcome in Athlone.

It is important that this legislation provides for a means of disciplining pharmacists, when necessary. Similar provisions are part of the regulatory systems of most professions. As we saw in the Shipman case, which has been mentioned, and the Neary case in this country, havoc can be created within a profession by the deeds of just one person. It is important that pharmacists who do not practice properly are subject to disciplinary proceedings of some type, if necessary.

I welcome the Minister's intention to introduce an amendment pertaining to the relationship between doctors and pharmacists. I hope the amendment will be made as soon as possible. It is most important that we get this aspect of the legislation right. I mention this issue because it is important that we maintain the traditional clear distinction between doctors and pharmacists. I welcome the Minister's decision to take on board the recommendations of the Government's pharmacy review group. We should bear in mind that if we do not get this aspect of the legislation right, we will do a disservice to this tremendous Bill.

I compliment the Minister for Health and Children and her officials. I know she made a commitment to the pharmacy profession to introduce this

[Mr. Minihan.]

legislation. She said she would endeavour to have it enacted before the general election. I hope Senators will facilitate its early passage through the House. The members of the profession have given a broad welcome to this Bill, which is long overdue. They have quite successfully lobbied a number of politicians to raise some valid questions on Committee Stage. I look forward to the Committee Stage debate, when I am sure we will work through the various issues.

I am concerned about the training of over-the-counter pharmaceutical staff. People do not fully appreciate that a great deal of the medication which is sold over the counter is rightly restricted to pharmacies. A Senator spoke earlier about runs on codeine and similar products. When I worked in the retail pharmacy sector, I saw such runs coming up. It is vital to ensure that staff are trained properly. In fairness to the pharmacy profession, it ensures that its over-the-counter staff are trained to certain standards but I would like that to happen on a more professional basis.

I await eagerly the Committee Stage debate, when many issues will be raised and all aspects of the legislation will be considered in detail. I look forward to considering the amendments that will be proposed by the Minister, Deputy Harney. I hope all Senators will support the early passing of the Bill by this House, which will allow it to be sent to the Dáil and enacted before the forthcoming general election.

Mr. Norris: I am a little surprised that this speaking slot has come so soon. I am glad I came to the Chamber because this is a good opportunity to contribute to the debate. I had arranged to share half of the time allotted in this debate to my colleague, Senator O'Toole, who is not here. Can I propose that the Senator be allowed to share time with me if he materialises and wants to take half of my time?

An Leas-Chathaoirleach: Is that agreed? Agreed.

Ms Harney: The way the debate is going, we will probably have enough time for separate speaking slots for both Senators.

Mr. Norris: That is excellent. I am sure Senator O'Toole has quite a lot to say.

Ms Harney: Senator Norris can keep all his time for himself.

Mr. Minihan: We would be happier if Senator Norris used just half of his time.

Ms Feeney: He should take his own time.

Mr. Norris: I will take my time. I will speak at a reduced speed.

An Leas-Chathaoirleach: How much time does the Senator wish to use?

Mr. Norris: The Chair should be able to tell me how much time I have.

An Leas-Chathaoirleach: The Senator has ten minutes.

Mr. Norris: That will be more than ample. I will speak at a reduced rate because I inhaled almost an entire Georgian ceiling a week or so ago, and consequently I have a lung infection.

Ms Feeney: Did the Senator not find a good pharmacist?

Mr. Norris: I have speedread the Minister's speech. I welcome some of the things she said, although I would like some of them to be spelled out. Although I have been and continue to be critical of the health service — I will probably criticise it again on the Order of Business tomorrow — I salute the Minister, Deputy Harney, for putting her head firmly in the lion's den, which was a remarkably courageous thing to do. Some of the changes the Minister has been making will not come on stream politically, in effect, until after she has departed not this life but the Department of Health and Children. The decision to which I refer highlighted the Minister's unusually altruistic attitude.

The first point I wish to make is the fact that towards the end of the Minister's speech, she addressed the question of conflict of interest. This is probably the most important element that is missing from the Bill.

8 o'clock She said that as a result of lobbying and changes in conditions, she intends to introduce an amendment on Committee Stage that will address any possible conflicting situations of that nature in a fair and proportionate manner. It is not only a question of possible conflicting situations but a question of existing and scandalous situations in terms of conflict of interest.

For example, the fact is that health centres are being built and suites are being made available to people at knock-down rates; I am told 20% is the going rate. These sorts of inducements sometimes follow on from a situation where people are interviewed and asked what is their client base, their prescription role and the value of them. I have in my hand, lest there be the slightest doubt, a form of tender for a premises known as The Pharmacy, The Medical Centre, Knock Road, Castlerea, County Roscommon, in which it is stated that the final date for submissions is 5.30 p.m. on 30 August 2005. The Minister might be interested in what it states in terms of the nature of the offer. It is addressed to a firm of solicitors and states:

I [and there is a space for the names to be filled in] ... HEREBY OFFER subject to the conditions and provisions set out in attached

conditions of tender to acquire by Lease the premises described in the attached Conditions of Tender at the annual rent of One Hundred and Fifty Thousand Euro [€150,000] (Exclusive) (subject to review in accordance with the Lease) together with any financial inducements [this is a lovely piece] that you are prepared to offer to the Landlord in the sum of [and it is rather engagingly left blank] or any other inducements that you are prepared to offer to the Landlord, which should be made in writing and attached to this Tender. As a gesture of goodwill the equivalent of 10% of the amount you are prepared to offer is to be paid over to the Landlord on the signing of the Agreement to Lease.

I regard that as completely scandalous. Of course there is a conflict of interest; there is an existing conflict of interest. It is not a potential one, a possible one or something that might happen in the future. It is something that was apparently fairly widespread two years ago. It is not only appropriate but utterly essential that the Minister introduces precisely the kind of amendment she spoke about because the conflict of interest here could not possibly be more clear and explicit.

I was engaged in other matters and I do not know if the Shipman report was mentioned. I notice the Minister is nodding to indicate it was. In that case I will confine myself to one quotation from it which addresses this matter directly. I will not give the context of it because if the Shipman report was referred to, it was probably by my colleague, Senator Henry, who knows a great deal about this matter and she probably put it into context so there is no need for me to do so. However, she may not have quoted this part which, to my mind, contains the core of the argument. The report states: "It is now generally accepted that the involvement of a pharmacist in the process of providing medication to a patient acts as a safety check against error." It goes on to state that: "[W]here prescribing and dispensing functions are carried out by the same person or within the same commercial or professional entity, there is a potential for the loss of professional objectivity or even abuse." Despite this, for reasons of commercial profit and not for the interests or welfare of the patients or citizens of Ireland, this is a situation which appears to be developing. While there are large pharmaceutical chains which we all know, there are smaller chains or businesses where considerable profit is being secured. I welcome the fact the Minister will introduce an amendment on Committee Stage. It cannot be introduced quickly enough but it must be clear, specific and obviate this unpleasant practice.

A gentleman, who will be well known to the Minister, a senior adviser to Professor Drumm whom I will not name as that would be unfair, left the Health Service Executive and took up a new position in one of these groups, Touchstone.

With engaging frankness, he said the following: "In our project in [a certain midland town] ... we were faced with the opportunity of being able to get suites at a cost of 20 per cent of their value, so from an investment opportunity it was something we couldn't match by doing things privately." That says it all. Who is handing out something at 20% of its value? I have heard of below cost selling but, to use another midlands expression, that beats Banagher.

I turn to another question of conflict of interest, that of independent regulations, which is a bee in my fairly capacious bonnet. I have been pursuing this issue with disastrous results for myself, as I have suffered the treatment I received from the news media for daring to speak out on the Defamation Bill, but I propose to continue to do so. The more it annoys them, the more I like it. For example, the newspapers claim there should be independent regulation of everybody else, including the medical profession and architects, except when it comes to newspapers. It wants to nominate half the board and to pay for it, but how independent can that be?

With regard to the question of regulation and representation, I notice that the Minister in her speech spoke about a new pharmaceutical society. Does that mean it is proposed there will be a second one? I see the Minister shaking her head to indicate "No". It should mean that because these functions should be separated. That is not only my view but a view I take as a principle. If the Minister wants to check the record, she will find that I have said this about every profession in every Bill that has been introduced.

It is also the view of the University of Dublin whose graduates I have the honour of representing. I received a letter from a distinguished academic in the pharmacy area which states:

The Pharmacy Bill published last week retains the existing structure of a combined regulatory and representative body. This is not a proper structure for the governance of a healthcare profession. A single professional body with a multiplicity of potentially conflicting purposes, including both the regulation of and advocacy for the profession of pharmacy is neither in the best interests of patients nor of the profession.

Again we have advice from the top that there should be a separation and independent regulation.

In Ireland there has been a tradition in this area, and we understand that. The Pharmaceutical Society of Ireland has served this country well. I am not making negative comments on its historical contribution. However, we must look to the future. As legislators, it is our responsibility to improve the position. If we look across the water to the United Kingdom, the position here used to prevail there but it is moving away from

[Mr. Norris.]

that and a new position has been recently proposed, namely, the creation of a separate general pharmaceutical council, which is similar to the General Medical Council, and another body to take on leadership. It is essential to have a separate body to regulate the profession. This is the point I wish to make on that issue.

I wish to make a final point on a matter which I hope was mentioned. It concerns people who get their pharmacy qualifications abroad owing to the lack of places in Ireland and who are discriminated when they return to this country. I wish to cite the case of a Dubliner who attended Trinity College. She is married to a pharmacist who qualified in Nottingham but is from Northern Ireland, which is not a million miles away and is part of the territory that was until recently claimed by this Government. He has been working as a pharmacist for four years and would like to open his own pharmacy in Ireland, but the problem is he would have to raise approximately €1 million to buy a pharmacy that is more than three years old.

The Minister may be addressing this issue and perhaps she will refer to it. This pharmacist would have to employ an Irish qualified or New Zealand or Australian qualified pharmacist because he would not be allowed to work in his own pharmacy. These pharmacists usually charge about €80,000 a year. The maddening aspect of the law as it stands, which I hope has been addressed in the Bill, is that although his qualifications are good enough for him to be employed as a locum or supervising pharmacist in any pharmacy over three years old, he cannot be employed in a brand new one. It is a bizarre situation. It is Kafkaesque. There are a series of contradictions here. I appeal to the Minister, if she has not addressed them in the Bill, a subject about which I am sorry to say I am not completely clear, I ask her to do so. The major point concerns the conflict of interest, while a related point concerns the independence of the regulatory body and the body which deals with fitness to practise. I suggest we deal with the points relating to definitions when amendments are being considered on Committee Stage.

Ms Feeney: I welcome the Minister and the Bill. To say it is long awaited is to put it mildly as the existing pharmacy regulation is 130 years old. The medical practitioners legislation is 30 years old. Even though the regulation is 130 years old, one never hears about pharmacists — community, hospital or industrial — getting themselves into trouble or kicking up a storm or being demanding. They must be among the quietest professionals in the country. I know a number of them and acknowledge that they are the unsung heroes of the health professions. I do not say this because there are some present in the Visitors Gallery.

I grew up in Tullamore, a small town in the midlands. My parents knew their pharmacist all their lives, as they had grown up with him. When the doctor was not available or sometimes when there may not have been money available to go to the doctor, the pharmacist would have been their first port of call. They were always given good advice and relied upon him. I live in Sligo and have a wonderful pharmacist. I will make him blush because he is in the Visitors Gallery. I use the term “wonderful” because I am known to his father for the past 25 years. I am a creature of habit; I have the same doctor, pharmacist and butcher. I do not like change in my life.

Ms Harney: The same politics.

Ms Feeney: Indeed. It is easy for me to say what I am going to say next. Everybody should be encouraged to build a relationship with a pharmacist, just as we build a relationship with a doctor. I had a meeting today with two pharmacists who made the same point as Senator Minihan made and which he knows from experience, as he was the manager of a pharmacy. A pharmacist may have more time to speak to a patient than a busy doctor in a busy surgery. He or she will take the time to explain that the prescribed medicine may interfere with other prescribed medication. Patients should be made aware of the side effects of medication and the hazardous effects of jumping from pharmacy to pharmacy. The nation would be better off financially and health-wise if patients did not change pharmacies. Senator Minihan has worked in a pharmacy. He is not a pharmacist but has managed a pharmacy and can speak first-hand about his experience.

I commend the Minister highly for introducing the Bill and the one she will introduce next week. During the years Ministers for Health have talked about bringing forward a pharmacy Bill and a medical practitioners Bill. I acknowledge that doctors will have their turn next week; therefore, I will not refer to that Bill.

This Bill was first mooted in June 2005 in a two-page document. Rather than introduce the Bill then, the Minister spent 18 months working on it. Today she has introduced an excellent 62-page document. While we do not agree with some of the proposals, it is to be hoped these can be dealt with on Committee Stage. I welcome all areas of the Bill which is innovative and has been worth the wait.

I refer to proposals on the membership of the board. I take my hat off to the Minister. It will be argued that in other countries there is not a lay majority on either the medical council or the pharmacy society but I ask what is wrong with how it is beginning. This country introduced a smoking ban before anywhere else in the world and we were hailed from the highest heaven. I do not see anything wrong with the proposals. It is

not a question of bringing people in off the street and appointing them as political appointees. The Minister will nominate good people to the board. I have first-hand experience, as I served as a lay member of An Bord Altranais and the Medical Council. I met no other non-medical person serving on either of those boards who did not have at heart the interests of the society they were representing.

I am delighted to see pharmacists will have fitness to practise procedures. Pharmacists will welcome this provision, as it means safety for them but most of all it will provide safeguards to ensure patient safety. I presume the procedure and sanctions will be similar to those of the Medical Council, the three lower procedures being to advise, admonish and censure and the more serious being suspension with or without conditions. The final procedure involves erasure. These procedures ensure safety for the practitioner, as well as the patient.

I am delighted to note that section 17 of the Bill allows for registration of the pharmacy unit as well as the pharmacist, an issue to which Senator Minihan alluded. The Minister really means business because any breach of the conditions of the Bill will carry serious penalties. I hope if conditions are breached, that the penalties will be doled out to the offender.

Some parts of the Bill will require tweaking. Senator O'Rourke alluded to Irish graduates being unable to enter the market elsewhere in Europe. Many UK graduates practise in Ireland. I am delighted that the derogation has been dropped. There are few places available in the pharmacy schools in this country. Therefore, it is to be welcomed that Irish people can go abroad to the United Kingdom to be trained where the training provided is second to none. It differs from the Irish model in that students learn the theory as well as the practice and such graduates make excellent pharmacists.

The relationship between subscriber and dispenser has been outlined by other speakers. I refer the Minister to the blueprint by which medical centres were established. They were set up as multidisciplinary centres with the doctor as the mainstay, as well as with a nurse, a physiotherapist, possibly a dietician and other related health professionals. Pharmacists and dentists are out in the community, with whoever else we as patients need to consult.

I look forward to Committee Stage and hope the Minister will consider the contributions made by Senators. It has come across loud and clear from both the pharmaceutical society and the pharmaceutical union that she has given an amount of time to both bodies and has listened to their concerns and taken them on board, for which I compliment her.

The problem faced by hospital pharmacists only came to my attention this morning. They

may have patients coming in and out of hospital on a regular basis, in particular cancer patients, some paediatric patients and others with mental health conditions. Chemo drugs for cancer patients are dispensed through the hospital pharmacy. Certain paediatric conditions may require blood testing on a daily basis, in conjunction with the dispensing of medication and it makes sense that this is dispensed from the hospital pharmacy. Psychiatric patients are sometimes hospitalised while this takes place. Hospital pharmacists have genuine concerns and, while I have read the Bill, I am not sure if section 5 addresses the point. Will a hospital pharmacist have to become a retail unit to continue dispensing as a hospital pharmacist? I see the Minister is shaking her head so I hope that is not the case. I hope they will fall under this legislation and be regulated as their colleagues in the community pharmacies are regulated.

Fitness to practise and all the other things introduced by this legislation should also apply to hospital pharmacists. We do not hear much from them and until today, to my shame, I have never given them much thought. These pharmacists look after sick people in acute hospital beds and now that I am aware of them I will push their case with the Minister and will raise it with her on Thursday.

Mr. Leyden: I welcome the Minister for Health and Children to the House and compliment her for bringing this Bill before the Oireachtas before the end of the term of this Government. It is a very important Bill and must be enacted urgently. The registration of pharmacists and pharmacies is of vital importance to the well-being of the public.

In the past there were very restrictive practices relating to the setting up of new pharmacies. When I was chairman of the Western Health Board there was an objection to the establishment of a pharmacy in Knock, even though approximately 1 million pilgrims visited the village every year. Regulations imposed by the then Minister, Deputy Noonan, restricted the establishment of a new pharmacy by requiring the approval of an existing pharmacy in an adjoining town as a prerequisite. That regulation was watered down to some extent but the Bill before us will create a more level playing pitch.

The present society is agreeable to being disbanded and reconstituted, which is unusual for such an organisation. The new organisation will have 21 members, nine of whom will be, as the Minister said, elected by the Irish Pharmaceutical Union under a democratic system based, I presume, on the old approach for the election of pharmacists to the health boards. The IPU will have a role and it represents 1,600 members throughout the country but the HSE has refused to enter into discussions with it on terms and conditions for its members, unlike other medical

[Mr. Leyden.]

unions which have regular contacts with the HSE. I cannot understand why that is the case and I raised the matter on 8 February in this House after discussions with IPU representatives. The Minister should arrange a review of the Competition Authority regulations because it is important the IPU have a direct relationship with the HSE on a formal basis as a representative union of so many members.

I also raised the question of pharmacies being attached to large medical practices. Members of the IPU provide services attached to large medical practices, which are starting to develop throughout the country. As the Minister knows, a number of practitioners come together and build a new, privately-owned health centre in which consultants take rooms. However, as has been mentioned in the House, the IPU has expressed great concern about the situation because there is no incentive for a medical practitioner to prescribe cheaper, generic drugs if a pharmacy is attached to the practice nor is there any incentive not to prescribe drugs at all. As the Minister knows, MRSA prompted an over-prescription of antibiotics, which were given out like smarties because everybody who went in felt they had to come out with a prescription.

Mr. Browne: It is more than that. That was just a factor.

Mr. Leyden: Some doctors were not too happy with my comments in that regard but, as a Member of this House, I represent the public as well as my electorate and I felt it necessary to speak out about a situation which was detrimental to competition and to rural towns. In some towns there is only one pharmacy and that is attached to a big practice. Between €1 million and €2 million is being asked in so called hello money for pharmacies and, as the saying goes, "If you are not in you cannot win". It is a major challenge and the Minister must be aware of it.

Mr. P. Burke: The Senator should name and shame.

Mr. Leyden: I see new applications for planning permission in rural towns and often find there is only one pharmacy, and that will not give rise to competition. Typically, a door leads from the medical practice to the pharmacy, through which one must go to leave the building. There are two shop fronts but shared access so it is very convenient to get one's prescription from the friendly pharmacy without having to drive further down the town. That is not addressed in the Bill, which does not impose any restrictions in that regard. The new society will have no power to restrict pharmacies as to where they are located. Many IPU members are engaged in such an

arrangement to the detriment of other members and will have the benefit of the arrangement into the future.

It would be beneficial if medical practices completed prescriptions clearly and they should be printed rather than scribbled. Non-nationals will be allowed to dispense drugs and it is very important a prescription is clear and contains no ambiguity as to the drug, the number of days for which it is prescribed and the number of tablets required. We should not allow non-nationals to practise in Ireland unless we have reciprocal rights in their country. The Minister should ensure, through the Bill, that Irish pharmacists have the right to practice in Northern Ireland, Britain, France, Italy or wherever. We are entitled to seek reciprocal rights in this area.

I commend the Minister on introducing the Bill. She will hopefully get it through the Dáil before the end of its lifetime.

I compliment pharmacists on the work they do. During the time in which I have been involved in public life, pharmacists have received only the highest praise in respect of that work. They dispense drugs to the public and provide great advice. Many people receive a great deal of advice from their pharmacists and are often cured as a result. In some instances, pharmacists do not receive the same rewards as the doctors who provide people with prescriptions.

Minister for Health and Children (Ms Harney):

I thank those Members who contributed to the debate. As the House is aware, it is hoped to take Committee and Remaining Stages on Thursday. It is the intention to have the Bill enacted into law before our impending rendezvous with reality.

I thank the officials of my Department for producing the Bill. I put them under enormous pressure when I gave a commitment to the presidents of the Pharmaceutical Society of Ireland and the IPU that the legislation would be enacted on my watch. I was determined this would be the case. When I use the term "on my watch", I am referring to my watch before the general election. I am not anticipating that I will not be back here after the election to steer through the second Bill. I accept the legislation is not a panacea and that it does not deal with all the issues. The second Bill to which I refer will deal with definitions of "community pharmacies", "pharmacy services", etc. It would have been impossible, in the time-frame we set ourselves, to deal with all of these matters in one Bill.

We are very far behind in this area in comparison, for example, to the medical profession, in respect of which legislation was enacted in 1978. Effectively, as far as pharmacists are concerned, there is no fitness to practise regime in this country. That position is not tenable.

I have attended many functions relating to pharmacies in the past two and a half years and I was informed at one such event that 27 years ago the then Minister for Health — I do not want to single him out because I am sure it was not his fault — gave a commitment to the father of the president to whom I spoke that the Bill would shortly be introduced. Pharmacology is obviously a family business and I would not begrudge that.

On liberalisation, I do not accept the argument that we should not do it unless others do it first. In that context, Senator Feeney referred to the smoking ban. When we have embraced innovation and been ambitious, we have done extraordinarily well. What has guided me in introducing this legislation is the fact that many of the people to whom we refer are Irish citizens. There was previously only one pharmacy school in Ireland and it was extraordinarily difficult to gain entry to it. Many Irish people studied overseas as a result and then felt they were at a huge disadvantage in their own country. As Senator Minihan indicated, even though he is not a pharmacist, he owns a pharmacy. However, a qualified pharmacist cannot do so unless he or she is supervised. I came to the conclusion that the latter is extremely unfair. The majority of people who will benefit from the enactment of this legislation — it is clear we cannot discriminate against the citizens of other EU countries — will be our own citizens.

The question of language competency will be a matter for the society to decide on. The society will set the timeframe in this regard. All EU pharmacists must — unlike those who qualify outside the Union, where language can be a requirement of registration — be registered. It will be a matter for the society to set the standard and the timeframe by which that standard must be met. As regards language, it is not merely a case of being fluent in English. One of the challenges for health care professionals at every level is to be able to communicate with patients. Some health care professionals in this country have a long way to go in that regard. I am not referring to the English language capabilities of these individuals but rather to the manner in which they seek to explain matters to patients. People often inform me that they were obliged to rely on a nurse to outline their position because they did not understand the language used by the consultant or that he or she did not communicate the relevant information in a patient-friendly way. The position in this regard is changing but it is doing so slowly. This is a major issue for those involved in health care.

I am a strong fan of empowering all health care professionals to do more. In the chain of care to the patient, the pharmacist has an important role to play. Reference was made to generic substitution. It is not just generic substitution. I would like a situation to develop where pharmacists,

perhaps because they have more competence in respect of drugs than doctors or because they are aware that certain drugs might be more suitable for particular patients, would be free to substitute one product for another. I would like us to move in that direction. If we want to ensure that patient care and safety are paramount, I am of the view that it would be appropriate to do so.

At one of the first conferences I attended as Minister for Health and Children, I learned that approximately 10% of people's experiences in hospitals involve adverse events. This is a world-wide statistic because we do not have data in this regard in Ireland. However, I have no doubt the position here is similar. Many of the adverse events to which I refer — thankfully an extremely small percentage of them involved fatal consequences — involve the administration of medication. Certain pills that do different things are contained in similar packaging. Busy nurses — I am not singling them out — can make mistakes when administering medication. Approximately 16% of adverse events are accounted for by mistakes in the administration of medication. That figure is very high. We must, therefore, be extremely cautious and careful when it comes to dispensing and administering medication.

I was somewhat taken aback when Senator Browne referred to people who are not qualified. I would like to discuss that matter with my officials because I am not aware that there are people working in hospitals who are not qualified.

Mr. Browne: On a point of information, I was referring to those who qualified under different circumstances.

An Cathaoirleach: The Minister, without interruption.

Ms Harney: I want to be helpful and I am not being critical of the Senator.

Mr. Browne: I was referring to older pharmacists.

Ms Harney: I will discuss the matter with my officials to ensure, in so far as is possible, we can put right what may be a difficulty. It is generally the case with legislation that we “grandfather” either premises that do not fit modern requirements or perhaps qualifications and give people periods of time in which to meet the standard, which is reasonable. I will check the position in that regard with my officials.

When I was growing up, my family availed of the services of a single chemist. I suspect that my parents, who migrated from Galway to Dublin, frequented his shop because he was a native of Galway. My memory of him is one of a man who worked extraordinarily hard seven days a week. I

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told this story recently in respect of doctors and many of them were of the opinion that I was suggesting that they should work 24 hours a day, seven days a week. However, I was not suggesting that.

People receive extraordinary service from their pharmacists. The latter are professionals and are among the brightest individuals in the country. One must be extremely intelligent to gain entry to pharmacy school. Even with a second school, it is incredibly difficult for people to obtain a place. The position is similar for physiotherapists, occupational therapists, doctors and language therapists. We are attracting into the health care system the brightest people in the country. That is a fact.

Reference was made to the making of profits. From a philosophical and pragmatic point of view, I have no difficulty with individuals making profits. People would not be in business if they could not make profits. If there were no profits to be made in the area of health, most of the research that pharmaceutical companies carry out — worldwide, this work is 80% funded by such companies and 20% funded by governments — would not happen. A large amount of the money invested in research never sees the light of day. A higher percentage of research does not pass what is referred to in the business as level 3. In other words, it does not proceed to the next stage. The figure in this regard is rising all the time. If companies could not make money from products which succeed and which can be developed and commercialised, they would not be in the business.

I do not see the making of profit as a bad thing. I have just returned from a trip to Scandinavia. I was interested to learn that socialist governments there have brought in private companies to run the hospitals. If I was to suggest that we should follow suit, according to Deputy Rabbitte, all hell would break loose. I visited one hospital in Stockholm which brought in a private company and it has had extraordinary results. This is what governments are doing to seek to provide better services for patients. What motivates me is better services for patients.

No doubt those, whether doctors, pharmacists or whoever, who are well qualified and who work hard are entitled to a decent living, and nobody should begrudge that. Nobody is trying to stop that. What I want to ensure is fair competition. The sole reason there is a reference to the Competition Authority approving the code is to ensure that codes are not used as barriers to entry or in an anti-competitive way.

Obviously the Bill covers pharmacists wherever they practise. It does not deal with definitions, as I stated earlier, and it does not deal with the hospital setting, but if there is a complaint, records can be sought and all the powers con-

tained in this Bill apply as much to a pharmacist working in a hospital as to one working in the retail community sector. For the information of Senator Minihan, we could not use the definition “community pharmacist” for legal reasons on the advice of the Parliamentary Counsel. I must inquire privately what the precise reason for this is and make him, and everyone else, aware of it. I am not certain what was the legal difficulty, but there was one.

When I originally took this Bill to the Government, it contained provisions on conflict of interest and property issues. The advice of the Attorney General, which as a member of the Government I am obliged to accept as he is the constitutional law officer of the State, was that we could not do it in that way because of property rights and a great many constitutional issues, and that is why we are doing it differently in the amendment I am bringing forward which I will be happy to circulate later. There is a real challenge in this regard. It is not easy to deal with the changing structure of the pharmacy sector. For example, we could not legislate for market share. That would be prohibited. Obviously, every pharmacy must have a supervising pharmacist and every corporate entity must have a pharmacist in charge of the overall corporate body. That is appropriate to ensure the provisions of this legislation apply.

I see the society as the regulator in the public interest. It is not a representative body in the way that people suggested. The society possesses advocacy powers and maybe that should be examined. I do not know whether the advocacy powers are related to patient safety, professional education or whatever, but it is not the union of pharmacists, which the IPU is. I compliment Senator Glynn on reading into the record of the House the submission of the IPU, which I am sure was gratified to know that its work was not in vain. I read it too, and we will be clarifying some of the issues of concern.

How long the admonishment would last, for one year, five years or whatever, is a matter for the society or, ultimately, a matter for the court because these matters may be appealed to the court. I must inquire whether the society can inform other regulators in other countries. I would hope it could but I want to check to ensure that is the case.

The nominees' term is four years. Perhaps it should be five. Four years is a rather short term and we might look at that. Clearly, the nominees are not political people. On the idea that a regulatory body would change if the Government changed, this is not the United States of America where everybody gets a position based on whether he or she supported the party in office. I think that is not a good system, certainly not in public bodies. It is a matter of inspiring public confidence in regulation and that is the reason I

am so keen to introduce a lay majority. The other profession says such a situation does not exist anywhere else in the world, but I am delighted to see that the White Paper published in the UK two weeks ago states that the professions should not hold a majority and we are moving in the same direction. It is all about inspiring public confidence in regulation, which is very important.

The persons nominated by the Minister, or, indeed, by the Health Service Executive or the Irish Medicines Board, are not on the council to represent their nominator. The reason I included those bodies as nominators was to show that we are trying to get people who have something to offer and it is not a question of merely picking names off the top of my head or anybody else's head. I would be happy to include other bodies if people felt that they were appropriate to nominate to the society.

Clearly, the confidentiality rules that apply to the individuals nominated by the Minister apply equally to the persons nominated by the HSE or the Irish Medicines Board. Often this is misunderstood. For instance, often I am asked in the other House what is happening at the Medical Council in particular inquiries. I am not informed. I have no right to be informed. It is entirely confidential. The Minister cannot interfere in the operations of the council and I know no more than anybody else knows. In fact, I read in the newspaper of its recent inquiry. I was not informed of it officially. The council did not have any such obligation, nor should it. The council acts independently and the same will apply to the pharmaceutical society.

Clearly, if I, as Minister, have concerns, I will bring them to the attention of the regulatory bodies, just as I have done to the Medical Council in some issues. If there were issues I felt the regulatory body should address, I would bring them to the society in my capacity as somebody with responsibility for health, but not as somebody who was trying to interfere in the day-to-day activities of the council.

We will provide in the legislation that there must be a separate entrance to a pharmacy. I take the point that this should not give rise to a duty-free type scenario. Although that may be the case in Dublin duty-free, it is not the case in other countries where one may happily go from the entrance to an airport into one's plane without walking through duty-free. I take the point made and we are making an amendment in that regard.

The society will be able to deal with a matter about which it has had considerable concern for quite some time, that is, underperforming pharmacists. Clearly, the issue of competence assurance is not as developed as I would like. It is an area on which we need to work together. It is certainly not as developed as the medical profession in medical regulation, but the days of a professional qualifying and practising for his or

her entire working life without continuing education are over. It will be a matter for regulators to ensure this is the case because matters, and especially those in the area of medicine, change rapidly.

How one regulates for the Internet is an issue that concerns governments across the world. If somebody can tell me how I might be able to regulate for the Internet, I will be more than happy to do so. Some things are not possible.

MRSA was mentioned. I refer again to my visit last week to Norway, Denmark and Sweden, all of which have a good MRSA record. On the MRSA map produced recently, they are in the green zone which is the good zone. Ireland is in the red zone and there is an orange zone between the green and red ones. There are two issues that affect MRSA. Antibiotics is by far the largest one and we in Ireland have an obsession of going to the doctor looking for antibiotics. The number of people I meet who are on antibiotics for something as simple as a head cold is incredible. It will take quite a long number of years, perhaps 20 or 25 years, for us to change that. We must involve pharmacists and doctors in a national effort. Patients must also be involved because if they go to the doctor and do not get a prescription, then they feel the doctor is not quite interested in their ailment.

The other issue is personal hygiene, hand washing, etc., between attending patients. In Sweden, for example, doctors rarely wear ties because of the difficulty of it touching the patients and picking up all kinds of infection, and they all wear their uniforms. I understand they do not wear their uniforms to the supermarket. I am not saying the doctors here do but I frequently see health care workers in their uniforms shopping in the supermarket. If we in Ireland want to reduce the incidence of health infections, especially MRSA, we must deal seriously with these crazy practices. As Members will be aware, one third of us in this Chamber have MRSA. I will not specify which third but that is the statistic.

Mr. Glynn: Innocent.

Ms Harney: I do not know about that.

Mr. Browne: As long as it stays on the skin one is fine. If it goes into one's blood, one is finished.

Ms Harney: I have taken detailed notes and I will deal with them on Committee Stage. I have dealt with the main points and there are some issues on which I need to seek clarification from my officials. I look forward to Committee Stage on Thursday. I acknowledge the support and advice my Department received from the society and the IPU. We received a great deal of assistance in framing this legislation. I am sure it will not solve all the problems identified but it will

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play an important role in putting in place a modern regulatory framework for pharmacists and pharmacies which will be appropriate to the times in which we live. The second Bill will deal with service definition and technical issues pertaining to premises, which are a minefield.

I thank the Seanad for allowing me the time to deal with this matter and for facilitating the completion of this House's debate on the Bill by Thursday evening.

Question put and agreed to.

Committee Stage ordered for Thursday, 22 March 2007.

An Cathaoirleach: When is it proposed to sit again?

Ms Feeney: Tomorrow at 10.30 a.m.

The Seanad adjourned at 9.00 p.m. until 10.30 a.m. on Wednesday, 21 March 2007.