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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Tuesday, 3 *April* 2007.

SEANAD ÉIREANN

Dé Máirt, 3 *Aibreán* 2007.
Tuesday, 3 *April* 2007.

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.
Prayer.

Business of Seanad.

An Cathaoirleach: I have received notice from Senator Jim Walsh 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 establish a comprehensive review of the Local Government Act 2001 with a view to addressing the democratic deficit through greater empowerment and resourcing of public representatives.

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

> The need for the Minister for Health and Children to outline the reason there is currently a one to a one and a half year waiting list for children to see a speech and language therapist in the Carlow area; the number currently on the waiting list for County Carlow; if there are private speech language therapists in the Carlow County area; and if a similar waiting list also exists to see an occupational therapist in County Carlow.

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

> The need for the Minister for Education and Science to provide funding for the provision of an internal toilet to replace the external toilets at Ballyguiltenane primary school, Glin, County Limerick.

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

> The need for the Minister for Education and Science to indicate when funding will be approved for Craughwell national school, County Galway, which has applied for additional accommodation at the above school due to overcrowding in recent years.

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

> The need for the Minister for Arts, Sport and Tourism to clarify the position with regard to funding for a sports hall for Edgeworthstown, County Longford, which is planned in conjunction with the current crèche project and school extension, to develop a multi-purpose campus in the area, with school, crèche, soccer pitch and sports hall in the one location.

I regard the matters raised by Senators Jim Walsh, Browne, Finucane, Ulick Burke and Bannon as suitable for discussion on the Adjournment. I have selected the matters raised by Senators Jim Walsh, Browne and Finucane and they will be taken at the conclusion of business. Senators Ulick Burke and Bannon may give notice on another day of the matters they wish to raise.

Order of Business.

Ms O'Rourke: The Order of Business is No.1, a referral motion whereby No. 18 on the Order Paper is being referred without debate to the Joint Committee on Justice, Equality, Defence and Women's Rights for consideration, the subject matter of which item concerns a proposed Council Decision in respect of the Schengen Convention, which decision forms part of a set of instruments to provide a legal basis for Schengen information, SIS II, which is required to improve performance and to cater for new functions, the Schengen Agreement itself providing for the elimination of border checks between participating states and for a number of law enforcement compensatory measures, in certain aspects of which Ireland successfully applied to participate following Government and Oireachtas approval, and among which aspects is included the Schengen information system through which relevant information is exchanged electronically by a central system; No. 2, Medical Practitioners Bill 2007 — Second Stage, to be taken on the conclusion of the Order of Business and to conclude no later than 6 p.m., with spokespersons to have 15 minutes, 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, Electoral (Amendment) Bill 2007 — Second Stage, to be taken at 6.30 p.m. and to conclude no later than 8.30 p.m., with spokespersons to have ten minutes and all other Senators six minutes and the Minister to be called upon to reply no later than ten minutes before the conclusion of Second Stage; No. 4, Broadcasting(Amendment) Bill 2006 — Report and Final Stages, to be taken at 8.30 p.m. and to conclude no later than 9 p.m.; and No. 5, Communications Regulation (Amendment) Bill 2007 — Report and Final Stages, to be taken immediately on the conclusion of No. 4 or, if the latter has not concluded earlier, at 9 p.m. and to conclude no later than 9.30 p.m. There will be a sos from 6 p.m to 6.30 p.m.

Mr. B. Hayes: The ongoing industrial action on the part of the Irish Nurses Organisation is having a debilitating effect on the health service. It is likely that the situation will become worse before it gets better. In view of the current impasse and the difficulties it is creating in the context of the provision of primary and acute care, does the Leader agree that sooner rather than later, a resolution must be found? Does she also agree it is important that no one, particularly front-line staff, should be demonised while that resolution is being sought? The situation will only be made worse if politicians, either in a leadership or a backbench role, attempt to play one section of the union off against the next.

A resolution to this problem may have to be found in the context of benchmarking. It would be useful if some of the grievances that are clearly felt by nurses could be resolved through the benchmarking process. Does the Leader agree that it might helpful if the Minister for Health and Children came before the House later in the week in order to make a statement on these issues and take questions from Members? There is a great deal of national concern about this issue and we would miss the opportunity to do a service to the public at large if we failed to provide an opportunity for a debate of some sort to take place this week. I ask the Leader to make time available, if she feels it would be useful to do so, for a debate on this matter.

The Minister for Health and Children recently sent to the Children's Hospital Temple Street Hospital, Our Lady's Hospital for Sick Children in Crumlin and the National Children's Hospital in Tallaght a proposed statutory instrument relating to the establishment of a national paediatric hospital interim board. Will the Leader impress upon the Minister that when the statutory instrument in question, which is secondary legislation, is published, it should be debated in the House, which has yet to have a full debate on the issue of the national paediatric hospital?

On the question of a definition of a national paediatric hospital, the proposed statutory instrument states that secondary hospital services for the children of Dublin and the greater Dublin area will be included. However, this is completely at variance with the commitment the Taoiseach gave to Deputy Rabbitte in the Lower House two weeks ago when he stated that 90% of the children in Tallaght will be treated locally. Secondary services will either be provided locally or they will not. What the Taoiseach said runs completely contrary to what the Minister for Health and Children has indicated in the definition of the proposed statutory instrument that will, if she has her way, be published in the coming weeks. The way to discover who is telling the truth in respect of this matter is to arrange for a full-blown debate on the proposed statutory instrument when it is signed by the Minister. I formally request that time be made available for such a debate.

Mr. O'Toole: I do not have a difficulty with No. 1 on the Order of Business, which is due to be taken without debate. However, I would like the matter to be discussed when it has been dealt with by the relevant committee. People should reaquaint themselves with the Schengen Agreement. Our attitude towards the latter is the reason we are still obliged to show our passports when passing through half the member states of the European Union when we should not have to do so. We should reopen the debate on the agreement.

It is regrettable that the nurses' dispute has reached its current stage. I would not normally comment on industrial relations matters but this matter was referred to those at the highest level in the national implementation body and they failed to resolve it. However, progress was made and it would be helpful it people reread the report issued by the body on Sunday afternoon last. The report indicates that significant progress was made on the issue of working hours and that the management side indicated that it was prepared to deal with this. Progress was also made on the issue of the differential between nurses and non-qualified people. However, progress was not made on the 10% general pay claim.

There is a great deal to be said for revisiting the national implementation body with a view to examining what is happening and recognising that progress can be made on two of the three issues. Time possibly could be then made available to deal with the 10% general pay claim. I think people recognise that nurses have made a fair argument, that the issue can and should be addressed and that structures exist for that purpose. The parties should, therefore, return to the national implementation body.

Last week, while debating the Carbon Fund Bill 2006 with the Minister for the Environment, Heritage and Local Government, Deputy Roche, I pointed to the incandescent light bulbs in the Chamber and asked whether they could be replaced——

Ms O'Rourke: With something softer.

Mr. Norris: Candles would be lovely.

Mr. O'Toole: ——with environmentally friendly bulbs that do less damage in terms of carbon emissions. I note that the Government issued a statement yesterday to announce its intention to increase the price of incandescent bulbs. That is a regressive and regrettable measure. What does the Government expect people to do? Will they sit and curse the darkness or buy another light bulb? It is simply another stealth tax on bulbs. The proper solution is a ban on incandescent bulbs and an immediate change to modern bulbs. One country, Australia, has already announced that it will ban all incandescent bulbs from 2009. There is no reason Ireland should not show leadership to the rest of

the world by beginning to phase out old fashioned carbon emitting bulbs from 2008. Rather than curse the darkness, let us do something positive for the environment by taking that approach. I ask the Leader to bring my suggestion to the attention of the Minister.

Ms Tuffy: I support the comments made by Senators Brian Hayes and O'Toole about the nurses' work to rule and threat of further industrial action. I stress the need for both sides to meet for the sake of everyone affected by the dispute. We should support all efforts made in this regard.

I also support the call made by Senator Brian Hayes for a debate on the National Children's Hospital in Tallaght. The issue is also important to people in my constituency which adjoins the Senator's.

Articles were published today and yesterday in *The Irish Times* by the family law reporter, Carol Coulter, and John Waters regarding a speech given by Ms Coulter at a conference on the role of children in divorce proceedings. I wish to speak about the general issue rather than dwell on the details of the two writers' debate. Senator Browne recently raised this issue when he called for a debate on the status of divorce ten years after the referendum. Such a debate would be important and could be based on the report recently presented by Ms Coulter regarding the family law courts. We should investigate what needs to be done to reform the system of family law. This issue affects a large number of people. Having worked in the area of family law, I am not happy with the system and I am aware that both women and men share my opinion.

Children should not be involved in court proceedings where at all possible, and alternative methods should be available to deal with these issues. I have proposed that we consider the measures introduced in this regard by Australia. Senator O'Toole also referred to that country, which is obviously taking several imaginative initiatives. Australia has done a lot of work in terms of trying to introduce a better system for dealing with family disputes. Family relationship centres have been established on a strong funding basis and a family relationship freefone number and on-line resource have been made available. The centres, which act as one-stop-shops for issues such as families that are breaking down or parents who are separating, allow people to avail of mediation, alternative dispute resolutions and parenting arrangements. I strongly argue that Ireland should take a similar approach. If we hold the debate Senator Browne and I seek, we will have an opportunity to air these views. We should promote co-parenting, alternative dispute resolutions and mediation as well as providing the supports and funding necessary for those approaches.

Ms Ormonde: I agree with what Senator Tuffy stated. I would welcome a debate on divorce ten years on and on how the concept of family will be redefined. The entire fabric of society has changed and we must consider the role of family law and how it should be reformed. I do not know whether such a debate is possible in this session.

The reform of the Central Applications Office is an issue close to my heart. We should have a root and branch examination of how the system works for our young children. It is wrong that after completing the leaving certificate one can only change one's mind until 1 July. Students should be able to wait until they have their results before completing a change of mind slip and they could base it on how they do in the leaving certificate. The CAO should be more flexible. This could be introduced this year and we should not need to wait. It should not take such a change for it to operate in the short term.

We should examine the system. Entry to third-level education has changed. The supply is no longer there and many courses do not need to involve the CAO. We must debate this matter. I do not know whether it is possible to do so because we are running short of time. If it is possible, I would welcome a debate before the leaving certificate begins. The CAO has had this power for too long and it should be diluted.

Mr. Coghlan: The House is aware that Dingle continues to suffer. It is blatant discrimination. I am thrown off by the Leader's smile. I do not know what brought it on.

An Cathaoirleach: Senator Coghlan should not be looking at the Leader. He should be looking at the Chair.

Ms O'Rourke: Please do look at me.

Mr. Coghlan: With respect, when I do not look at the Leader the Cathaoirleach asks me to address my questions to her.

An Cathaoirleach: I never did.

Ms O'Rourke: He never did, honestly.

Mr. Coghlan: I stand corrected. I thought the Cathaoirleach always asked me to address questions to the Leader which is what I was about to do.

An Cathaoirleach: Questions are to be addressed to the Chair.

Mr. Coghlan: I always bow to the Cathaoirleach's superior knowledge. A recent survey of more than 100 visitors showed beyond doubt this blatant discrimination hampers trade.

Ms O'Rourke: In Dingle?

Mr. Coghlan: Yes, because they cannot find An Daingean and go astray from all sorts of places.

Ms O'Rourke: They cannot find Senator Coghlan.

Mr. Coghlan: When will the Government solve this serious issue of blatant discrimination, which exists only in County Kerry against the good people of Dingle? Bilingual signs are inside and outside Gaeltacht areas in counties Cork, Galway, Mayo and Donegal.

Ms O'Rourke: Dingle is full.

Mr. Coghlan: I wish it were.

Mr. Norris: I join with Senator Brian Hayes in his concern about the attitude of the Government towards the National Children's Hospital in Tallaght. I will simply point out that the name "national children's hospital" resides legally with Tallaght Hospital. This must be examined as does the fact that the Government gave clear commitments to Tallaght that the National Children's Hospital would be continued and developed at Tallaght. One waits to see what will materialise.

The situation with regard to the nurses is serious. It worries many people in the community who rely on the professional standards of nursing and medical care when they are taken ill. It is ridiculous to have a situation where nursing staff supervise less qualified people than themselves and are paid less than the less qualified people they supervise. It is an absurd situation and is extremely aggravating for nursing staff.

However, although I have always strongly supported the nurses, I believe they are in danger of losing public sympathy if they threaten or use the strike weapon. This is very clear from soundings one hears on every radio and television programme, in the newspapers and speaking with people on the streets. I would caution the nursing profession against taking too strong and militant a stance as I am afraid it may lose public sympathy.

I join Senator O'Toole in expressing an interest in No. 1 on the Order of Business. I was going to indicate my regret at it being passed without debate but there seems to be a mechanism whereby it may come back to us. It is very important we discuss it. The Schengen agreement is a complex and important matter but this also deals with the exchange of information.

I am in possession of information which leads me to believe that people in this country who come from other territories sometimes have their cases very seriously prejudiced by the lodging with the system of completely untrue and anonymous information, which is subsequently used by the Irish authorities against such people. There is no recourse, and when people ask what the information is, they are told it will not be given to them. It is a Kafkaesque scenario and one I propose to explore a little further.

I refer to the point raised by Senator Tuffy. I also read the article by Carol Coulter, an extremely fine journalist who is very clear and dispassionate in what she writes. Mr. John Waters wrote an extraordinary article, published yesterday in the same newspaper, which seemed set on undermining her position and professional role. It made some extraordinary insinuations against her. It is very strongly rebutted by Dr. Coulter in this morning's paper.

A concern of mine as I read the article by Mr. Waters was that he seemed to deplore the existence of the guardian *ad litem*, to which I would take great exception.

An Cathaoirleach: Is the Senator seeking a debate?

Mr. Norris: I thank the Cathaoirleach for his assistance and I am definitely seeking a debate. The guardian *ad litem* was introduced in this House after a long battle as a result of an amendment put down by myself and seconded by Senator Ryan of the Labour Party. The Senator was not then of the Labour Party, he was still moderately independent.

An Cathaoirleach: We do not need that complete detail.

Mr. B. Hayes: It is an historical analysis.

Mr. Norris: I am sure the Cathaoirleach does not need it because his knowledge of the Seanad and its history is encyclopaedic. It must be said the system was first introduced in Britain as a result of a case in which a young girl was returned to her abusive family and murdered.

An Cathaoirleach: Senator——

Mr. Norris: It was to prevent that kind of scenario that the guardian *ad litem* system was introduced. I have no regrets about being responsible for it. I thank the Cathaoirleach for his helpful suggestion.

Mr. U. Burke: The publication in a newspaper last Sunday of what was termed an internal and private memo from within an insurance company greatly disturbs many people who have made personal injury claims following accidents. It is disturbing that the insurance company has established what it terms a "Garda panel" of retired and, in some alleged cases, serving, members of the Garda who access, source and relay information on accidents through the Garda computer system. This is a gross abuse of the system in this country.

Mr. B. Hayes: Hear, hear.

Mr. Coghlan: Hear, hear.

Mr. U. Burke: It is important that we ask the Data Protection Commissioner to investigate this matter thoroughly and have a full examination on

why it is stated that as a result of these investigations, the costs of this insurance company have been dramatically reduced. There allegedly have been bonus payments to members of the legal profession who were acting on the company's behalf and made settlements on the third party's doorstep rather than through the courts or the PIAB. It is a disgrace if these events are occurring. It is one issue that many people are benefiting from lower insurance premia but if the company in question is conducting matters as alleged there will be serious consequences for the insurance industry. I hope the matter will be investigated thoroughly and as quickly as possible to allay the fears of the many people who are genuinely and severely injured as a result of road accidents.

Mr. Glynn: In any industrial relations situation, one should refrain from making a comment that might prejudice the outcome. I wish both sides well in the nurses' dispute and I hope they find an amicable resolution. I am sure the will is present and I hope the mechanism can be found to address the issues.

Mr. Quinn: Two years or three years ago, we passed legislation insisting that those who drive motor boats on our internal waters or on the sea have certificates of competency, but the statutory instrument has not been introduced. I am not sure why this is the case, but I understand that a number of courses issue the certificate in Ireland because a similar law is being enforced in France. People who want to holiday and drive motor boats in France must get certificates of competency in Ireland beforehand.

Why have we not introduced the statutory instrument? We could do something about the number of deaths each year on our internal waters and seas. We passed the legislation, but it is not being enforced. There is a possibility that the tourism industry believes it would be damaged by enforcement, but why do we pass legislation if we will not enforce it? The legislation should be enforced despite the danger to the tourism industry.

3 o'clock

Senator Browne asked for a debate on the ten years since the divorce referendum, particularly regarding Senator Norris's point about guardian *ad litem*. I read the article in yesterday's *The Irish Times*. When we passed the legislation, we did not realise that it may entail asking three year old children whether they want to go with their mommies or daddies. If that is the case, it was not our intention.

Mr. Norris: It is not the case.

Mr. Quinn: Yesterday's article stated that it is occurring.

Mr. Norris: John Waters is notoriously inaccurate.

Mr. Quinn: If it is the case, we should ensure our intention for the legislation is being followed.

Dr. M. Hayes: I would like to echo Senator Norris on the question of the nurses' dispute. It would not be helpful to have a debate on the matter, as industrial relations should be sorted out in the industrial relations arena. Debating them here would only make matters more difficult. That is not to say Members should not reflect the public's concern.

Speaking as a non-party Senator, I welcome that the parties seem determined to keep the matter from becoming electoral leverage. It would be unwise of the nurses' leadership to believe the election could be a useful factor, as the issue must be dealt with by whoever is in Government. I hope that we do not need to wait until the end of the week for those involved to return to the Labour Court and its proper procedures.

I have a pleasant interest in another matter this week in that the travel pass has been made available North and South. It is a great development and has been welcomed by senior citizens in Northern Ireland. I hope many senior citizens in the South will take the opportunity to travel to the North. It is an example of cross-Border co-operation and communication that we should welcome.

Mr. B. Hayes: Hear, hear.

Mr. Bannon: My party argued for many years that a travel pass should be introduced——

Mr. Glynn: It never did anything about it.

Mr. Bannon: ——to allow people to visit all parts of the island of Ireland.

Mr. Minihan: Why did Fine Gael not introduce it?

Mr. Bannon: I would like the Leader to invite the Minister for Social and Family Affairs——

Ms Ormonde: He was in the House last week.

Mr. Bannon: ——to the House for a debate on Government policy in all parts of the pensions system, including social welfare pensions. Many people, including women who retired from the Civil Service when the marriage bar was in place, do not receive any support under the social welfare system. I am glad the bar was abolished in 1974.

An Cathaoirleach: The Senator had an opportunity to speak when the House debated the Social Welfare and Pensions Bill 2007 last week.

Mr. Bannon: It is important that we have a debate on this issue.

Mr. Norris: Hear, hear.

An Cathaoirleach: We had it last week.

Mr. B. Hayes: We should have another debate.

Mr. Bannon: It is very dear to my heart.

Mr. Minihan: The Senator should read the transcript of last week's debate.

Mr. Bannon: Some issues which have been brought to my notice over the past week were not fully addressed on that occasion.

Ms Ormonde: Senator Bannon will get all the information he needs from the transcript.

Mr. Bannon: We should have a full and thorough debate on this issue.

An Cathaoirleach: We had it.

Mr. Bannon: Where is the Green Paper on pensions that was promised? It has not been delivered by the Government.

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

Mr. Bannon: There was a consultation document.

An Cathaoirleach: We had that debate last week.

Mr. Bannon: No, wait now——

An Cathaoirleach: No, we had that debate last week.

Mr. Bannon: Excuse me, a Chathaoirligh——

An Cathaoirleach: We will not debate it again.

Mr. Bannon: A Green Paper on pensions was promised in November.

An Cathaoirleach: We will not debate it again.

Mr. Bannon: It was promised again in February and March.

An Cathaoirleach: We had that debate last week.

Mr. Bannon: It is now April and we have not got it yet.

Mr. B. Hayes: Hear, hear.

An Cathaoirleach: Does Senator Bannon remember the debate that took place last week?

Mr. Bannon: Idle talk, a Chathaoirligh.

Mr. Leyden: I support Senator Ulick Burke's comments on a particular insurance company. It is a question of ambulance chasing as far as settlements are concerned. A procedure is in place now. The Personal Injuries Assessment Board, which was established by the Oireachtas and the former Minister for Enterprise, Trade and Employment, Deputy Harney, has proved to be a successful vehicle for the settlement of cases in an orderly and proper manner. The book of quantum that has been agreed is now part of the established approach and should be adhered to. The newspaper that raised this issue has served a purpose. I am delighted that Senator Burke raised in the House the need to make people aware that they should not agree to supposedly urgent settlements which are made on the basis of trying to save costs. The insurance companies are benefitting from this approach. The Personal Injuries Assessment Board, which is bedding down very well, should be allowed to deal with such cases in a proper, orderly and transparent manner. I thank Senator Burke for raising this issue.

I join Senator Maurice Hayes in complimenting the Minister for Social and Family Affairs, Deputy Brennan, and the Minister for Foreign Affairs, Deputy Dermot Ahern, for bringing about an all-Ireland travel pass system. It is wonderful that people can use their free travel passes to go north, south, east and west. As applications must be made for the passes in question, I urge pensioners who are eligible for the scheme to apply. People on both sides of the Border must apply directly for the pass, which is separate from the standard pass.

Mr. Coghlan: Perhaps the Senator can mention this issue in his newsletter.

Mr. Leyden: I will. I thank the Senator for his suggestion.

An Cathaoirleach: It is not appropriate to mention newsletters on the Order of Business.

Mr. Leyden: I appreciate that. I assure Senator Coghlan that Dingle, or whatever name one likes to call it, was packed out——

Mr. Coghlan: It is called Daingean Uí Chúis.

Mr. Leyden: ——with Irish and American tourists last week.

Ms O'Rourke: That is great. Was the Senator there?

Mr. B. Hayes: He is like the Holy Ghost; he is everywhere.

Ms O'Rourke: He is no ghost.

Dr. Henry: Like Senator Maurice Hayes, I am relieved that the nurses' dispute has not become a party political issue. We have to remember that market forces are on the nurses' side. The shortage of midwives in this country is so desperate that women are being seen later and later in pregnancy. Those who are employed in many of our maternity hospitals are under such stress that they cannot be retained. We are producing enough nurses in this country, but we are unable to retain them. We lose approximately half of our nurses within three years of graduation. I promoted direct entry into midwifery, which is now available in some hospitals. The nursing profession is leaking graduates, so we must think of means of retaining them. Considerably more than 10% of the nurses in this country graduated overseas. It is sad to think that a significant proportion of those who graduate here leave the profession. I accept that some of them go abroad for extra training.

Labhrás Ó Murchú: In my ten years' experience in the House I have found every Member to have a strong humanitarian orientation in considering those who are vulnerable and helpless, particularly the aged. I have heard many contributions from Members speaking on behalf of old people who have been victimised or suffered. There is a case of a 96 year old woman in Galway who, in her twilight years, will have her life changed. She may end up in an institution, with no one to care for her, because her son is going to prison. That is a justice issue and we have discussed justice on various occasions, including the varying approach to it. Humanitarian aspects should have been brought to bear——

An Cathaoirleach: That is a court decision. We must respect the separation of powers.

Labhrás Ó Murchú: We discussed the justice system last week. Whether it is politically correct or not, an old woman should not find herself in this position. Opportunities existed to ensure the person who will be imprisoned would undertake community service. I do not accept that the woman should be in this position.

Mr. Browne: I join other Senators in seeking a debate on family matters. It would be timely considering the recent tenth anniversary of the divorce referendum. It is time to reflect on whether we were right or wrong. The CSO figures provide food for thought, showing an increase of 70% in the number of divorced people. There is also great variation, with Limerick and Dublin showing the highest rates and Galway and Cavan the lowest. We could arrange a wide-ranging debate on family law matters, examining the issues on which we can support married and unmarried families. We can acknowledge the permutations and combinations in modern Ireland.

I congratulate the Minister for allowing the travel pass to be used in Northern Ireland. A major problem exists for those in isolated non-urban areas. The travel pass is worth very little to them because they are not near a DART or bus station. Could those in isolated areas be allowed to use the travel pass as taxi vouchers instead? They could be given a number of taxi vouchers.

I know of a partially blinded lady with two adult sons with Down's syndrome. She must walk one mile along an extremely dangerous road to catch the bus to use her travel pass. We must examine the use of a taxi voucher system for the travel pass in rural areas. People in towns and cities enjoy greater level of service from the travel pass than those living in rural areas.

Mr. Cummins: What is the Government's plan for the Defamation Bill, No. 8 on the Order of Business?

Mr. O'Toole: What Bill is that?

Mr. Cummins: Has it been shelved or is it the intention of the Government to resurrect it after Easter?

Ms O'Rourke: That is the period of the resurrection.

Mr. B. Hayes: I seek the Cathaoirleach's guidance. In the course of my contribution I referred to the proposed national paediatric hospital development board that will be established by statutory instrument. Under Standing Orders, if and when that is proposed, I should have 21 days to bring an order before the House to have the statutory instrument debated before it becomes law.

An Cathaoirleach: It would depend on the terms of the legislation.

Mr. B. Hayes: I understand that the House has 21 days to annul the statutory instrument and if it has not been annulled, it comes into effect. If that is the case, I ask the Leader to respond to the issue because it is crucial there be a debate before this is put in place by sleight of hand by the Minister for Health and Children.

Ms O'Rourke: Senator Brian Hayes raised the nursing dispute, sensibly proposing that since the national implementation body has discussed the issue and, as Senator O'Toole pointed out, has reached accommodation on two of the three issues, it should go back to the NIB. There is no higher body for dealing with disputes and it could be looked at through the benchmarking process. That is a sensible idea and some minds are already considering that. I hope so because people are worried about this, even those who are not sick.

Senator Hayes also mentioned the proposed statutory instrument regarding a national paedi-

[Ms O'Rourke.]

atric hospital development board and asked for a debate on it. I am sure it could be debated under the 21 day rule. I have never seen the rule invoked but the Senator claims the Taoiseach is at variance with the Minister for Health and Children on the matter. Senator Hayes claims no debate on the location of the children's hospital has taken place and this may allow for it. We will see if that is possible.

Senator O'Toole pointed out that the NIB had shown possibilities for forward movement in the nurses' dispute and the subject should be revisited by the body. He also mentioned the light bulb levy, calling instead for the phasing out of incandescent light bulbs by the Government by 2009. I will mention the idea to the Minister for the Environment, Heritage and Local Government.

I agree with Senator Tuffy. Those of us who are campaigning for election to the Dáil come across houses where the mother has the children, in accordance with court judgments. The father, however, wants to have the children for the weekend but only has a small apartment, after the mother was granted the tenancy of the council house, and has nowhere to bring the children. That has caused a great deal of disquiet and worry because the father wants to play the part of a parent but cannot see his children at weekends because he has nowhere to bring them. Sometimes the social worker does not allow the father access because of a lack of proper housing. It is a vexed question. I supported divorce but it brings trauma in its wake. It is a traumatic step, especially when children are involved. The Senator mentioned the report by Dr. Carol Coulter on the topic. There could be a junior family mediation process where co-parenting issues could be discussed and children could talk through their difficulties. It would be good to have such a system in place.

That was echoed by the remarks made by Senator Browne, but in many cases, divorce is preferable to warring parents with young children in the house, because that is very difficult for children to cope with. Experiencing conflict daily is harmful and a respite from it is necessary. We should arrange a debate on family law ten years after the divorce referendum. I thank both Senators for raising in such a vigorous manner how children are affected by the onset of divorce.

Senator Ormonde agreed with the points made by Senator Tuffy and called for reform of the CAO. Many colleges are now scrambling to get people to take courses, rather than the other way around, and they are visiting far-off places such as India and China in order to get students. It would be good if there could be more flexibility, as regards the CAO.

Senator Coghlan returned to his favourite theme, Dingle. He should do his master's treatise on it or something such. I am sure he would be ably assisted, in the event, by Senator O'Toole. He worries that the visitors are not coming because they cannot find where to go to. Senator Leyden has direct knowledge of Dingle from last weekend when, he reports, one could hardly budge in it.

Mr. Coghlan: That was one instance.

Ms O'Rourke: It sounds very good to me.

Mr. B. Hayes: What about the dolphin?

Ms O'Rourke: Senator Norris——

Mr. Leyden: It is still there.

An Cathaoirleach: Order please.

Ms O'Rourke: ——said that the children's hospital in Tallaght is legally the National Children's Hospital and that has to be addressed before the move to the new site. He said the nurses were in danger of losing public sympathy if they take the militant stance they are proposing. Senator Norris also referred to the Shengen Convention and Dr. Carol Coulter's piece in *The Irish Times*, yesterday, as well as Mr. John Waters's contribution.

Senator Ulick Burke referred to the internal memorandum about the insurance company, which I believe we have all read, and the rather dubious methods they use to get information and to move in on clients making payments to members of the Garda Síochána. Senator Glynn wished both sides well in the nurses' dispute.

Senator Quinn raised the matter of the legislation governing competence standards for those who steer boats, which has not yet been implemented. I will make inquiries about that, since I understand it was to be implemented. The Senator also referred to the position of children following divorce proceedings involving their parents.

Senator Maurice Hayes said there was great public concern as regards the nurses' dispute and emphasised the need to get the negotiations restarted. He mentioned cross-Border travel and hailed today's development, as regards all-Ireland free travel for the elderly. It is a great move forward and a great step in cross-Border relationships. We travel up and they travel down. It is terrific. Senator Bannon said the rainbow coalition Government had introduced this initiative. It did not because it was only introduced yesterday.

Mr. Bannon: It was part of our policy document.

An Cathaoirleach: Senator Bannon must allow the Leader, without interruption, please.

Ms O'Rourke: We listened to Senator Bannon for quite a while but regardless of that, this Government introduced the measure, not the

rainbow coalition Government. However, we are very happy that we brought it in.

Mr. B. Hayes: The Oireachtas brought it in.

Mr. Bannon: The taxpayers pay, not Senator O'Rourke or Fianna Fáil.

Ms O'Rourke: It is a very good thing——

An Cathaoirleach: The Leader should not be trying to initiate a debate.

Ms O'Rourke: Do not be annoying him——

Mr. Bannon: The Leader's party hoodwinked the electorate for too long.

Mr. O'Toole: They shall have it in Mullingar and can travel to Athlone.

Ms O'Rourke: Yes they will, very soon. They will have it from the Dáil.

An Cathaoirleach: Order please, now.

Ms O'Rourke: It is a very good use of taxpayers' money, to allow people North and South to be able to travel.

An Cathaoirleach: Order, please.

Ms O'Rourke: That was Senator O'Toole, the Cathaoirleach will have to reprimand him.

Senator Bannon also referred to the Green Paper on pensions policy. There was an excellent debate in House last week and it was a pity the Senator had to miss it, on the——

Mr. Bannon: On a point of order, I was on important business at Athlone Institute of Technology, the opening of a very special event——

An Cathaoirleach: Senator O'Rourke should not be provoking interruptions from Senator Bannon.

Ms O'Rourke: I am not provoking him at all.

An Cathaoirleach: Senator O'Rourke is directing him.

Mr. Bannon: Senator O'Rourke was conspicuous by her absence from Athlone last week.

An Cathaoirleach: We must be serious and have regard for the dignity of the House.

Ms O'Rourke: Senator Leyden referred to the point Senator Ulick Burke had raised about a particular insurance company. The Senator said PIAB had been properly set up by the State. An eminent Member is on the board, doing the business of the nation.

Senator Henry raised the issue of the shortage of midwives and claimed the nursing profession is leaking members. Graduates are no sooner qualified than they are going to work abroad or in many cases qualifying abroad.

Senator Ó Murchú raised the humanitarian issue of the 97-year old woman who had to leave her home to be looked after because of a particular incident in her son's life. I commend Senator Ó Murchú's feelings.

Senator Browne sought a debate on family matters and supports for families. The rural transport initiative, which I introduced, will be extended nationwide. A community welfare officer would assist the case referred to by Senator Browne with taxi vouchers. Community welfare officers are good and flexible.

Mr. Browne: There is a problem for isolated rural dwellers to avail of the free travel scheme.

Ms O'Rourke: Yes, but the community welfare officer would deal with that.

Senator Cummins asked if the defamation Bill will be resurrected, exhumed or buried. It will not be dealt with until after Easter.

Mr. B. Hayes: The Leader can sing that.

Order of Business agreed to.

Treaty of Amsterdam: Motion.

Ms O'Rourke: I move:

> That the proposal that Seanad Éireann approves the exercise by the State of the option or discretion provided by Article 1.11 of the Treaty of Amsterdam to take part in the adoption of the following proposed measure
>
> > a proposal for a Council Decision on the establishment, operation and use of the second generation Schengen information system (SIS II),
>
> a copy of which proposed measure was laid before Seanad Éireann on 12th March 2007, be referred to the Joint Committee on Justice, Equality, Defence and Women's Rights in accordance with paragraph (1) (Seanad) of the Orders of Reference of that Committee, which, not later than 5th April 2007, shall send a message to the Seanad in the manner prescribed in Standing Order 67, and Standing Order 69(2) shall accordingly apply."

Question put and agreed to.

Medical Practitioners Bill 2007: Second Stage.

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

Minister for Health and Children (Ms Harney): The Medical Practitioners Bill 2007 updates and modernises the regulation of medical practitioners by the Medical Council. It is acknowledged the current legislative framework, which is

[Ms Harney.]

almost 30 years old, needs to be revised. The Health and Social Care Professionals Act 2005 provided for the appointment of the new Health and Social Care Professionals Council, which recently held its first meeting. The Pharmacy Bill 2007 will modernise the regulation of pharmacists and I am ensuring that further legislation governing nurses and midwives will be on the legislative agenda in the near future.

The Medical Practitioners Bill is part of a set of legislation aimed at enhancing patient safety, which is at the heart of the health reform agenda, and the accountability of health professionals. The Bill has been the subject of extensive consultation and consideration. When I published the draft heads in 2006, I was pleased many organisations and individuals responded with comments on the proposals. A total of 58 submissions were received from members of the public, patient groups, individual doctors and their representative organisations, the third level sector, medical specialist training bodies, Departments, State agencies and other interests. In addition to that consultation process, the Medical Council and other bodies organised seminars to allow the public to debate and identify the key issues which were to be addressed.

Following a constructive and useful debate in the Dail, I am pleased to bring this long-awaited and much-needed legislation to the Seanad. The need to act decisively is more evident than ever following the publication of the reports of various health care inquiries, including the inquiry into events at Our Lady of Lourdes Hospital in Drogheda. The Bill is consistent with the Government's commitment, as outlined in the health strategy, to strengthen and expand the provisions for the statutory registration of health professionals, including doctors. If we are to maintain the trust of patients in the doctors who treat them, we need to demonstrate and maintain quality at all levels. Patients want to know the service they receive from doctors is based on the evidence of best practice and meets the highest standards. Improving quality involves implementing internationally recognised evidence-based guidelines and protocols and ensuring professionals commit to and engage in ongoing education and updating of skills. The maintenance of trust requires that deficiencies in practice are identified at the earliest possible stage, corrective actions are taken and future progress is monitored. If we are to put people first, we should ensure patients are given more influence and responsibility.

One of the priorities of this legislation is to strengthen and clarify accountability. In April 2006 the Department of Health and Children issued a Framework for Corporate and Financial Governance to all statutory bodies, including regulatory bodies, which operate under its aegis. The provisions of the legislation are in line with the Department's framework. The governance procedures and arrangements outlined in the Bill are accepted as normal by public bodies across the wider public sector. The laying before the Oireachtas of statements of strategy, business plans and annual reports will give the public an opportunity to see how the Medical Council is fulfilling its statutory delegated functions. Some argue these provisions increase the potential for ministerial or political interference in the workings of the council, but that is most certainly not the case. The provisions are about openness, accountability and responsibility which should be embraced by any statutory body undertaking public functions in a modern and democratic society.

I do not doubt doctors are working in a much more demanding environment than they previously did. While evidence-based guidelines, tighter professional standards and increased patient rights and expectations are welcome and necessary, they add to the demands faced by doctors. Such forms of accountability will be strengthened by these legislative proposals.

This legislation will ensure members of the public are guided, protected and informed in order that they can be confident that doctors are properly qualified, competent and fit to practise on an ongoing basis. Importantly, it will support doctors by allowing them to demonstrate the high standards they strive to maintain on an ongoing basis. It will increase the trust doctors have in their own profession and their continuing personal and professional competence.

I am conscious that in the modern world, the regulation of doctors, as with other professions, cannot be solely the remit of the profession itself with minimal input from patients and other professionals. There are many interested parties and stakeholders who have an important role to play in the regulation of the medical profession, including patients, employers and other caring professionals.

Education is key to quality medical practice, as is research. I have endeavoured to ensure the third level sector, as well as those representing the broader science and humanities areas, are represented. I have also included a representative from the Health Information and Quality Authority. The Medical Council's functions under the legislation will be significant in setting and monitoring standards and quality and this new membership will serve only to enhance that role. The council exists to regulate the medical profession, not to represent the interests of that profession or any constituent group within it. The public interest comes first and everything in the Bill, including the membership of the council, is designed with that in mind.

For the first time the legislation imposes a clear requirement on all medical practitioners to register with the Medical Council before engaging in the practice of medicine. The Bill provides for the designation of titles for the sole use of registered medical practitioners or particular classes of

registered medical practitioners on the basis of specific criteria. This will help to guide members of the public as to the level of competence of the medical practitioner responsible for their care.

A strong feature of this legislation is the new system of registration, with procedures which will be more streamlined for all. It includes a new, appropriately divided register. Temporary registration for doctors from outside the European Union will be discontinued, in order to allow for those doctors who have given such significant support to our health service to enjoy the same benefits of registration as their Irish and EU-qualified colleagues and peers. For the first time, doctors with suitable non-EU specialist qualifications will be able to gain direct access to specialist registration. Legal registration confers a professional privilege which demands the adoption of a consistent and ongoing high standard of professional conduct for each registered medical practitioner. We are all aware, however, that sometimes things go wrong. Therefore, a comprehensive fitness to practise structure which can act quickly and appropriately in such circumstances is required.

A central feature of the Bill is the adoption of a contemporary approach to fitness to practise issues, which provides for alternatives to the existing complex legal process of a fitness to practise inquiry. A mediation process for less serious complaints by agreement of the parties concerned is provided for. The Bill also includes a means for a complaint to be referred to the statutory complaints process established under the Health Act 2004, or to another body or authority, or for the referral of a matter to competence assurance procedures.

During the years it has been of significant concern that fitness to practise procedures are conducted behind closed doors and that the Medical Council is precluded by the existing legislation from disclosing any details regarding the conduct of inquiries. Arising from these concerns, I have decided that fitness to practise inquiries will be generally held in public. To allow for individual situations where this may not be appropriate, provision is included for the fitness to practise committee to decide to hold in private all or part of an inquiry, depending on the circumstances. In addition, the Bill now specifically provides that the council may, if it is in the public interest, publish the transcript of an inquiry. However, I am also concerned that we should demonstrate our commitment to support medical practitioners. With that in mind, I have ensured that a new health committee is provided to assist individual doctors with health issues.

The support of doctors and the protection of patients also require the modernisation of medical education and training processes. The overall approach is consistent with the broad thrust of the recommendations of the Fottrell and Buttimer reports on medical education and training at basic and specialist level. The Health Service Executive will assume a significant role in the development and co-ordination of medical education and training, in co-operation with the Medical Council and the medical specialist training bodies. However, I consider it important that the Medical Council's role in education and training has been significantly redrafted to provide more clarity on the requirement to set standards and develop guidelines to assist all. It should be clear to all parties that the Medical Council's role is about standards, guidelines and quality in education and training, while the HSE will have a more facilitative, co-ordinating role.

This country has bitter experience of what can happen when appropriate systems and supports for the maintenance of ongoing competence and high standards in medical practice are absent. Isolation of medical practitioners, even when working in a hospital setting, can lead to outmoded and outdated practice being perpetuated. The Lourdes Hospital Inquiry brought such matters into sharp focus. I am determined that we will learn and move on from these matters and as a result Judge Harding-Clarke's recommendations have had a strong influence on the drafting of this legislation. Her recommendations for the reform of education and training and ongoing competence assurance structures have been studied and will be implemented in a number of ways. While we can never guarantee that mistakes will not happen again, this legislation provides an important opportunity to learn from the past and put in place necessary elements to limit the impact of mistakes in the future. I consider it significant and imperative that all employers of medical practitioners, not least the HSE, have been given responsibilities with regard to the maintenance of the professional competence of medical practitioners.

The Medical Council will have a leadership role in ensuring doctors comply with what is a new legal statutory requirement for them to maintain their professional competence on an ongoing basis. This will require much commitment from all parties, individual doctors and the teams within which they work, their employers, the medical specialist training bodies and the Medical Council as the regulating competent authority of the profession.

I have ensured the Bill contains provisions which will allow funding for the administration of competence assurance structures and other matters to be provided for the Medical Council. While the Council will continue to be funded in the main by the medical profession through the payment of registration fees, I recognise that the State must also share the burden of the costs involved in such issues. I consider that these costs will be offset in this case by the benefits of the quality assurance of the competence of medical practitioners.

Given the importance of this legislation, I take this opportunity to highlight some key elements of the new system of regulation. In Part 2, section

[Ms Harney.]

6 sets out, for the first time, a statutory objective of the Medical Council, which is "to protect the public by promoting and better ensuring high standards of professional conduct and professional education, training and competence among registered medical practitioners".

Section 7 outlines in clear terms the functions of the council which relate to the registration of medical practitioners, the regulation of their education and training at all levels and matters relating to the recognition of qualifications of medical practitioners. The council's functions also include the setting of standards of practice, including advertising, and all matters of ethical guidance for medical practitioners, the handling of complaints and inquiries relating to the conduct of medical practitioners and proactively advising the public on all matters of general interest relating to the functions of the council, its area of expertise and the practice of medicine.

Section 9 provides for the Minister to give general policy directions to the council concerning its functions but it is important to emphasise this standard common provision specifically excludes matters relating to ethical guidance, complaints, inquiries and sanctions. In addition, the provisions of this section make it clear that any policy directions cannot prevent the council from, or limit the council in, performing its functions.

The Medical Council, as a statutory body established in 1978, cannot and does not operate in a completely independent or autonomous way despite the views expressed by some. It is important that it has regard to public policy, particularly in regard to areas such as medical education and training, in which it plays such an important role, along with a range of other stakeholders. Section 11 outlines the council's power to make rules. Rules will be subject to publication in draft form for public comment and all rules of the council must be laid before the Houses of the Oireachtas.

Part 3 provides for the council to prepare a statement of strategy, an annual business plan and an annual report on its activities. A modern public body with powers and responsibilities delegated to it must demonstrate how it plans to undertake its statutory functions and account for its progress and achievements in tis regard.

Part 4 includes provisions for the membership, committees and staff of the Medical Council. Section 17 outlines the membership of the Medical Council, which shall continue to consist of 25 members. As I have consistently stated, it is my belief that public confidence in the Medical Council requires that a majority of its members should not be doctors. These members will represent a wide variety of interests and experience. However, I have made it clear that although all members of the Medical Council will receive an appointment order from the Minister in order that they are all appointed on an equal basis, the Minister may not refuse to appoint an individual nominated or elected to serve.

Section 20 outlines the council's power to establish committees to perform any of its functions and provides that persons who are not members of the council may be included in the membership of any of the council's committees. This will allow all committees of the council to co-opt additional expertise, both medical and non-medical, as required. The various sections in Part 5 deal with the accounts and finances of the Medical Council.

Part 6 is concerned with a new modern system of registration of medical practitioners. Medical practitioners who wish to practise medicine in the State must be registered unless acting lawfully in another professional capacity. Sections 39 and 40 provide for the designation of titles which are reserved for use by certain medical practitioners. Offences and significant penalties for breaches of registration requirements are included in this Part of the Bill. Section 43 establishes the register of medical practitioners to consist of four divisions, namely, the general division, the specialist division, the trainee specialist division and the visiting EEA practitioners division. Provisions are included to allow doctors who hold refugee status and who have had difficulties in the past providing the necessary documentation to prove they are in good standing to become registered and to work as doctors in this country. I am pleased medical practitioners with suitable non-EU specialist qualifications will, for the first time, be able to gain direct access to specialist registration.

Section 50 concerns the transposition of relevant articles of Directive 2005/36/EC and relates to temporary and occasional provision of medical services by medical practitioners who are already lawfully registered or legally established in another member state.

Part 7 relates to complaints regarding medical practitioners and the procedures for the handling of complaints. The sections outline the expanded grounds for complaint, what actions the new preliminary procedings committee can and must take and includes new and innovative provisions governing mediation, referral to other authorities and keeping the complainant informed.

Part 8 relates to procedures to be followed by the fitness to practise committee in conducting inquiries, once a *prima facie* case has been established. The fitness to practise committee must have a majority of persons who are not medical practitioners. It covers the conduct of the hearing which generally will be in public. Part 9 relates to the imposition of sanctions by the Medical Council following a finding against a medical practitioner. The role of the High Court in the confirmation of sanctions imposed is maintained and provision is made for rights of appeal.

Part 10 provides for the roles of the Medical Council and the Health Service Executive with regard to the education and training of medical students, interns and medical practitioners under-

taking specialist medical training. The provisions of this Part are influenced by the recommendations of the Fottrell and Buttimer reports on medical education and training. It is clear that medical education and training must be undertaken in partnership by the various stakeholders and this Part emphasises that requirement for co-operation and consultation.

Following the dissolution of the postgraduate medical and dental board under Part 12, the HSE will now be responsible for the co-ordination and development, including funding matters, of medical and dental specialist education and training.

The education and training role of the Medical Council was outlined in a minimalist fashion under the Medical Practitioners Act 1978. Sections 87 and 88 now outline in clear terms the role of the council in setting standards and guidelines on medical education and training and monitoring adherence to those guidelines. The council will continue to be the body which inspects and approves medical training programmes and institutions at basic, intern and specialist level and to approve medical qualifications. The Medical Council will also continue to act as the competent authority for the recognition of EU medical qualifications.

Part 11 is new to the system of regulation of medical practitioners as it outlines new requirements for the maintenance of professional competence of registered medical practitioners. The Medical Council, the HSE and other employers and individual medical practitioners are given statutory responsibilities by this part. An appropriate link to fitness to practise procedures is also included.

Part 13 provides for a number of miscellaneous matters, including a power for the Medical Council to investigate unregistered persons and new provisions regarding licensing for the practice of anatomy.

As I said at the outset, the Bill marks a further significant step in the process of strengthening and expanding provisions for the statutory registration of health professionals as set out in the health strategy. It is further confirmation of the Government's commitment to the delivery of a reformed health service which has as its core objective the maximisation of the level and quality of care provided to patients in the years ahead. Protecting patients and supporting doctors is at the heart of the policy behind this legislation and I urge Members to support the principles it outlines.

I commend the Bill to the House.

Dr. Henry: I welcome the Minister. This is an important Bill not only for the public but also for members of my profession. As the Minister stated, the protection of the public is given prime importance in the Bill, but in regulating the medical profession it is also important to ensure it has confidence in the way it is being regulated.

As the Minister is aware, there has been much criticism of the legislation and she has entertained a considerable amount of it since the heads of the Bill were published six months ago, for which I am very grateful. Like other Members, I am still hearing criticism of it.

The changes to the way the registers are to be set up is one of the most important aspects of the Bill because the registers will show whether people are doctors, trainees, specialists and so on. In the past people could claim to be specialists without having any specialist training and I am glad that has been altered.

I welcome the changes in regard to practitioners from outside the country, particularly doctors with refugee status who, in many cases, find it impossible to get letters of good standing from the countries in which they were registered. It is to be welcomed that cognisance is being taken of offences committed and judgments against doctors in other countries because this has been a cause of great concern not just to members of the public but also to members of the medical profession.

The Minister decided a long time ago that the various professional bodies would be supervised by councils with a lay majority. I have no great problem with this proposal but it will mean a small number of medical practitioners on the council. Even if people are co-opted onto the various committees, there will be inordinate delays as such people are only permitted to sit on one committee at a time.

Senator Feeney served on the Medical Council and will be aware that one of the main complaints about the fitness to practise committees of the current Medical Council was the inordinate delay in bringing forward complaints. I doubt if this situation will be much helped by having such a small number of people on the council.

The Minister is correct in stating that she is not appointing and dismissing the whole council and very strict rules are in place. Only five people will be appointed by the Minister and there is always the concern that these will be political appointees such as friends because this Minister will not always be the office holder, even though we may have her for another few years. Future Ministers might be more prone to making political appointments. I refer to Deputy Boyle's Bill which he has just published in which he proposes various vetting criteria for people who are being nominated for membership of statutory bodies.

I am pleased with the Minister's proposals for the establishment of committees. I was delighted that she has brought mediation into the picture. This is also a part of the Pharmacy Bill and it is a good idea. It is often the case that once the situation is explained and apologies are extended, if that is what is required, it is not necessary to bring the complaints procedure any further.

The Minister suggests that the fitness to practise committees dealing with complaints should be held in public. I expressed my concerns about

[Dr. Henry.]

this proposal during discussion of the Pharmacy Bill and I and other doctors are of the opinion that if public hearings are proposed, it will prevent many people from coming forward with complaints, especially complaints which may be of a sexual nature. I have urged people in two or three cases to complain about the treatment they received because I thought the type of examination they had been given was unnecessary for the procedure for which they were being assessed, but I could not persuade them to go forward even when the complaints proceedings were to be held in private.

I have had interesting correspondence with a woman general practitioner who has been prominent in the area of medical ethics and she has expressed the same concerns. The Minister is aware of complaints against a medical practitioner who had videotaped women whom he was examining. This man went as far as the courts to try to have the proceedings held in public. In even the most atrocious cases of rape people are not inclined to come forward. Those who should complain do not do so.

All the committees except the fitness to practise committees are to have a membership with a majority of doctors. The Minister will need to recruit a fair few doctors. I do not think anyone could object to having a lay majority on the fitness to practise committee because the lay members have been far more lenient and forgiving than peers of the person against whom a complaint is made. The standard of proof required is that of reasonable doubt in the fitness to practise procedure. Will this continue to be the standard because the Bill does not state whether it will? The new council will make its own rules but it is possible that the new council will want to change the standard to one of the balance of probability which requires much less evidence against the person. It might be preferable to follow the courts and have the standard of proof of reasonable doubt but the Minister has not made these suggestions in her legislation. This will be a decision for the council but the rules will be considered by the Minister.

The Minister referred to the Neary case both in this House and in other fora and commented on the reticence of those who worked with Mr. Neary in Our Lady of Lourdes Hospital in Drogheda to come forward and make complaints about the serious malpractice. One of the defences for that dreadful malpractice of Caesarian sections was that the man was doing what were described as compassionate hysterectomies done to sterilise a woman rather than sterilisation by means of tubal ligation which was not allowed within the ethos of Our Lady of Lourdes Hospital. Even after reading Judge Harding Clark's report, I am not sure about the composition of the hospital board or who or what body decided on the rules for the hospital. It is certain these rules were subscribed to by those who worked there and this led to serious consequences for many young women who had unnecessary hysterectomies. That anyone could even carry out such a serious procedure and afterwards explain it was carried out because tubal ligation was forbidden, is shocking.

Those obstetricians who supported Mr. Neary and the court cases to date show that what were described as compassionate hysterectomies were being carried out in other places besides Our Lady of Lourdes Hospital. Such hospitals had lay boards so it was not the medical profession which was laying down these ethics. I would be very careful about considering that lay members would be somehow more righteous than members of the medical profession.

I remember one hospital in particular where the number of hysterectomies carried out to cure menorrhagia, excessive bleeding at the menses, would mean that half the women of Ireland must have been exsanguinating. This practice may be ongoing because there are hospitals where it is difficult if not impossible to carry out sterilisations, even though this is a perfectly legal procedure. These hospitals have lay boards and it must be questioned whether compassionate hysterectomies are still being carried out. I refer to the old days when symphisiotomies were carried out and when Caesarian sections were being carried out, the obstetrician would be inclined to perform a sterilisation or the woman might resort to contraception to avoid another Caesarian section. I do not believe the medical profession is incapable of being its own ethical watchdog. I understand this is the only country which will have a lay majority on its professional regulatory body.

All Members and the Minister have received letters implying that abortion or embryonic research could be introduced by appointees to the Medical Council. Some of them had some kind words to say about me and indicated that I was their last hope in terms of having this stopped. However, the latter is not true because the Minister made it clear in the legislation that she or her successors will not give directions with regard to doctors' ethics, performance, etc. I do not know who decided that this would be a good reason for not having a lay majority on the board. As far as I am concerned, it has nothing to do with it.

4 o'clock

I am much more concerned about the relationship between the council and the Health Service Executive in respect of education and training. I am also concerned about the council's position *vis-à-vis* the promotion of Government policy. If medical practitioners are of the view that a policy is wrong, they have an ethical obligation to say that this is the case. It is difficult to see how anyone could state that there might be something wrong with their doing so.

On the relationship between the council and the Health Service Executive in respect of education and training, the legislation does not indi-

cate in clear terms how they are supposed to work together. The Health Service Executive will be obliged to service the health service, as well as ensuring that education and training take place. If push comes to shove, the services will have to be given priority. As a result, there may be a diminution of education at trainee level. There may, in particular, be a diminution if there is any difficulty regarding funding. Provision should have been made in the legislation in respect of funding for study leave, training courses, etc., for those who will be in training.

There is nothing in place to follow the Postgraduate Medical and Dental Board. The universities that have medical schools — of which there are going to be even more throughout the country — will only be represented by two people on the main council. I would have preferred it if the bodies that provide training and postgraduate education had been dealt with under the legislation and given representation on some sort of committee. Specific provision should be made in this regard, rather than merely leaving matters to the council. The bodies, and places where training will take place, will be inspected. However, the inspectorate is only loosely described and I would have preferred if a more structured provision had been brought forward in this regard.

When the Postgraduate Medical and Dental Board is disbanded, its assets will be taken into the great maw of the Health Service Executive rather than being ringfenced in order that there might be something in place as regards education and training going forward. This is an extremely important area and for as long as I can remember there have been difficulties with it in respect of money.

In the context of competence assurance, I am delighted that assessments will be carried out every five years. From where will the money regarding such assessments, etc., come? Those at the Health Service Executive will have to have their wits about them in order to assure that they will be able to facilitate the maintenance of professional competence because direct provision in that regard is not made in the Bill.

I am concerned with regard to the position in respect of appeals against judgments handed down by the fitness to practise committee. There will be no appeal against anything less than "an advice or admonishment, or a censure, in writing". When the Select Committee on Health and Children debated Committee Stage of the Bill, the Minister informed Deputy McManus that this is because of a case before the courts. This brings us back to the Neary case once again. I fail to understand how legislation relating to the future can affect a court case being judged on the basis of existing legislation. The Minister indicated to the select committee that she had received legal advice on this matter and is awaiting the determination of the case in question. She also indicated that it will have an impact on other legislation. When replying, perhaps the Minister will expand on the explanation she provided to Deputy McManus. It is a matter of extreme concerns that if a person is given a minor admonition or advice, he or she will not be able to appeal against these or in respect of the facts brought forward in the case.

The legislation has been long awaited. I hope it will be as useful as the Minister hopes it will be.

Ms Feeney: I welcome the Minister for the debate on this groundbreaking legislation. I am delighted this Bill is being taken.

I am unusual in that I am a former member of the Medical Council. I sat on the council from 1999 to 2004 and on each occasion I entered Lynn House in Rathmines during that period I was greeted by people screaming and wanting to know when the Medical Practitioners Bill would be introduced. I congratulate the Minister, Deputy Harney, on the leadership she has shown in bringing forward the legislation. I have to smile at Senator Henry because many were the days on which we asked each other if we would see the Bill being introduced. We thought that we would never do so. When attending meetings at Lynn House during the period to which I refer, I never thought I would be a Member of the Seanad when the legislation emerged.

I have never been lobbied so much on an item of legislation as I have been in respect of this Bill. Some of the lobbying to which I was subjected was good, while some of it was terrifying. I received items of mail in which I was called horrible names and had terrible things written about me. This frightened the living daylights out of me. However, I decided to put them to one side in the hope that nothing further would happen.

I may be the only person in the House who welcomes the fact that there will be a lay majority on the board. I congratulate the Minister in that regard. I recall that she took similar action when she was Minister for Enterprise, Trade and Employment. I spoke to an accountant at the weekend who informed me that there is a lay majority on the board of his profession's regulatory body. He stated that when this was introduced, those in his profession were not too enamoured of the Minister's actions. However, the profession has turned itself around and those in it are now delighted with the lay majority. The Incorporated Law Society of Ireland introduced a lay majority on its own initiative. I have no difficulty with the putting in place of a lay majority and, in fact, I welcome this development.

When I was a member of the council, there were 25 members on the board — 21 medics and four were lay people. Of the four lay people, one was a GP. The latter spent more time dealing with Medical Council issues than he devoted to his practice because he was so committed to upholding the role of the lay person. The individual in question took that role very seriously.

I have the height of respect for Senator Henry, particularly in the context of what she has to say

[Ms Feeney.]

on medical issues. It is because of the some of the points she made that I wish to outline some of the experiences I had when serving as a member of the Medical Council. The Senator stated that not having a majority of medical practitioners on the board would be a matter of concern. I do not believe that this will be the case. When I served on the council, it was difficult to encourage members, particularly doctors, to sit on fitness to practise committees. Lay people were always putting their names forward in this regard. I must have been involved in 80% of the fitness to practise cases heard during my five years on the council.

In the latter half of my time with the Medical Council, I chaired the ethics committee. When I first became a member of the council, there was no question but that a lay member could not chair any of its committees. After two and a half years of service, I had obviously proved myself and I was approached by the doctors and asked if I would allow my name to go forward for election as chair of the ethics committee. I reluctantly said "Yes" and was opposed by only two doctors. When I won that vote by double numbers, the sky did not fall and the ethical standard did not drop. I was a safe pair of hands who carried out my duties as well as any doctor. I make these points to show that a lay majority will not be bad for the council.

It was difficult at times to find a quorum of doctors at meetings of the education, ethics and fitness to practise committees. I say this not as a criticism but to acknowledge that the doctors were very busy in their practices. One of the reasons for their inability to attend meetings was that their work for the Medical Council was additional to the responsibilities of their practices.

With regard to the Neary case, the sterilisation of women and the fact that the board of the hospital had a lay majority, I am very familiar with the issues because I sat on the board at the time and none of the 13 cases I investigated involved sterilisation. The women were robbed of their wombs. Sterilisation was an issue from another world and a different decade to the one with which we dealt. From my understanding of the case, Dr. Neary's colleagues turned a blind eye. The pathologist and the anaesthetist did nothing except write a report. I will not use all my time on a discussion of Dr. Neary but if I were a pathologist who received a diagnosis from a doctor that a fungus or other defect necessitated the removal of a uterus but did not find the problem, I might write a report and say no more. If I received a second diagnosis, bells would start ringing in my head. However, if I received 48 diagnoses, I would be breaking down every door in the hospital to see the man directly rather than send him a report because I would be afraid for my practice. The same would apply in the case of the anaesthetist.

I am not sure whether it is fair to compare this Bill's provisions with a lay majority on the board of a hospital run by nuns, clergy and medics at a time when lay members were too afraid to speak out. I make my argument because I hold Senator Henry in high regard. She is a stalwart on medical issues in this House and has a finely balanced mind which I respect.

This Bill will have ground-breaking effects on the medical profession. It is broadly welcomed by the profession and, while certain issues remain to be worked out, I am sure they will addressed on Committee Stage. I was glad to see that the Bill passed through the Dáil without any major hiccups. The council will continue to carry the responsibilities it did when I served on it. I welcome the Minister's clear explanation of the Bill's main functions in protecting the public and regulating the profession.

Education and training is an important area for the Medical Council, so I was glad to read in an article by the Minister in today's issue of *The Irish Times* that she would not and could not interfere with the setting of standards in medical education and training. The Bill is drafted to prevent any Minister from interfering in that area. The Minister's article was written in response to an article by Dr. Wann published in a previous edition of *The Irish Times* which suggested that a Minister could use the Bill to unleash unqualified doctors on patients. The profession is indulging in a degree of disingenuous scaremongering in that regard.

I think this a great Bill, although I probably would not know as much about it if I had not had the benefit of sitting on the Medical Council. The council was one of the best educational experiences I have had. It certainly gave me an experience which knew no bounds and I remain in awe of what I learned during my time there. I will, however, speak tomorrow about the exclusion of local authority members. I was not a local authority member but I was often referred to in the Medical Council as a political hack, as the Taoiseach's eyes and ears or as the yes woman of the Minister for Finance. However, I made my mark and people know me best as Ger Feeney who served on the Medical Council.

When I was appointed to the council, people would ask me to explain it to them. I even asked myself the same question when I was appointed. The public does not really understand the role of the council and I would go so far as to say that the medical profession regards it as little more than the body which takes registration fees and strikes doctors off when they get into trouble. Therefore, I am glad to learn there will be better communications with the public. If a member of the public feels he or she has a grievance against a doctor, it takes him or her a lot to put pen to paper to make a complaint. I can say, with my hand on my heart, that any complaint received by the Medical Council while I served on it was dealt with by the doctors and lay members in a fair

way. There were times when I would question whether a *prima facie* case could be made, even though I always put myself in the position of the patient, but when I might have put up my hand to say there was no case to answer, the doctors would have found one.

Fitness to practise is the area of the council's work with which most people are familiar, mainly because of recent high profile cases. I am glad that section 7 provides for the health committee, which was not established until three or four years ago. Many of the doctors who came before the fitness to practise committee did so on health grounds. Members of the public do not expect alcohol or drug addictions to affect their livelihoods if they seek treatment but if a doctor suffers an addiction or a mental health problem, all hell breaks loose and he or she is brought before the fitness to practise committee. During my time on the council, we set up a health committee and I am glad to say that I continue to sit on that committee to represent the public interest. It is the best committee of the council because it deals with doctors in a humane manner. The worst thing to happen to any of us is to undergo an inquiry by our peers in whatever profession we practise. Even if it is decided there is no case to answer, the stigma remains of being inquired into. That is particularly relevant in Ireland, where we say there is no smoke without fire.

We had to stop recruiting for the health committee because too many people offered to sit on it. A wide range of external expertise will become available if there are insufficient medical professionals on the council. I am also delighted to see provision for competence assurance, peer review and clinical audits. To a certain extent, the doctors who appeared before the fitness to practise committee were victims of their environment because they did not have competence assurance. I have spoken at several medical conferences, where I gave the analogy of a pilot who never upgraded his or her skills. I do not think anybody would feel happy to sit in an aircraft flown by such a pilot in the knowledge that he or she had received no further training since receiving a pilot's licence. I will have a great deal more to state tomorrow. I wish the Minister well with the Bill and I look forward to Committee Stage.

Mr. Browne: I welcome the Minister of State, Deputy Power, to the House. I also welcome the Bill which is ultimately about ensuring adherence to proper medical practices. Unfortunately, as long as human beings are involved in the health system the potential for another case similar to that of Dr. Neary will exist. What shocked me about the Dr. Neary case was not that one person made a mistake and patients were the victims of his malpractice but that he was cleared by his peers afterwards.

As Senator Feeney stated, it takes a great deal of courage and bravery for a patient to query not to mind make a complaint against a medical person and people are slow to do so. They must have been shattered when Dr. Neary's three colleagues gave him the all-clear. Thankfully, it was corrected afterwards and perhaps it resulted in this Bill.

It is a difficult area and I am conscious that one of my late constituents led the campaign to highlight the illegal retention of children's organs. Recently, we had a tragic case where a person died in Ireland and was sent for burial in England where another post-mortem was conducted in which an organ not belonging to the person was discovered in the body. Things can go wrong beyond what any of us can imagine.

Recently, the son of a friend of mine was quite ill and brought to a medical centre where he was wrongly diagnosed. Thanks to my friend's maternal instincts she sought a second opinion and saved her son from being gravely ill afterwards. I do not envy the job of a doctor in having to decide whether a person with chest pains has indigestion or is on the verge of a heart attack. I am sure none of us in the House would like that job.

I welcome the lay majority, a matter which has received much airing. I speak as a former primary school teacher who worked in a school with a board of management made up of the parish priest, teachers and parents. People on the board may also have been parents of former pupils or from the parish. It works well in the Minister of State's constituency in Kildare, Sligo, Carlow, and the constituency of the Acting Chairman, Senator Ulick Burke, in Galway. I do not see a problem with it. If the right people are on the board it can make a great difference.

I will not be a hypocrite. Every day in the Oireachtas I complain about the rate of MRSA in hospitals. I am delighted to be involved with the group MRSA and Families. I attended its first public meeting which was held in Kilkenny and have been with it ever since. I travelled abroad with it and this group of lay people has done major work in raising awareness about the issue of MRSA in our hospitals. If it were up to the medical profession, the issue would not receive the airing it does. At times it is no harm for any of us to look outside the box.

Senator Feeney referred lobbying. That is the nature of politics now. Aristotle stated that it is through the clash and collision of ideas that matters get sorted and that is how it should be. Having stated that, I do not agree with many of the representations made to me by certain people, particularly with regard to the lay majority. To be fair to the Minister for Health and Children, she addressed the matter in her speech here and in other fora.

In terms of fitness to practise, we must strike a balance between protecting the good name of a medical practitioner and acknowledging a wrong done to a patient while under his or her care. It is a difficult area. Recently, the Minister mentioned 10% of deaths could be due to negligence in

[Mr. Browne.]

hospitals such as wrongly prescribing or administering drugs or other procedures. I am not a great fan of the television programme "ER". I watch it every so often. Genuinely I do not understand how anyone could work in the conditions many people in the Irish health services do. They are under huge pressure and must make vital decisions in life and death situations.

A great deal of lobbying was done on this Bill and I kept all of the correspondence I received. Some of it was sent at the beginning of the year and I know a great deal of consultation took place on the Bill. I will discuss some of the concerns raised, and I assume many of them were addressed either before the Bill was published or when it went through the Dáil.

This morning, I received a letter from the College of Anaesthetists expressing concern about the mechanism for the arbitrary removal from office of individual council members and the replacement of the entire council. With regard to council membership, it is concerned that representation from all 13 training bodies is a minimum requirement for the council to perform its duties adequately. With regard to funding, the point was made that the Bill imposes significant additional duties and responsibilities on the Medical Council and the College of Anaesthetists feels it is imperative to provide the financial resources necessary for the Medical Council to perform its duties to the optimum level.

I was also contacted by numerous GPs including some in my constituency. They are concerned about the ministerial power to control the medical council in terms of policy and membership. They point out correctly the council's original responsibility was as an independent watchdog to safeguard the interests of patients. They feel the Bill will remove its ability to be independent of the Minister and the Department of Health and Children. Will the Minister of State address these concerns?

The Irish Medical Organisation which represents doctors would like a slight majority of medical practitioners on the Medical Council. It wrote to us in February stating that the World Medical Association stated no evidence exists that governments or lay bodies do the work any better than self-regulatory bodies. It claimed ample evidence of the opposite existed. I do not necessarily agree with this view but it is worth raising the issue for clarification by the Minister of State.

The Irish Medical Organisation is also concerned about the democratic deficit in representation of medical specialists and urges that the nominated representatives of psychiatrists come from the Irish College of Psychiatrists and not from the Irish Psychiatric Training Committee. Perhaps this matter was dealt with in the Dáil.

The issue of hearings in public is raised time and time again when we debate health Bills. A fine balance must be struck and I am encouraged by the reference to this matter in the Minister's speech. The option to hold it in private is still reserved both from the patient's point of view and that of the medical practitioner who is in the dock.

I was also lobbied by the Postgraduate Medical and Dental Board which is concerned about the lack of an explicit requirement for the HSE to put in place robust national medical educational structures with ring-fenced funding independent of service pressures. It expressed concern that much of the voluntary good will involvement in self-regulation and training may be lost in the process.

Another person who lobbied me was concerned that if a hospital's training accreditation is withdrawn it can no longer employ non-consultant hospital doctors which could immediately impact on service delivery. The point was also made that although the council's primary and independent role is to protect the public it could now be an extension of the Department of Health and Children, the Minister and the HSE. In such a case a conflict of interest could arise. The introduction of the HSE to the council and the need to meet service demands by the HSE raises a very obvious conflict of interest. These concerns were raised by a general practitioner. We clearly need to separate the role of the Irish Medical Council from the HSE and the Department of Health and Children, and we should ensure patient safety is paramount at all times.

I welcome the Bill and I have taken the opportunity to raise some of the concerns from many people who have lobbied Members on this Bill. I would appreciate it if the Minister of State, in concluding, could indicate whether those concerns were addressed in the Dáil debate, and if they were not, the measures taken in the Bill which make such concerns unfounded.

Mr. Glynn: I welcome the Minister of State to the House and I welcome this legislation. It is true the medical profession plays a pivotal role in a very important area of life, namely, public health. It is important people in this profession have the optimum training and the best expertise that can be acquired, and this Bill is designed to facilitate just that. It may need to be tweaked, but in the main, it emphasises those areas needing attention. Given that it is the first major legislation of this nature for almost 30 years, it is important we debate the matter on Second Stage in the House.

There have been some amendments to the 1978 Act, but they have been piecemeal. This is the first legislation relating to medical practitioners since that 1978 Act. In general, the Medical Practitioners Bill 2007 provides for an enhanced and modern system of regulation of the medical profession in Ireland. It correctly puts public interest first and modernises regulation of the medical profession. The main objective of the new legislation is to provide for a modern, efficient, trans-

parent and accountable system for the regulation of the medical profession, which will satisfy the public and the profession that all medical practitioners are appropriately qualified and competent to practise in a safe manner on an ongoing basis.

Regrettably we have had recent examples — I do not need to refer to them because they are in the public arena — where certain medical practices left much to be desired. This Bill is a significant step in our drive towards assuring standards of patient safety and has been approved as a major reform to support and increase public confidence in medical practice in a structured and sustained manner for the decades ahead. As I have stated, the Medical Practitioners Act dates back 30 years. It is clear that in the interest of patients and doctors alike, a modern, accountable and efficient system of regulation is required.

There have been some amendments to the 1978 Act, but this is the first time in 30 years we have engaged in a total review and modernisation of the statutory regulation of medical practitioners. At this stage, piecemeal change to the 1978 Act is not enough and this new Bill is required. The need for doctors to keep abreast of new developments, the rights of patients to be informed and the expectations of the public have greatly increased since the passage of the 1978 Act. I do not have to remind Members that 20 years ago, if somebody was going to hospital, half the parish would be around moaning, wailing, crying and wringing their hands. An ordinary person may now elect to go for certain medical procedures, including surgery, with nothing thought of it. We have come a long way in that time. The balance between self-regulation and public accountability needs to adjusted to reflect these requirements. It is explicit in this Bill that the purpose of the Medical Council is to safeguard the public interest. In the main, given the terms of reference to date, it has done just that.

The Bill contains many practical new measures towards this goal. For example, both patients and doctors will benefit from a modernised system of continuous competence assurance. Since the Medical Council will have the public interest as its primary goal and objective, its membership of 25 is designed to support just that. Only people with expertise will be elected to serve on the board and no one group will be in the position to exert any dominant interest. As is provided in the Bill, medical practitioners will not be in a majority. There is some disquiet about this point and there is no reason in stating otherwise. I have been contacted by a number of medical practitioners who feel this to be incorrect. It is a matter for debate, and as this process continues, I am sure there will be many comments on it.

These people will work with other people of standing and expertise to advance the interests of patients and the public at large. The fitness to practise committee will also have lay members as a majority, while the new health committee and education and training committee will have a majority of medical practitioners. The latter provision is sensible and practical. To meet today's standards of openness, fitness to practise hearings will normally be held in public unless the committee decides the public interest is best served otherwise. That provision is important and we may have further comments on this on Committee and Report Stages.

The Bill is the latest step in the reform of regulation of health professionals as outlined in the health strategy. It is consistent with the objectives set out in the strategy. We have already debated legislation governing pharmacists. Alongside the Health Bill 2006 and reinforcing standards and enforcement, this Bill demonstrates this Government's commitment to ensuring patient safety in legislation and regulation as well as to the enforcement area.

The Medical Council will continue to consist of 25 members but the balance between medical and non-medical representation has been altered significantly to include a majority of people who are not nominated by the medical profession. As I have stated, questions are being asked about this provision, although many members of the public would support such a position. We will see how the issue evolves in the fullness of time.

Modern governance and accountability arrangements applicable to other statutory bodies, particularly in the health and social care area, will now apply to the council. The Bill includes a statutory requirement for doctors to maintain professional competence on an ongoing basis and the Medical Council, the Health Service Executive and other employers will be required to facilitate this. These and other provisions were central recommendations contained in the Lourdes hospital inquiry report, and I do not have to remind the Acting Chairman or Members what that report was about.

The registration system for medical practitioners will be reformed so patients can be clear on the level of competence of their doctor. I hope steps will be taken so that some of the examples we have had over recent years will not be repeated. A medical specialist with appropriate qualifications and experience from outside the EU will now be able to gain direct entry to specialist registration. This is what I would term professional enrichment of the medical profession, which is a very important measure in the Bill. I am pleased it is included.

Fitness to practise provisions will be streamlined to include a preliminary screening process for complainants which can, if appropriate, be referred to other procedures such as the HSE complaints procedures or to the competence assurance system if required. Provision for mediation in appropriate circumstances is also included, which again is a very important provision.

A majority of people on the fitness to practise committee would not be medical practitioners

[Mr. Glynn.]

and fitness to practise inquiries will normally be held in public, unless it is considered not in the public interests to do so. The fitness to practise committee may decide, on application by the medical practitioner or a witness, including the complainant, to hold some or all of the inquiry in private, depending on the circumstances.

Clear responsibility on medical education and training are outlined for the Medical Council and the Health Service Executive, which takes over many of the responsibilities of the Postgraduate Medical and Dental Board, which is also being dissolved by this legislation. I hope this Bill will permanently consign to pasture certain people who have been struck off the register and who have evolved to another area of professional life called alternative medicine. Many examples have been given in this Chamber of such a practice, and I hope the Minister will rule with a heavy hand on the matter. An example near Mullingar of a dear and departed loved one's treatment at the hands of the people in question made for sorry listening.

The Health and Social Care Professionals Act 2005 will be complemented by forthcoming legislation regulating nurses, midwives and dentists. Let us be clear in both Chambers that only those who are appropriately qualified and registered will be able to practise in any profession. If chancers have lost their positions through malpractice or gross professional misconduct and are deemed to be unfit to practise by the medical council, their peers or so on, they should not practise under any guise. I hope the Minister of State will ensure this tenet is pursued to the letter of the law.

The legislative instruments will have a common thread of ensuring robust governance, clarity of procedures and formal systems of accountability. They are aimed at the protection of the patient while recognising the need for due process in respect of the handling of allegations and complaints against health care professionals. I welcome the Bill, which is long overdue. Working at the edges of existing legislation was not the way to go. Hence the advent of this Bill, which I commend to the House.

Ms Tuffy: I wish to share time with Senator Norris.

Acting Chairman (Mr. Leyden): How much time?

Mr. Norris: Five minutes.

Ms Tuffy: I might take less than ten minutes.

Acting Chairman: Is that agreed? Agreed.

Ms Tuffy: The Bill has welcome aspects, as did the Bill we discussed last week to establish the Health Information and Quality Authority and the office of the inspector. I cannot remember the exact title. Was it the "Office of the Inspector of Nursing Homes"?

Mr. Browne: The HIQA.

Ms Tuffy: Yes, but there was also an office of the inspector. A point I made during that debate is appropriate to this one, namely, that more needs to be done in terms of a patient's ability to have his or her grievances with the health system dealt with. There is a need for something along the lines of the proposal in the Labour-Fine Gael document, Patients First: An Agreed Agenda on a Patient Safety Authority, which calls for an independent safety authority with a strong legislative base and patient-focused remit. It would bring together the various regulatory bodies and work in conjunction with the other statutory or professional bodies with a regulatory function in the health system. A patient-focused avenue of complaint is needed.

When the Bill was discussed in the Dáil, Deputy McManus referred to Mary Rafferty's comments on the need for something along the lines of New Zealand's commissioner, who is not unlike an ombudsman in that one can make complaints to an independent body. The system, both as it stands and after the Minister's proposed reforms, involves many diverse bodies such as HIQA, the office of the inspector and the medical council, which deals with complaints about doctors' conduct. In a system without an overall one-stop-shop, such as a patient safety authority to which people can bring all of their complaints in the first instance, grievances or concerns can often fall between the gaps and people do not know where to bring their complaints. The patient safety authority's advantage lies in the fact that if a person complains to it in respect of a body with which it deals, it could refer the person to that body, explain the process or identify any gap in order to have it addressed. However, the Bill does not go that far.

When the Garda Ombudsman Commission begins operating, it will be an obvious place for people to go irrespective of their concerns. For example, they could ask for advice and make complaints. This is what the health system needs. People are confident with the ombudsman commission because it is independent. While lay members will be included on the council under the Bill, it will not be an independent avenue of complaint.

Like Senator Leyden, who raises the matter in the House frequently, Senator Feeney referred to section 17 on the council's membership. Section 17(7) states:

> A person is not eligible for appointment as a member of the Council, or of a committee, if the person is-
>
> (*a*) a member of either House of the Oireachtas or of the European Parliament,

(*b*) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(*c*) a member of a local authority.

Will the Minister of State explain in his response why this subsection is included? An explanation is a common provision in legislation. Has the subsection been included for the sake of it or due to a politically correct idea in the Civil Service that there is something wrong with politicians being on the board? Unless a reason is given, it is not something over which we as politicians should stand. I am not 100% sure about whether it was previously the case that politicians could not be members, but I see no reason for this provision. If it is justified, we should be able to make up our minds.

Mr. Norris: I thank Senator Tuffy for making this time available to me. I have an interest in the Bill for a number of reasons. As a matter of principle, I have always supported independent regulation for professions, including the news media and newspapers in particular, which lash out and ask others to be regulated independently, but are not keen on it for themselves.

While I support independence and it is clear that the medical council as constituted is a self-regulating body, the Minister's proposal is a ministerial takeover. That is worrying, particularly in light of this important legislation being railroaded through the House at the last minute. There is not the slightest chance of amendments from this House being accepted. It is an abrogation of our role, as the Seanad is supposed to be a refining and amending Chamber. Second Stage is to be concluded today while Committee Stage is scheduled for tomorrow and Report and Final Stages for Thursday. That schedule does not leave much time and there will be no amendments.

I will examine the situation and express my concern about the ministerial takeover of the medical council, which reflects the concerns of many people in the medical profession. The first question we must ask is what is the medical council for. It can be answered simply, namely, to ensure the quality of undergraduate and postgraduate medical education, the registration and disciplining of doctors and guidance on professional standards. Under the Bill, the Minister is taking unto herself powers to direct the council on matters of education and policy. She is also giving herself powers to appoint and direct — this is an important issue — the majority of the council and to remove appointees who fail to meet her approval. These provisions make the council amenable to political interference. I regard the current Minister as somebody of high ethical standards who would be very unlikely to try to interfere politically. This legislation is opening the door to such interference, however, which is very dangerous.

The Bill basically proposes to remove the autonomy of the Medical Council and the individual doctor. It will damage the ability of the council and of doctors to act as advocates for patients, in circumstances in which such advocacy is in conflict with the Minister's own ends. That is the problem. Like the Medical Council, doctors should be politically independent and should represent the interests of patients. After this legislation has been passed, it will be possible for politicians and their advisers to devise and construct health policy without having to tolerate the nuisance that might be presented by any serious appraisal of it by health professionals.

I would like to read from a statement on the Bill that has been published on its website by the Medical Council, which has to be taken reasonably seriously in this regard:

> The Bill as currently worded may end elements of the Medical Council's independence. As worded, it will allow a future Minister for Health to block Council activities that could be in the interests of patients (but) might give discomfort to officials at a local or national level.

In other words, it is possible that professionals — people with expert involvement, understanding and knowledge of this area — will be muzzled in the interests of political convenience. I also refer to a recent editorial in *Forum*, the journal of the Irish College of General Practitioners, which is a serious and responsible body. The college represents local doctors who meet the public all the time when they are contacted by those who are sick or in distress. The editorial stated:

> The unanimous warning from the profession is that the section on ministerial directions to Council heralds the holding of draconian power by future ministers to dictate policy to the Council. It is the view of the ICGP and the other training bodies as well as the IMO that this effectively abolishes self-regulation and the independence of the Council from political interference. This is deemed (to) be a serious step in the wrong direction for the protection of patients.

It is clear that similar concerns are outlined on the Medical Council's website and in an editorial in *Forum* which speaks on behalf of general practitioners.

It has been indicated to me that the Medical Council has previously lobbied the Minister actively to give it greater powers so it can regulate more effectively. The council felt that the tools with which it was provided were inadequate for the job. The Medical Practitioners Bill 2007 does not provide for such additional powers, however. It allows the Minister to assign functions to the council relating to education, training and the practice of medicine, as I have already said. The Minister is being given powers that might make it difficult for the Medical Council to

[Mr. Norris.]

be critical of the Government's health care policy, or its funding of medical education. An attempt is being made to muzzle what should be a strong professional voice on behalf of patients. There is a danger that State intrusion in the doctor-patient relationship might interfere with the duty of doctors to act as advocates on behalf of their patients. It is obvious that there will always be tension between the State and individual citizens in the provision of health care.

The Department and the Minister are in an unenviable position. I understand they might feel angst in having to allocate resources to one group of patients rather than another. They might not appreciate the criticism they are getting from certain voices. People such as me have been demanding the provision of further services for people with cystic fibrosis. It is scandalous that the life expectancy of people in Northern Ireland with cystic fibrosis is ten years more than that of their counterparts on this side of the Border. It is scandalous that the resources made available there are not provided here. I understand the Department of Health and Children has some difficulties in making resources available. It is terribly important that people with cystic fibrosis should be represented not only by people like me who are briefed by groups which are concerned about these matters but also by people within the medical profession who push the interests of their patients. I accept that there is tension in this respect, but it is healthy and democratic. It underlines the principle that the doctor works for the patient rather than for the health service, the Department or the Minister for Health and Children.

Some really tragic stories were told as part of a recent series of programmes on RTE television. We learned about some wonderful doctors who engage in passionate advocacy on behalf of their patients. We were told about a woman with no private health insurance who did not get treatment in time because she had to wait six months for her smear test to come back. It is shocking that a woman in a country with substantial resources was sentenced to death, in effect, for the crime of being poor. I do not believe that such criticism will be evident if the Medical Council comprises a row of Government appointees. I have consistently opposed the practice of jamming all kinds of boards with political appointees because it is wrong. There have been arguments in the past about the process whereby members of local authorities are appointed to the boards of third level institutions. When there was a big row about this sort of thing during the debate on the Trinity College Bill, we managed to confine the number of appointees to one. That person has been all right so far, as far as I know. Politicians are notoriously susceptible to the creeping disease of thinking they will be all right if they get one of their own boys on these boards. Such an approach is not in the best interests of the medical profession.

If the Medical Council is to be truly independent and to fulfil its duty to protect the public, it must be free of the Government's control and direct influence on policy. In particular, it must be free of any suggestion that it can be politically muzzled. I have considerable hesitation in endorsing this legislation for that reason. I cannot give it the welcome it was given by Senators from the other side of the House. The Minister of State, Deputy Seán Power, who is a decent man, is standing in for the Minister for Health and Children, Deputy Harney. Will he outline to her the concerns I have expressed? Other Senators may have similar concerns. I was not able to be present in the Chamber for Senator Henry's contribution. I assume she made some similar points, but I am not sure. I simply do not know.

Mr. S. Power: Senator Henry has a lot in common with Senator Norris.

Mr. Norris: That is good.

Mr. Browne: Senator Henry welcomed the Bill.

Mr. Norris: Did she really?

Mr. Browne: She did.

Mr. Norris: She does not have quite as much in common with me as the Minister of State thought.

Acting Chairman: If the Senator reads the transcript of this debate when it has been published, he might be in a better position.

Mr. Norris: I read nothing other than the reports of Seanad proceedings. I keep a constant supply in the lavatory. I find it extremely moving.

Acting Chairman: I am sure Senator Henry's speech will make nice bedside reading.

Mr. Norris: Excellent. I do not attend to such lower needs in the bed. Perhaps the Acting Chairman does, but that marks another significant cultural difference.

Mr. Lydon: I do not know who could argue with most of the aspirations of this excellent Bill, which represents a comprehensive updating of the legislation regulating medical practitioners, outlines an explicit definition of the role of the Medical Council, provides for increased lay membership of the council, puts new obligations on the council to adhere to the governance arrangements which apply to other statutory bodies, accelerates the relevant investigatory systems, streamlines the process of registration and prohibits unregistered medical practitioners. As the Minister for Health and Children, Deputy Harney, said, the Bill aims to enhance patient

safety, which is at the heart of the health care reform agenda. It will safeguard the accountability of health care professionals, which is excellent.

I have no problem with the appointment of a lay majority to the Medical Council. When I started to work in the hospitals sector many years ago, doctors were treated like gods. When ward rounds took place, consultants walked in front and a row of people lined up behind them. One could hardly touch consultants, never mind speak to them. As time went by, they gradually mollified their views and became more human, if not exactly humane. As things are different nowadays, it is no harm to have a lay majority on any professional body to keep the profession in place. It is ridiculous to say, as Dr. Catherine Wan did, that the Minister could introduce unlicensed surgeons under this legislation. That does not make sense at all. All kinds of concerns have been expressed about the appointment of lay people to these bodies. It has been suggested that they will do things that will destroy the ability of doctors to perform correctly. That will not happen in the slightest. It did not happen in any other profession. I do not see why it should happen in medicine. If one has nothing to fear, one has nothing about which to worry. If some of this governance had been established in the past perhaps the Neary case would not have occurred.

Section 17(7) refers to a person being ineligible for appointment to the council if the person is a member of the Oireachtas, the European Parliament or a local authority. If Senator Henry is appointed must she resign her seat in the Seanad? This is ludicrous. For example, Dr. Mary Grehan or Dr. Bill O'Connell would have to resign local council seats if appointed to the Medical Council. I have no idea how this would affect them.

5 o'clock

The Minister of State has informed us that the Minister for Health and Children will propose to Government the establishment of a committee to examine legislative provision regarding local authority members on boards of certain public bodies in the future. That does not deal with this Bill. Why do we eliminate these people? A councillor recently commented that being a members of a local council is tantamount to being a member of a subversive organisation. Talented people could serve on the Medical Council as well as on the local council. Maria Corr is a talented person, a psychologist with 20 years experience. Could she not serve on the Medical Council as well as on the local council?

One might as well argue that the health boards, which operated successfully for several years, made no sound decisions because they included local authority members. Some of the good decisions made by health boards are better than those made by the HSE.

Might Oireachtas Members or members of local authorities exert undue influence? Is this not one of the reasons they should be members of the Medical Council? This measure is retrograde, regressive and regrettable. I hope the Minister will change her mind on Committee Stage but I doubt she will. I have no objection to the thrust of this worthwhile Bill, particularly the sections that deal with registration and prohibitions on those who are not properly registered.

Mr. Quinn: I am disappointed the Bill is being rushed through both Houses. I understand the urgency but I am always concerned when we rush legislation.

When I was elected to the Seanad some 15 years ago I was unsure how to handle the Bills that were debated.

Mr. S. Power: The Senator has managed it all right.

Mr. Quinn: Drawing on my background, I considered the customer in each Bill. In this case, as Senator Norris has identified, the customer is the patient. I wish to see if this Bill is in the best interests of the patient. I was chairman of a hospital and tried to get the hospital staff to call patients "customers". The medical profession found this difficult to do.

Listening to this debate and reading the debates on the Bill in the other House, I am struck by the similarity that exists between the medical and teaching professions. Both are vocations rather than professions and both are lucky enough to have members who are driven to pursue excellence through idealism rather than profit. Both have a tiny minority of people whose talents are not suited to their chosen profession and who are bad doctors or bad teachers. Perhaps it is a tiny minority but it exists.

The two professions also share a rather undesirable attribute in the way they treat their non-performing members. They have traditionally rallied around their delinquent members and attempted to shield them from outside criticism instead of adopting the commonsense approach and ensuring unsuitable members are not allowed to continue practising or, better still, are weeded out before they qualify. From the point of view of a profession that wants to preserve and encourage the highest standards, this behaviour is not only dysfunctional but suicidal. The days when they could get away with behaving like this are long passed. All learned professions have a tendency to live in the past, which is why we need legislation such as this Bill.

Although I believe in self-regulation, and have argued for it in many cases, it has failed in medicine. In an ideal world self-regulation is the best kind of regulation. However, one cannot continue to argue for self-regulation when that kind of regulation has spectacularly failed. Failures such as the Neary case deal a credibility blow to the medical profession from which it will be very difficult to recover. We must face up to this and deal with the consequences.

[Mr. Quinn.]

At the same time, we must not replace self-regulation with something worse. I am in favour of public accountability but I am less of a fan of political accountability. Those who write our legislation seem to think the only way to ensure public accountability is through political accountability. It is not the only way, nor is it the right way. Methods of public accountability that would not necessarily extend ministerial powers should be considered at official level. If such methods could be devised there would be enough common sense at the political level to see the merit in them.

I wish to highlight once again the shortcomings in how we remunerate the medical profession. We pay our doctors for the work they do, not for the results they achieve. In China the tradition was to pay doctors according to the number of patients they kept alive, rather than the numbers they treated. If one became ill the doctor did not get paid. Our method is the opposite because the doctor does not get paid when one stays healthy. As soon as one is ill the doctor is paid. I am in favour of the Chinese system. I am not sure how we could apply it but I raise it for consideration.

Whether that system still applies in China, we must change the reward systems in medicine to provide practitioners with a strong incentive to invest time in preventative rather than curative medicine. We have a series of medical fire brigades but we need a force of propagandists to prevent fires in the first place. From the point of view of public policy, there is a clear benefit to be gained in purely monetary terms. Money spent on preventative medicine, euro for euro, provides a much greater return than money spent on purely curative activities. The State should take a long-term view of this matter, especially since the State picks up most of the bills.

There is another way we should consider in regard to changing the remuneration of our medical practitioners. To remain effective in a fast-changing world, practitioners need to spend more time keeping themselves informed of the latest developments. However, it seems that, increasingly, other pressures on time conspire against this happening to the extent that it should. One doctor confessed to me that the only reason he keeps up with the latest developments is that, thanks to the Internet, his patients were far more informed than him. In the past patients would simply accept a diagnosis from their doctors, but the first thing they do now is rush to their computers and become experts on the ailments from which they are suffering. It should not be patients who pressurise doctors to keep up with the latest developments in treatment. A strong incentive to devote a sizeable proportion of their working time to professional development should be built into the methods of rewarding medical practitioners

I mentioned my worry about legislation that has been rushed through the Houses and I am, therefore, concerned that the lack of concentration on preventative medicine and the lack of reward for professional development are not addressed in this Bill. The Bill will be passed and I understand the necessity for it but I urge the Minister to give serious consideration to a change in direction in the years ahead.

Ms Cox: I am not an expert in this area and have no medical background. I did, however, meet some people who made some points and perhaps the Minister of State would be kind enough to address them.

This Bill is necessary and is supported by the medical profession and the Medical Council as an attempt to reform current procedures. It is important to ensure that existing competent structures are put on a statutory basis so the weight of law is given to the requirements of these assurance structures. It is surprising, however, that the incoming council will be responsible for drafting some of the structures that will be in place within six months of its inception.

The main functions of the Medical Council are to oversee the quality of medical education, to register and license practitioners, to assure itself of European and international qualification standards, to ensure that the Irish standards meet current international standards and *vice versa*, to discipline and recommend actions to help practitioners whose behaviour or practice falls below an acceptable standard and to set ethical guidelines for the profession. Those are important and give no cause for disquiet.

My query relates to the proposed composition of the council. A total of 25 members will be appointed by the Minister. Of these, 12 will be proposed by the professions — seven elected and two of the remaining five representing colleges for basic medical education and three representing colleges of specialist education — while of the 13 others one will be proposed by the Royal Irish Academy, one by the HSE, one by an Bord Altranais, one by the Health and Social Care Professional Council and seven will be non-medical practitioners, which may include representative of advocacy groups and service users, while two will be proposed by the Minister.

It is possible that this method of appointing people to the council may result in a lay majority and this is the area of concern. Those who spoke to me pointed out that according to the recent World Health Organisation review, there is no need for a lay majority. A recent document on the regulation and licensing of physicians in the European Union reviewed the status of 39 countries' processes for basic licensing and specialist registration, and in 18 countries where a council is responsible for those processes, none has a lay majority. The highest lay representation is in Britain, where 40% of council members are non-medical. It is important to have lay members on the council because the public must have confi-

dence in the processes that govern medical self-regulation. However, if the members of an autonomous profession are defined by specialist knowledge and experience resulting from training and education whose goals and purposes are governed by the principle of ethics and service, why is a lay majority necessary?

The council was established over 100 years ago to protect the public from quacks and charlatans by setting the standards for education for medical students to be doctors and for doctors to be specialists, and acting as judges of their behaviour. As respected representatives of the position, the public and profession had confidence in the council. There is a genuine concern now that a lay majority will not increase confidence in the profession but reduce the respect of the profession for the decisions of the council. That could be a problem in future because the council's role is to protect the public to ensure quality standards are met, so it must be seen as completely independent and responsible in terms of the quality standards it is setting and have an understanding.

It is also important it is not seen to be a body that is at the whim of the Minister. There must be separation between the two. Perhaps the opportunity exists to ensure this will not happen and I look forward to hearing the Minister of State's remarks on that.

The briefing I received from the Department of Health and Children and the legislation did not make it clear how the council will be funded. Who will pay for it? It is currently paid for through the subscription of the medical membership. Will that change? Will the council be paid for by the Government? How will those appointed to the board be recompensed for their expenses or will they work on a voluntary basis?

Mr. Daly: This is a long and detailed Bill and there will be time on Committee Stage to go into it in depth. It is important to update the legislation in this area, although the current legislation is only 30 years old.

It is daft for there to be 25 people on a board. It is far too large and should be reduced to about 12 people. Other activities of the board should be carried out by subcommittees. A board of this nature will be unwieldy and it will be difficult for it to reach decisions. We should take this opportunity to limit the membership of many of the boards that have been established over the years that have been far too large.

I would also like the board to be established outside Dublin. I cannot understand why every board must be located in this city, which has grown beyond management. Good examples of the relocation of Departments are to be found in the Minister of State's constituency, where they operate successfully. There is no reason such an approach cannot be replicated. When it comes to a decision on this board being relocated outside Dublin, it would not make any difference to me if it were located in Ennis, Shannon or Limerick. No more than my views on its membership, the size of the board etc., this would have no impact on what we are discussing this afternoon.

It is necessary to update the legislation in so far as the system we have operated up to now has left major gaps in the effectiveness of the role of the medical profession. For example, the Department is aware there are difficulties in regard to the training, management and application of orthodontists in the mid-west. Thousands of children are on waiting lists for orthodontist treatment. Can this board resolve those difficulties? Will it have any influence in resolving the difficulties that exist in regard to speech and language therapists and occupational therapists? Hundreds of vacancies for skilled professional people have remained unfilled and now when an effort is being made to fill them speech and language therapists in Ennis and other towns cannot get positions in the service, despite the numbers on waiting lists. We heard of this on national radio this morning.

I pay tribute to the general practitioners in my region, the people with whom I mainly deal from the viewpoint of my constituents. Rarely if ever, over 35 years, have I received a major complaint against any of the GPs in my constituency. They are all exceptional and I want to put on record my appreciation of their dedication, work and commitment to the job. Shannondoc provides an out-of-hours service in the mid-west region. This service had some teething problems, but it now provides a successful and competent service, when most people are relaxing. The highly professional people in Shannondoc should be complimented on the service they provide to the community. This is certainly true in County Clare.

I compliment Limerick University on its recent initiative in developing a medical school. While I am not familiar with the details of that decision, it is important we use the type of expertise that is available at Limerick University to develop a medical school there. This initiative may have been criticised by other colleges, but in so far as the people in the mid-west and I are concerned, since its establishment Limerick University has charted a new course for innovation and education in the mid-west region. It has been an outstanding success and I have no doubt the medical school there will play a significant role in the development, training and organisation of medical professionals to cater for the needs of the people throughout the country. I welcome these moves at the university and compliment the people in the college on the initiative they have shown. I also compliment the Department on working with them in establishing the new initiative.

The Bill is very detailed. I am not sure whether it is necessary to set down in legislation the procedures for running a board meeting and indicating that, when the chairman is not present, the vice chairman should take over, etc. The legis-

[Mr. Daly.]

lation could be reduced by half, as could the membership of the board, to deliver a very good, more efficient and effective service.

Minister of State at the Department of Health and Children (Mr. S. Power): I thank Senators for their informed contributions to the debate on this important legislation, the need for which has been argued for some time, not least by the medical professionals.

The Bill comes at a time of great change in the health service which has seen a number of significant legislative initiatives such as the Health Bill 2006 which this House debated recently. Some of the issues raised in the Bill before us today arose in that context also. A keen interest has been shown in having an honest and open debate on the subject of this proposed legislation. Relevant stakeholders have been involved, particularly with the recent consultation process and publication of the draft heads of the Bill. Department officials have met with a number of key groups in this area.

Safe outcomes for patients and quality of health care have been at the heart of a number of announcements made in recent weeks, including legislation to underpin the Health Information and Quality Authority, the establishment of a commission on quality and safety in health care and the appointment of the Health and Social Care Professionals Council. However, this legislation is very wide ranging in that it directly affects the medical profession, but indirectly, all those who come in contact with the profession as patients. The Bill represents a new era in the regulation of the medical profession. It is important to get it right and that we have a new Act which can and will stand the test of time. The end results must be legislation that is robust, yet flexible, and which ensures patient safety is to the forefront in all doctor-patient relations.

It is important to acknowledge that the majority of doctors perform to a high standard. However, lessons must be learned from those instances where patients have been harmed, and as such there are many provisions which shift the balance towards patient safety. All medical practitioners have a duty and responsibility to ensure their practices are safe and that their skills are up to date. The majority of doctors practise competently and many are involved in continuing education or professional development. The Bill will provide support for doctors in terms of education, training and ongoing competence assurance and it will assure patients that the competencies of their doctors are to acceptable standards.

Another matter that has caused considerable debate is the question of public hearings on fitness to practise issues. This development has been generally welcomed by patient groups in contributing to openness and transparency in procedures. However, particular concerns have been raised by the medical profession in regard to media coverage of such inquiries and the potential for harm to the reputation of a doctor who is innocent unless proven guilty. I am conscious of these matters, but once again it is a question of redressing the balance. The *in camera* behind closed doors nature of inquiries to date has operated against the public interest. Protections are in place for cases or parts thereof, where it would not be appropriate to hold public inquiries. However, the public interest requires that such hearings should, in general, be held in public and it is necessary to move the balance more in this direction.

A number of Senators raised particular issues and I shall deal with as many as possible. Senators Browne and Henry raised the issue of the public inquiry as regards fitness to practise. The committee may decide to hold all or part of an inquiry in private. This is likely to be used in sensitive cases such as those mentioned by Senator Henry.

On the issue of standard of proof, the courts have ruled on this matter over the years. Where it is proposed to remove a doctor's registration, depriving him or her of the means to make a living, the burden of proof is already set out by case law as the standard of beyond a reasonable doubt. Senator Henry also raised the matter of appeals of a censure. In the coming months the High Court is due to consider a judicial review matter relating to appeals against a finding of the fitness to practise committee under the provisions of the 1978 Act. It is possible that the court's decision could have some effect or provide some insight into the matter. Therefore, I consider it preferable to await the decision of the court before making any change to appeals of this nature. Legal advice also suggests to await the outcome as it may give some guidance on how best to provide for any legislative changes which may be required.

The council will have the public interest as its primary goal. Its membership of 25 is designed to support this. Only people with expertise and experience will be asked to or elected to serve on the council. The balance, however, between non-medical and medical representation, has been significantly altered to include a majority of persons who are not nominated by medical professionals. While there may be many medical specialties which could argue a case for representation on the council, the council's committees can include all or any of those specialties in their membership. This is not limited to persons who are members of the council. As a result, the council will have access to further specialised expertise, both medical and non-medical, as required.

Senator Henry raised the issue of medical expertise on the fitness to practise committee. It is considered necessary in the interests of the public confidence in the regulatory system that the fitness to practise committee should have a majority of persons who are not doctors. All committees may include in their membership persons who are not members of the council, giving any

required medical or other expertise for an individual case.

Senator Browne raised the issue of nominated and elected persons to the council. On the Stages of the Bill in the Dáil, it was outlined that it was normal for members for a statutory board to be appointed on the same basis. This is consistent with legislation governing other statutory bodies. It is not intended as a means for the Minister of the day to unilaterally override the nominating powers of the bodies concerned or an election process. It was clarified by way of amendment which provides that the Minister may not refuse to appoint any of the persons nominated or elected to serve on the council. The matter referred to by the Irish College of Psychiatrists was provided for by an amendment in the Dáil.

The provisions of section 23 deal with the removal of individual council members from office in specific circumstances such as illness, stated misbehaviour, obstructive behaviour and matters covered under the standards and ethics in public office legislation. If difficulties arise with regard to an individual member of the council, it will be made known to the Minister by the president of the council or other appropriate member.

The matter of how the entire council may be removed from office was discussed in some detail in the Dáil. The removal of the council from office will require a ministerial order, a draft of which must be laid before both Houses of the Oireachtas. The draft must be accompanied by a statement of the reasons for the order. The order cannot have effect until a resolution approving it is passed by both Houses of the Oireachtas. It would require a considerable debate before such drastic action could be taken.

Dr. Henry: That is fine.

Mr. S. Power: Senator Browne raised the matter of funding for medical education and training. Given the dissolution of the postgraduate medical and dental board by this Bill, it is appropriate and necessary for the HSE to take over this role. As the primary health employer in the State, it is in the HSE's interest to ensure an adequate supply of suitably trained medical and dental professionals is available. The Prospectus and Buttimer reports recommended the dissolution of the medical and dental board and the reassignment of its functions to the HSE and the Medical and Dental councils.

Senator Tuffy raised the matter of patient safety. The Minister has recently established a commission on patient safety and quality assurance to bring forward proposals aimed at the development of robust quality and safety systems across the health service. Deirdre Madden, a leading expert on medical law and ethics and who was recently elected by the council to chair its ethics committee, will chair the commission. The commission will report to the Minister within 18 months.

There was some debate on the powers of the Minister to issue policy directions to the council. This provision, which is not unique to this legislation, is necessary in that the council is required to undertake its role within the overall context of public policy. It is important the Minister should be able to give direction in public policy matters, for example, in the area of medical education and training. This section is qualified in several ways. The Minister may not issue such directions in respect of ethical guidance matters, complaints, inquiries and sanctions. In addition, any such policy directions may not be construed to prevent the council from performing its statutory functions. Concerns expressed that the section would allow a Minister to deflect the council from doing its statutory duty are therefore unfounded.

Senators Tuffy and Lydon raised the matter of the standard practice of the prevention of Oireachtas Members from membership of the council. This is a matter I discussed with the Minister last week. She has agreed to have the matter discussed at Cabinet with a view to establishing a commission to decide on what committees are appropriate for local authority members or Oireachtas Members. It is clear there are some committees on which elected members could serve a useful role while there are other committees where it might be preferable for membership to comprise non-elected persons. I take the point made by a number of Members that this almost paints local authorities in a poor light but that is not what any of us in this House would want to do.

Senator Quinn raised the issue of competence assurance. The introduction of a formal system for the maintenance of professional competence is new under this legislation and to the medical profession. While the Bill does not lay down in specific terms what each medical practitioner will have to do, it requires each individual to comply with the rules which will be set out by the Medical Council. With the introduction of any system, we must allow for flexibility to make changes over time with the benefit of experience as to what works and what needs to be adapted. There are many stakeholders involved in ensuring that this can take place. The Medical Council, as the competency regulatory authority for the medical profession, will take the lead and employers, including the HSE, will play their play. Individual doctors will have different individual needs, which must be addressed also.

Senator Cox raised the issue of funding. We have ensured that the Bill contains certain provisions which will allow funding for the administration of competence assurance structures and other matters to be provided for the Medical Council. While the council will continue to be funded in the main by the medical profession through the payment of registration fees, we recognise that the State must also share the burden of the costs involved in such issues. We consider that these costs will be offset in this case by

[Mr. S. Power.]

the benefits of the quality assurance of the competence of medical practitioners.

A White Paper on future regulation of health professionals was published recently in Britain. It proposes that all health regulatory bodies should have, as a minimum, equality between lay and professional members. This would also include the UK General Medical Council. Therefore, we are not out of sync with our neighbours in what we are proposing in this legislation. While there might be resistance to it from certain quarters, by and large I believe it will be well received throughout the country and it will give us a better health service, which is what we are all working towards.

I thank the Members for their contributions. It is always nice to listen to them, some were from Members with medical experience but each Member brought their own experience to bear in his or her contribution. I thank them for the sincerity of their contributions. Go raibh míle maith agaibh go léir.

Question put and agreed to.

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

Mr. Glynn: At 11.30 a.m. tomorrow.

Committee Stage ordered for Wednesday, 4 April 2007.

Sitting suspended at 5.45 p.m. and resumed at 6.30 p.m.

Electoral (Amendment) Bill 2007: Second Stage.

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

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. B. O'Keeffe): This Bill responds to a judgment of the Supreme Court on 13 November 2006 concerning the nomination of Dáil candidates who are not members of registered political parties. The outcome of the judgment is that there is currently no statutory mechanism to regulate the nomination of such candidates standing for election and this must be addressed before the general election.

For clarity and context, I will outline briefly the background to this matter before proceeding to deal with the detail of the court decision and its implications. The assentor provisions for nomination of candidates were enacted in 2002 to provide an alternative to election deposits where candidates are not members of registered political parties. This followed the High Court judgment in the Redmond case in 2001 which found the deposits system to be unconstitutional. The assentor provisions, as enacted, required the nomination papers of Dáil candidates to be assented to by 30 persons, excluding the candidate and any proposer, who were registered as Dáil electors in the constituency concerned. Each assentor had to sign the candidate's nomination paper, which was usually lodged at the main local authority offices.

In legal cases last year, there were several grounds of appeal to the Supreme Court and the State was successful on all but one point. In particular, the court upheld the main requirement for obtaining 30 assentors to help ensure the proper regulation of elections but it struck down the provision requiring personal attendance by all assentors in a single location in a constituency, on the basis that it can involve excessive demands on the time of assentors. The court found that the provision is disproportionate to the objective to be achieved, namely, the due authentication of nomination papers and declared section 46(4B) of the Electoral Act 1992 unconstitutional.

In light of the judgment, the statutory mechanism which regulated such candidates standing for election is no longer valid. However, regulating access to the electoral process is a common feature in most parliamentary democracies and is widely seen as necessary to discourage an overly large number from contesting an election. Indeed, this view is endorsed in the Supreme Court judgment, which supports fully the right of the Oireachtas to legislate in this area. It stated:

> The Court is satisfied, and considers it self-evident that the State has a legitimate interest in regulating the conduct of elections by law, subject to the Constitution, in the interests of, *inter alia*, protecting and maintaining the integrity and efficacy of the electoral process for Dáil Éireann as well as ensuring that those elections are conducted free from abuse and in an orderly fashion consistent with democratic values acknowledged by the Constitution.

It further stated: "In the view of the Court the State has a legitimate interest, founded on rational considerations, in being concerned that the integrity of the electoral process is not tainted by frivolous candidates or a seriously excessive number of candidates on the ballot paper."

In Ireland, the purpose of any general election is to elect members to Dáil Éireann in accordance with the Constitution with a view to Government formation. It follows that elections must have some reasonable structure and coherence to help the voter see what the impact of their vote might be on the eventual composition of the Dáil and to exercise a meaningful choice towards that objective. Having an overly large number of candidates could impact on the democratic right of voters to play a meaningful part in the political process. As always, in considering these matters, there is a balance to be struck. In this case, the balance is between providing for a reasonable test of the bona fides of a prospective candidate and

not setting that test so high as to unduly restrict people from seeking election.

Having considered the issues involved, we now propose to the House the measures provided for in this Bill. I will first deal with the form of the Bill. Members of the House are aware that electoral law is at times quite complex. Therefore, we have tried to simplify and make more understandable the provisions in this Bill by avoiding, as far as possible, inserting isolated textual amendments to the law which are not easy for anyone to follow. The Bill presents a continuous text dealing with nominations generally and incorporating within that text the specific new provisions arising from the court judgment. This will allow us all to place the new provisions in their proper legal context and will give us a single text that can be more easily understood and implemented. The consequence of this more user-friendly approach is that the Bill repeals and re-enacts without amendment most of the existing settled law relating to nominations generally. In my comments, I will focus on the new provisions being proposed to meet the terms of the Supreme Court judgment. At this stage in the electoral cycle, our attention should be primarily on those limited new provisions which we need to put in place before the upcoming general election.

In terms of substance, the Bill provides for two alternative mechanisms to regulate the nomination of Dáil candidates who are not in possession of a certificate of political affiliation. These are as follows: first, by way of assents requiring the completion of statutory declarations by 30 assentors in the constituency which may be witnessed by a commissioner for oaths, a peace commissioner, a notary public, a garda or a local authority official, or second, by way of the candidate, or someone on his or her behalf, lodging a deposit of €500 with the returning officer before the deadline for receiving nominations.

As regards the assents procedures, the proposed shift to statutory declarations will allow a much more flexible system than before under which each assentor had to travel to the local authority office to sign the candidate's nomination paper. It will no longer be necessary to turn up in person at the local authority office as assentor signatures will now be on documents attached to a nomination paper as opposed to being on the actual paper. This break in the physical link with the nomination paper allows for more flexibility in the time for assents to be obtained and the Bill avails of this opportunity.

The five categories of authorised persons who may witness the statutory declaration will also ensure a wide spread of locations with easy access for assentors. For example, under the Solicitors (Amendment) Act 1994, every practising solicitor, of whom there are more than 6,000 nationally, has all the statutory powers of a commissioner for oaths. The form of statutory declaration will be prescribed by the Minister and, as part of the checks and balances, relevant details of an assentor will have to be included on the declaration. An assentor will also be required to present prescribed photographic identification to the person who is witnessing the declaration.

Rather than obtaining 30 assents, a candidate may instead choose the alternative of lodging a deposit and, if he or she does not do so, their candidature will be deemed to have been withdrawn. The provisions are similar to the previous deposit system which operated until 2001. Notwithstanding the High Court decision in the Redmond case that year, the thinking on a return to a deposit system is informed by comments of the Supreme Court and advice from the Attorney General. To be clear on this point, I will quote directly from the Supreme Court judgment where it refers to the deposit of £300 that was required under the Electoral Act 1992:

> In contemporary Ireland it is difficult to comprehend how a sum anywhere in the region of £300 or its equivalent in Euro (or more if inflation is allowed for in the meantime) [that is, since 1992] could be considered a disproportionate measure for such a legitimate purpose or to involve invidious discrimination, given the costs necessarily otherwise incurred by candidates and the possibility, at least in certain circumstances, of a refund of the deposit.

Therefore, in further response to the Supreme Court judgment, the Bill provides that the candidate, or someone on his or her behalf, has the option of lodging a deposit of €500 with the returning officer before the deadline for receiving nominations.

In summary, candidates standing for the Dáil who are not in possession of a certificate of political affiliation may now choose which option best suits their own circumstances — either assents or deposits — to support their nomination. This represents a significant improvement on the previous arrangements and fully meets the relevant constitutional requirements.

This is a short Bill containing three sections. Section 1 is the main provision, amending the Electoral Act 1992, as previously amended, by inserting sections 44 to 52, inclusive, in substitution for the existing sections. These sections cover the nomination of all candidates for election to the Dáil and most of the existing settled law in this area is being re-enacted without amendment. The amendments necessary to meet the terms of the Supreme Court decision are being incorporated, as appropriate, in the re-enacted sections to give a single text relating to nominations generally.

Section 44 restates the law regarding the giving of a public notice at a Dáil election by the returning officer. The public notice sets out the time and place for receiving nominations and related arrangements. A new section 44(*b*) requires details of the new assentor and deposit provisions to be included on the notice of election.

[Mr. B. O'Keeffe.]

Section 46 contains the substantive provisions underpinning the two alternative mechanisms to regulate the nomination of Dáil candidates who are not in possession of a certificate of political affiliation. Section 46(5) is a new subsection which provides specifically that either the assents or deposits system must be complied with before the expiration of the time for receiving nominations. A consequential provision is included in the new section 46(2)(*b*) relating to inclusion of details of the new provisions on the notes to the nomination paper.

The detailed procedures for assents are set out in the new section 46(6). The relevant details of the assentors to be included on the statutory declaration are: the assentor's number and polling district letters on the register of Dáil electors in force at the time of assent; address on the register; contact details; the relevant Dáil constituency on the date of assent where he or she is registered; the name and address of the candidate; and the form of prescribed photographic identification produced and any number on it. An assentor must confirm on the statutory declaration that he or she has not consented to the nomination of any other candidate in the election concerned. Under the Statutory Declarations Act 1938, a person who knowingly makes a false or misleading statutory declaration is liable on conviction to a fine not exceeding €2,539 or imprisonment for a term not exceeding six months, or both. However, under the new section 52(1)(*c*), a candidate's nomination will not be invalid where a person assents to the nomination of more than one candidate. Statutory declaration forms will be available free of charge from registration authorities and returning officers.

An assent will be valid in respect of the constituency in which the assentor's address at the time of assent is located at election time. The assent may be made at any time but it may only be used at the next general or by-election in the relevant constituency and it expires when the current register ceases to be in force, notwithstanding that no such election may have been held by then. Responsibility will lie with the candidate or proposer to attach the 30 statutory declarations to the nomination paper and deliver all the documentation to the returning officer by the deadline for receipt of nominations. Where there are more than 30 statutory declarations attached to the nomination paper, the first 30 attached will be taken into account.

Under the new section 52(1)(*b*), a returning officer may rule as invalid a nomination paper from a candidate who has opted for the assenting alternative if he or she considers that the candidate has not complied with the relevant statutory requirements set out in the Bill.

Instead of obtaining 30 assents, a candidate may choose the alternative of lodging a deposit under the new section 47. A candidate, or someone on his or her behalf, may lodge a deposit of €500 with the returning officer before the deadline for receiving nominations. If a candidate chooses this option and fails to lodge the deposit with the returning officer by the relevant deadline, his or her candidature will be deemed to have been withdrawn. The amount of €500 is reasonable. It is significantly less than the £300, as updated by reference to inflation, in respect of which provision was made in legislation in 1992. Under the new section 48, deposits will be returned to successful candidates, those who receive votes in excess of a quarter of the quota and in certain other circumstances, such as withdrawal of candidature or death. Deposits will otherwise be forfeited.

Section 2 amends the Schedule to the Electoral Act 1997 to ensure that travelling and other expenses that may arise for a candidate or an assentor in meeting the assentor requirements and the amount of any deposit paid will not be regarded as election expenses. Section 3 is a standard provision relating to Short Title, collective citation and construction.

Our democracy is predicated on elections that are fair, orderly and inclusive and it falls to us as legislators to ensure the statutory framework governing the electoral system reflects these principles. Under the terms of this Bill, candidates who are not in possession of a certificate of political affiliation will now have a choice in the mechanism they use to support their nomination. This is a balanced and proportionate response to the terms of the Supreme Court judgment. I commend the Bill to the House.

Mr. Bannon: I welcome the Minister of State. There is no question of not supporting the Bill which is 100% necessary. Without it, there can be no general election. Members on this side of the House are very much looking forward to the latter.

The Bill is very important to both candidates and the electorate. Fine Gael is very anxious to see it passed. Natural justice and democracy demand this. However, we must ask what action or inaction made this Bill necessary. What bungling and inefficiency has necessitated rushing it through the Oireachtas in the dying days of this Government's term of office?

We do not need to look too far for answers. Responsibility in this regard lies with the Government and the Minister of State. While not directly involved in the introduction of what became the Electoral Act 1992, which this Bill seeks to amend, the Minister of State will surely agree that the Government is directly responsible for drafting improper legislation in the first instance and that this now requires us to pass the Bill before us.

Mr. B. O'Keeffe: I have a feeling the Senator's party was in power at the time.

Mr. Bannon: I would be obliged if the Minister of State could outline the exact consultation that took place prior to the drawing up of the Electoral Bill and if, for example, his Department was warned that certain provisions in it relating to non-party candidates were likely to prove unconstitutional. If the answer is in the affirmative, I am puzzled as to why the legislation was permitted to proceed in such questionable circumstances. Has anybody in the Fianna Fáil-Progressive Democrats Government thought about the waste of public funds and Oireachtas time that is caused by such an unprofessional approach to legislation?

I am not going to categorise the long list of money-wasting blunders and general fiascoes perpetrated by the Government during the past ten years because everyone is quite familiar with them. However, the electronic voting fiasco and the mess relating to the electoral register mess, which saw the names of thousands throughout the country and in my constituency of Longford-Westmeath being left off the register, cannot be ignored, especially in light of the nature of this debate.

An Cathaoirleach: Would it be possible for the Senator to speak to the Bill?

Mr. Bannon: Yes. This Bill is just the latest example of the Government's lamentable record on handling elections and all they entail. It is technical in nature and responds directly to a judgment handed down by the Supreme Court on 13 November 2006 in the cases of King, Cooney and Riordan *v*. the Minister for Environment, Heritage and Local Government, the Attorney General and others. King, Cooney and Riordan challenged the provisions of the Electoral Act 1992, as amended by the Electoral (Amendment) Act 2002, which required the nomination papers of candidates to the Dáil who are not members of political parties to be assented to by way of signing their nomination papers by 30 persons.

In his judgment, Mr Justice John Murray noted that political party candidates are not obliged to obtain the statutory declarations of 30 assentors but must produce a certificate of political affiliation signed by a party officer. He said that measures had been introduced to protect the electoral system from abuse and to ensure that the holding of orderly and democratic elections was not undermined by the unfettered participation of frivolous candidates or an excessive number of candidates. However, that matter was not really at issue in this case.

The court was also satisfied that the Oireachtas has the power to regulate the criteria with which citizens must comply to be nominated. There was a question of whether the statutory regulation of the nomination of non-party candidates was constitutional. However, the Supreme Court ruled that it was unconstitutional to expect non-party candidates to arrange for the 30 people who support their wish to be on the ballot paper to travel to the relevant local authority offices and make declarations in person to authenticate nominations. The court ruled that this was disproportionate to the objective of authenticating nomination papers.

The Bill allows candidates the option to lodge a deposit of €500 or 30 signatures, which is reasonable and which will allow any person to put his or her name on the ballot paper if he or she has strong feelings about particular issues or about the Deputies who have represented them since the previous election. This is their democratic right. I support the right of non-party candidates to run for election and to do so without constraint.

Under the amended Bill, non-party candidates may choose the system which best suits their circumstances to support their nomination, either by way of assent or by lodging a deposit. This is an improvement on the previous arrangements but reassurances are needed from the Minister of State that the reintroduction of deposits is constitutionally firm.

The authentication process often involved people travelling distances up to 70 km. This was certainly excessive and one could even say that it was above and beyond the call of duty. However, when one considers the lengths, metaphorically speaking, to which people were obliged to go to get their names on the electoral register, I suppose it is not something that would give rise to amazement.

The detailed procedures relating to assents are set out in the new section 46(6) to be inserted into the 1992 Act. All relevant details must be contained in the statutory declaration. These include: the assentor's name; address on the register; electoral number and polling district letters on the register of Dail electors in force at the time of the assent; contact details; the relevant Dail constituency on the date of assent where he or she is registered; the form of photographic ID and number contained on it; and the candidate's name and address. The assentor must also produce photographic ID to the person witnessing the statutory declaration. The assentor must also confirm on the statutory declaration that he or she has not consented to the nomination of any other candidate in the election concerned. The requirement for photographic ID could prove difficult, especially as not all elderly people may possess it.

I am pleased that, in respect of the potentially serious consequence for a candidate of having his or her nomination declared invalid due to an assentor nominating more than one candidate, the Bill inserts a new section 52(1)(*c*) into the 1992 Act. The latter provides that where a person assents to the nomination of more than one candidate, that candidate's nomination will not

[Mr. Bannon.]

thereby be invalidated. This will serve to protect innocent candidates from the misbehaviour or false or misstatement of an assentor. A candidate should not suffer disproportionately as a result of the misbehaviour of an assentor. The fraudulent assentor should be penalised for his or her false declarations. It is, however, important to note that the consequences of this are that a non-party candidate may unknowingly stand for election without having fully met the requirement of obtaining the statutory declarations of 30 assentors.

I welcome the use of statutory declarations that can be witnessed by a commissioner of oaths, a peace commissioner, a notary public a garda or a local authority official, with assentor signatures on documents attached to the nomination paper rather than on the nomination paper itself. This will allow for greater flexibility in the time during which assents may be obtained.

Although I am conscious the Bill is primarily concerned with making provision in respect of the forthcoming general election, it is debatable whether it makes sense to ignore the opportunity to amend legislation relating to European and local elections. There is a need to amend the legislation in respect of the electoral procedures for European and local elections, having regard to the flaw in the nomination process identified by the Supreme Court in the Cooney case.

The Taoiseach's commitment to Thursday, 17 May for a general election is unfair to students who wish to vote in their home constituencies and indicates the Government's mounting unease.

Mr. Kitt: A week before.

Mr. Brady: A week later.

Mr. Bannon: Why is Fianna Fáil so afraid to hold the general election on a Friday when it is clear it benefits voters and the numbers going to the polls increase?

Mr. Brady: It did not happen on the previous occasion.

Mr. Bannon: It is utter rubbish to assert that polling on a Friday does not work when it does not tally with the statistics which show turnout in the European and local elections——

An Cathaoirleach: That is not relevant to the Bill.

Mr. Bannon: ——increased substantially when voting was switched from Thursday to Friday.

An Cathaoirleach: The Senator's time has concluded.

Mr. Bannon: In 1999, the European and local elections were held on a Thursday with a turnout of 50.21%.

An Cathaoirleach: That is not relevant to the Bill.

Mr. Bannon: However, when the 2004 European and local elections were held in 2004 and were switched to a Friday, turnout rose dramatically to 58.58%.

An Cathaoirleach: I ask the Senator to resume his seat. I call Senator Kitt.

Mr. Bannon: That is a fact and I do not see why the Taoiseach is running away from failure.

Mr. Kitt: I welcome the Minister of State to the House and I am pleased to have an opportunity to speak on this Bill. Fianna Fáil did very well in 2002, when the election was on a Friday.

An Cathaoirleach: The Senator should speak on the Bill.

Mr. Kitt: I do not think it matters when the election is held.

Mr. Bannon: Fianna Fáil lost 100 council seats in the last local elections.

Mr. Kitt: This Bill——

Mr. Bannon: Fine Gael is now the largest party in the European Parliament representing Ireland.

Mr. Kitt: ——is a response to the November 2006 judgment of the Supreme Court in King, Cooney and Riordan *v.* the Minister for the Environment, Heritage and Local Government, the Attorney General and others. It is a measured response and, as Senator Bannon has noted, achieves a good balance between the rights of those who are not members of political parties and the need to prevent frivolous or excessive numbers of candidates.

In 2002, people who were not members of political parties had to bring 30 assentors to the election office. While that can present a good photograph opportunity, it is not always possible to arrange for that many people to be physically present when required. If the central requirement for nomination by 30 people cannot be met, provision is made for paying a deposit. We were all familiar with deposits until 2002, when the provision for 30 assentors was introduced.

The Supreme Court judgment made reference to the legitimate interest of the State in the conduct of elections. In this regard, fixing a date is less important than allowing sufficient time for people to vote. That is why the early opening and late closing of polling stations in the last election was welcome.

I am not sure whether much can be done about frivolous or excessive numbers of candidates. Great Britain has the Monster Raving Looney Party and other parties who give themselves strange names. Unfortunately, they make frivolous use of the electoral system and put no policies forward. In addition, those of us who have attended election counts have noticed that some people make frivolous comments on their ballot papers, which are thereby made useless.

The Supreme Court found that the £300 deposit provided for in the Electoral Act 1992 was not a disproportionate requirement and would not discriminate against a person who wished to run for office. It is reasonable to change the amount to €500. Prospective candidates have the choice of finding 30 assentors or paying a deposit. As the Minister of State noted, a quarter of a quota is needed to have the deposit refunded.

This legislation is a balanced response to the Supreme Court judgment. The Minister of State should not be held responsible for everything that happens in his Department because he has not been there since 2002. However, he has done very well during his time in office. I hope the Bill is passed promptly by the House.

Mr. Brady: I welcome the Minister of State to the House and support the Bill. Although it has been a while coming, the State has challenged appeals on a regular basis over the years and was successful in all its points of appeal to the Supreme Court except the requirement that 30 assentors had to go to local authority offices to physically sign the nomination form.

Successive Government have tried to deal with this issue but every Bill that passes through these Houses is subject to challenge in the courts. That is one of the democratic rights we cherish and challenges have been mounted on many occasions. Legislators have the duty to ensure the soundness and constitutionality of the legislation we pass. The Parliamentary Counsel goes to great efforts in framing legislation but we have the ultimate responsibility. Democracy is precious and democratic Parliaments throughout the world do everything they can to protect it.

The Bill is not excessive and it caters for people who wish to express their own opinions or put themselves before an electorate. We have all listened to the hurlers on the ditches, particularly at election time, but it is a great honour to run in an election, whether in a party or as an Independent.

Senator Kitt spoke about the elections in the UK. It fascinates me that 30 candidates of all hues and colours can compete in an election, including obviously frivolous candidates who are only involved in order to interfere with the democratic process. The more we protect democracy in this jurisdiction from that, the better. This legislation is balanced from that point of view. It provides people with the opportunity to either pay a small fee or obtain the signatures of 30 of their constituents or supporters on an affidavit witnessed by five categories of people, which is extremely generous, and a statutory declaration to this effect. This is normal procedure in the majority of cases.

When filling out a form for a passport one must make a declaration and it is only right if one puts oneself forward for election that one complies with existing legislation, regulations and requirements for all candidates and that those putting forward a candidate are reasonable people who can prove their identity. We saw in past elections that we had an issue with impersonation. We made huge strides towards tackling the issue and it is hoped the upcoming general election will prove it.

One sees from the detail of the Bill that it is reasonable. A charge of €500 for a person to put himself or herself forward is extremely reasonable when one considers in the 1920s the charge was £100, particularly when one takes into account inflation. Obtaining the signature of 30 people on a declaration and an affidavit to the effect they support a candidate is also reasonable. It means people do not have to travel to local authority offices and a nominator can put forward a candidate with the required forms and the supporting names can be attached. This will allow people express themselves in a democratic way and put themselves forward.

With regard to the requirement for photographic identification, the majority of people have photographic identification of some type, whether they are senior citizens or students. It is only reasonable that a person should prove who he or she is and the Bill is not excessive or does not go over the top in that regard. It would have been easy to be over-restrictive. Whether it suits the incumbent Government or the Opposition is a matter which can be discussed.

It is like the issue surrounding the day the election will be held. It will make no difference.

Mr. Bannon: It does. It can disenfranchise young people. Students in the cities who want to vote in rural constituencies may not be allowed to do so.

Mr. Brady: The Bill is welcome. It has a history but is balanced. It protects the democracy for which our forefathers fought and died. Anything we can do to support and protect it is to be welcomed.

Mr. Quinn: I welcome the opportunity to speak on the Bill and I also welcome the Minister of State to the House. I agree with what Senator Brady stated. We did not value our democracy nearly enough in the past and we can recognise the benefit of democracy. Almost every day since I entered this House for the first time I recognise

[Mr. Quinn.]

the trust given to those of us who step into this and the other House.

I am not sure the Government recognises and respects the huge benefit of independent candidates and Members in both Houses and I have some words to state on their value. In this House alone it is clear to see the six independent Members, including Senator Maurice Hayes, play an active role. The same does not seem to happen in the Dáil, although it could; perhaps they are not provided the same opportunity. This is one of the reasons this House has the benefit of being far less confrontational.

The Minister of State may be pleasantly surprised to hear I will take advantage of this debate to offer a word of praise to the Government. I do this quite often. This may seem odd when discussing a Bill that need never have arisen but for the Government's ineptitude at trying to make it more difficult for independent candidates than for candidates of political parties to put themselves forward for Dáil elections.

The problem with the Supreme Court did not arise because of an honest mistake such as we seem to encounter with increasing frequency as Ministers rush around trying to introduce legislation. I am reminded of the little Dutch boy putting his finger in the dike to stop what was happening. We seem to have had a great deal of rushed legislation in recent times and nobody wants it, including the Leader. This problem arose because of a Government try-on. It tried barefacedly to make matters more difficult for independent candidates seeking election to the Dáil and once again the Supreme Court caught the Government in the act. This Bill is a defeat for the Government and more importantly it is a victory for democracy and I welcome it on this account.

Where are my words of praise? I might be tempted to offer marks for courage to any Minister who dares on the brink of an election to introduce an electoral amendment Bill which fails to address the real pressing electoral issues. Such a Minister knows full well he will run the gauntlet of Opposition Members, as the Minister of State did this evening, who will not only remind him of those omissions but also of the scandal of the electronic voting machines.

My words of praise are in another direction. I wish to salute the way the Bill was written. Two possible approaches exist to the drafting of any Bill. The first conventional way is to amend existing legislation in a piecemeal manner, section by section. It may be perfectly correct legally but, as I pointed out in the House and elsewhere on numerous occasions, it makes for law which is difficult for the ordinary citizen to access. It is immensely difficult when one must go back because it amends other legislation.

Ordinary people are used to reading something from start to finish in one continuous stream. We all find it enormously confusing when we are expected to refer every few seconds to a completely separate document — a previous Bill — to find out what the first document is about. If we were trying to devise a way of making our legislation as impenetrable as possible we could hardly do better than this. Such an approach encourages a view that the law is a matter to be perused only by a restricted sacred brotherhood of professionals who jealously guard their access and charge through the nose for sharing the benefits of it. It is the very opposite of what we should look for in the way a democracy writes its laws.

The second way is not more difficult or right but it is infinitely easier to understand from the layman's point of view. This approach is what I call "repeal and re-enactment". Instead of changing the odd word, sentence or section here or there the approach is to rewrite from scratch entire sections or parts of Bills or even entire Bills. The ideal, which is not difficult to do in practice, is to have all relevant law contained in one place as one continuous running narrative. Cross-referencing is reduced to the absolute minimum.

I have spoken on this theme for as long as I have been in the Seanad, which is almost 15 years. Although many eminent people expressed agreement with me, I have not noticed much change in the way Bills are written. A notable exception was the Arts Act 2003 which could have been written by amending the two earlier Arts Acts but went back to square one and a completely new Bill was written. Apart from that I am hard put to recall an example of what I will call the "common-sense way" to write a Bill.

I am delighted at how the Minister of State chose to present the Bill before us today. Instead of amending previous legislation on a line by line basis he rewrote a large chunk of the relevant law at one go. This will make the legislation easier to understand for anybody who is not a trained lawyer and I applaud him for doing so. One wishes the effort was expended in a more worthy cause but that is another story.

I congratulate the Minister of State on the manner in which this is being done but I urge the Government to recognise the benefit of Independent Members of the Dáil, as it does with the Seanad. Much as I would like to see a reformed Seanad, which will happen, although not immediately, I hope the opportunity to have Independents in both Houses will continue.

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. B. O'Keeffe): I thank the Senators for their contribution to the debate. The comments, as usual, focused on the Bill and went across the

electoral agenda. That is not unusual, I suppose. In the time available I wish to comment on some of the points raised.

Regulating access to the electoral process is a common feature in most parliamentary democracies and is widely seen as necessary to discourage an overly large number from contesting an election. The proposals in the Bill strike the right balance between providing for a reasonable test of the bona fides of a prospective candidate and not setting the test so high as to restrict people unduly from seeking election.

Candidates standing for Dáil election who are not in possession of a certificate of political affiliation will now be able to choose which option best suits their circumstances. This can be an assent requiring the completion of a statutory declaration by 30 assentors in the constituency, which may be witnessed by a commissioner of oaths, a peace commissioner, a notary, a garda or local authority official. A deposit of €500 can otherwise be lodged with the returning officer before the deadline for receiving nominations. This represents a significant improvement on the previous arrangement and I am satisfied it fully meets the relevant constitutional requirements.

In response to Senator Bannon and in commenting on the backhanded compliment given by Senator Quinn, the previous system was enacted in 2002 on the basis of the best legal advice available to the Government at the time. It is significant to remember that 15 Independents were elected to the current Dáil. Irrespective of how difficult it was, these people were able to come through the system.

It is always possible to challenge legislation, and this frequently happens in the electoral area. It is timely to remember that the State won on approximately seven issues in this case before the Supreme Court but lost on one item, which the Bill addresses.

Senator Bannon commented on European and local elections. Although the terms of the Supreme Court judgment relate to Dáil elections only, I fully agree it will be necessary to introduce similar arrangements for local and European elections. In considering the response to the Supreme Court decision, the feasibility of legislating for all three electoral codes in this one Bill was taken into account. It was concluded that the priority must be to ensure that proposals for amendments to the Dáil code are developed, considered, enacted and implemented in advance of the general election.

As Senators are aware, there is only limited time available to do this. The development of the new provisions in respect of the local and European electoral codes would have taken some additional time, which would have limited the opportunity for the Houses to consider the important issues involved.

The matter is not really as simple as it might appear. The necessary additional legislation will span a number of provisions across two electoral codes, requiring careful consideration and detailed drafting. It was therefore decided that the focus should be on preparing proposals to facilitate non-party candidates standing in the forthcoming general election and to maximise the time available to consider these.

When the new arrangements are enacted, the way will be open to begin work on developing revised procedures along similar lines for local and European Parliament elections, for implementation by way of a further electoral Bill. This will be done well before the next elections in June 2009.

On the question of the deposit amount, and to reiterate the statements of Senators on the Government side of the House, €500 is a reasonable sum. It is certainly significantly less than the £300 enacted in 1982 as updated by reference to inflation, and it has clear legal and judicial support based on the case law now available to us.

I remind the House that at the foundation of the State, the deposit amount was fixed at £100. Over the next 70 years this amount remained unaltered despite the great changes in money values. By the time law in this area was revised in 1992, the original £100 set down in 1923 was worth €3,800. The Oireachtas set the deposit at a tenth of this amount, £300 or €380. If the 1992 figure of €380 is updated to 2007, taking inflation into account, the figure is €570. Whichever way it is considered, €500 is not excessive.

I thank Senators for their contributions and look forward to further debate on these important issues on Committee Stage.

Question put and agreed to.

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

Mr. Kitt: Now.

Agreed to take Committee and Remaining Stages today.

Electoral (Amendment) Bill 2007: Committee and Remaining Stages.

Sections 1 to 3, inclusive, agreed to.

Bill reported without amendment and received for final consideration.

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

Mr. Kitt: I thank the Minister of State for coming to the House and the expeditious manner in which he brought the Bill through the Seanad. Both sides of the House would agree the Bill is balanced and reasonable. I wish the Minister of

[Mr. Kitt.]

State well with other legislation he brings before us.

Mr. Quinn: I add some words to those of the Minister of State. If there were backhanded compliments from me, they were compliments, which is not always the case.

I hate rushed legislation, as we all do. This Bill clearly had to come through and it has done so, with the Minister of State explaining it very well. There is little doubt in my mind that we have two Chambers and we have the ability to get legislation through them. We must try to avoid rushed legislation in future but I congratulate the Minister of State and his officials for getting this Bill through as efficiently as he did.

Mr. Bannon: I thank the Minister of State for coming to the House and guiding the Bill through. I made a request for the general election to be held on a Friday if at all possible to accommodate students and young people, especially people from rural Ireland.

Mr. Brady: Hear, hear.

Mr. Bannon: Ireland extends beyond the Pale and it is important that in a democracy, fair play is evident. This has been an issue with many young people, including those I have met last weekend and since the Taoiseach made his statement. Perhaps the Minister of State could use his good offices to impress on the Taoiseach the needs of those people in the electorate.

An Cathaoirleach: I am sure the Taoiseach will heed the Senator's comments.

Mr. Bannon: The sooner, the better for the sake of the electorate and citizens of our State.

Mr. Brady: Hear, hear.

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. B. O'Keeffe): I thank the Senators for their co-operation and the expeditious and constructive way in which they dealt with the Bill.

Question put and agreed to.

Sitting suspended at 7.30 p.m. and resumed at 8.30 p.m.

Broadcasting (Amendment) Bill 2006 [*Seanad Bill amended by the Dáil*]: Report and Final Stages.

Acting Chairman (Mr. Moylan): 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 Minister will deal separately with the subject matter of each related group of amendments. I have also circulated the proposed grouping in the House. Senators may contribute once on each grouping. The only matters that may be discussed are the amendments made by the Dáil.

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

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): Amendments Nos. 1, 9 and 11 to 22, inclusive, are minor necessary improvements to the text of the Bill as pointed out by the draftsperson. Amendments Nos. 20 to 22, inclusive, are similar to amendments proposed by Deputy Durkan on Committee Stage in the Dáil. After a discussion with the parliamentary draftsperson, it was agreed the amendments would enhance the text of the Bill.

Amendment No. 2 requires the RTE authority to move quickly to begin the implementation of digital terrestrial television roll-out and to ensure the extent of coverage of its channels RTE 1 and RTE 2 through DTT roll-out is similar to that available from the analogue network currently. It is important that viewers in regional and remote areas continue to have the same access to the public service broadcasters on a free-to-air basis as they do now. In a number of years, it may be the case that a small percentage of the population who receive analogue terrestrial television will receive digital television by means other than terrestrial. In the main, the DTT coverage area or footprint should mirror the analogue footprint. From recollection, there was strong debate in this House on this matter.

The amendments in group 3 deal with the issue of the right of carriage of TV3 and TG4 on the national multiplex service established by the RTE authority. Amendments Nos. 3 and 6 allow for consultation with ComReg regarding the charges for carriage and will give greater certainty to TG4, TV3 and other parties as to the transparency around transmission costs charged by RTE.

Amendments Nos. 4 and 5 clarify the role of the Broadcasting Commission of Ireland in requesting whether the television programme service contractor, currently TV3, is carried on the RTE multiplex. Amendment No. 7 allows for further consultation with the BCI to ensure TV3, if carried, has adequate digital capacity on the RTE multiplex. Amendment No. 8 removes some

uncertainty pointed out by the BCI as to whether it must endeavour to provide for TV3 on a separate multiplex in advance of TV3 being carried on the RTE multiplex. Amendment No. 10 allows for further consultation with the BCI to ensure both TG4 and TV3, if carried, have adequate digital capacity.

Amendments Nos. 23 and 24 relate to the issue of digital switch-over. Amendment No. 23 places a duty on RTE to have a role in providing public information about how to access digital television services and the practical issues involved for viewers. This is similar to the duty placed on the BBC regarding digital switch-over in the United Kingdom. Amendment No. 24 provides that RTE must report to the Minister at intervals on progress made with digital broadcasting. Any report submitted in this regard will be laid before the Houses of the Oireachtas.

The latter amendment derives from an amendment raised by Deputy Broughan on Committee Stage. It is essential that a full roll-out of DTT takes place before digital switch-over can be facilitated. The aim of the DTT pilot project under way is to provide insight into the issues associated with the roll-out of a national DTT system and the potential impact on the analogue television network. In addition, the experience gained during the initial years of DTT operation by RTE under this legislation will also help to inform any decision in this regard. Section 11 puts in place a general framework for high-level consideration and planning for analogue switch-off. However, the availability of digital services throughout the State and the consumer uptake must be assessed before tackling the specific details surrounding switch-over.

Mr. O'Toole: Is the Minister speaking on section 5 or will that be covered in the next grouping? Has he addressed amendments Nos. 25 and 26?

Mr. N. Dempsey: They are next. Amendments Nos. 25 and 26 require the RTE authority to review and report to the Minister for Communications, Marine and Natural Resources on the third and fifth anniversaries of the coming into force of this measure on the provision of broadcasting services to Irish communities abroad, as mandated by the Bill. The amendments also require that the Minister lay such reports before each House of the Oireachtas. These amendments derive from an amendment proposed by Deputy Eamon Ryan in the Dáil.

Mr. O'Toole: I wish to raise an issue with the Minister that I raised on Committee Stage. I have no objection to the amendments, but I would like clarification. The question of Irish people living abroad accessing Irish broadcasting is a matter of some significance in respect of which the Minister has been supportive in his comments during the years. I am trying to establish the situation regarding access to Irish radio and television for people living elsewhere in Europe, which are shown on the Sky digital system, the Astra satellite. People with digital dishes and decoders and who are living anywhere in the satellite's footprint in Europe can tune into RTE Radio 1, Radio 2, Lyric FM and Raidió na Gaeltachta without paying Sky. The reception is clear. Recently, Newstalk may have been added.

People's access abroad does not concern the amendment precisely, but RTE television is encrypted on Sky. Someone without a Sky card who is living in Brussels with a dish on his or her roof and a satellite decoder can tune into free-to-air BBC 1, BBC 2, BBC 3, BBC 4, ITV 1, ITV 2, ITV 3, ITV 4 and the broadcasts of many small countries, such as Cyprus and Malta, but RTE is encrypted. This is a significant loss.

When the Minister and I went to school, approximately 60% of our imports and exports came from and went to, respectively, the UK. I was astounded to see the latest figures from Enterprise Ireland to the effect that our exports to the European mainland are far greater than our exports to the UK. That would have been unthinkable ten years ago, when we were talking about joining economic and monetary union. Ireland has a huge engagement with Europe. It is completely wrong that RTE is encrypted in certain areas. I have written to the RTE Authority to ask why that is the case. The Minister explained it once by talking about copyright issues.

I want to make clear what I am talking about. I accept that if RTE buys an American television series for a price that is based on this country's population, it would not be able to make that programme available to people throughout Europe without running into difficulties. If a person living outside the UK tunes into the Scottish version of ITV or BBC as a Celtic football match is about to be broadcast, he or she will find that the transmission stops just as the match begins. The television stations in question are not allowed to show certain programmes in other jurisdictions. I am not concerned about such programmes, however. I would like home-made programmes like "Prime Time" and news programmes, in respect of which no copyright law other than Irish copyright law arises, to be broadcast overseas. Not only would such broadcasts help Irish people who live abroad to keep in touch, but they would also help to sell this country to people in the wider world who want to know and hear about Ireland. While I do not want to talk about tourism, it is also relevant in this regard.

The Government has an opportunity to do something easy by ensuring that RTE broadcasts are not encrypted. Three months ago, the French authorities established a new 24-hour news channel, France 24, which broadcasts in English rather

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than French. Who would have believed it? It is available on channel 515 on the Sky platform, where the ITV News Channel used to be. While the French authorities hate the English language, they understand the importance of broadcasting in English to the wider world. Ireland and France have exactly the same level of access to the Astra satellite. I will set aside the issue of whether we should be pushing out these services on other satellites. No other satellite can match the footprint of the Astra satellite, which covers an area from Belmullet to the far east of Europe. I would like to know whether any progress is being made in that regard.

I welcome the Minister's recent announcement that RTE is to set up a new channel for emigrants, taking over from what Tara Television was doing when it broadcast into the UK eight or nine years ago. Will the new channel be encrypted? Will it be available on a single platform only? One of the amendments under discussion relates to the need to ensure that television services are available to all of Ireland. The point I am making is that we all should have the same access. This is of huge cultural importance in terms of the Good Friday Agreement. In a week when it was revealed that Ian Paisley has ordered his clerical garb from a Catholic wholesaler based in County Donegal, we should take a broad look at matters like this. The same platform of programmes should be available in Belfast and Dublin, to those who want them. There should be an understanding that allows everyone on this island to delve in and out of, and deal with, the same group of programmes.

Issues like access are important. Will the new station that is being put together by RTE be encrypted? Will people have full and easy access to it? Is it based on a recognition that Irish people living abroad, as well as other people overseas who are interested in Ireland, are entitled to access these services? Does the Minister acknowledge that such access is important for reasons of culture, economics and growth? It is a pan-European issue, as we said earlier today when we discussed the Schengen Agreement. It is as important as having a passport. Why should Sky decide that people cannot access a certain television channel because it is encrypted? We will lose out badly if we allow that to happen — we will do not do ourselves any good when trying to exert a wider influence over a larger part of Europe. I am keen to hear the Minister's views on that.

Mr. N. Dempsey: I thank Senator O'Toole for his comments on this matter, which he has raised previously in the House. The Government is encouraging RTE to broadcast to Irish people abroad — it is providing for that in legislation. It is not limiting RTE's ability to provide such services. During the debate in both Houses, I have focused on the need to reach out to the Irish community in the UK. I do not suggest that our role in helping Irish people abroad is limited to the UK. This legislation gives RTE a mandate to deliver a broadcasting service to Irish communities in all countries and not just the UK. It allows RTE to decide what platform it will use to that end, and in what way it will use it. Obviously, RTE will want such services to be provided on a free-to-air basis, as far as practicable. Most of RTE's domestically produced programming is available on its website. I refer to the kind of programmes which were mentioned by Senator O'Toole, such as news programmes and "Prime Time". It is likely that such matters will be covered in the broadcasts which will be aimed at Irish communities abroad.

To be honest, I am not really sure why RTE is encrypted on the Astra satellite when similar stations in other countries can be accessed throughout Europe. I presume the reason relates to deals which have been done on copyright, as I said the last time we considered this matter. It is a matter for RTE and Sky in the first instance. I agree with Senator O'Toole's aim of getting Irish-made programmes to as wide an audience as possible in the UK and elsewhere in Europe. The Government will support anything that facilitates the achievement of such an aim. I have amended this legislation to try to ensure that such programmes are as widely available as possible.

Question put and agreed to.

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

Mr. Kenneally: I thank the Minister for returning to the House this evening for the final part of the Seanad's consideration of this legislation, which was the subject of good debate in the House on Second and Committee Stages. I thank those who spoke on the Bill, particularly those on the Opposition benches. I thank the Minister's officials for their co-operation.

Ms Terry: I welcome this Bill on behalf of Senator Finucane, who is unable to be present for this evening's debate. He appreciates the work that has been done on the legislation by the Minister and his officials in the Department. I am sure these provisions will strengthen this country's broadcasting sector. I thank everyone who was involved in introducing this legislation and getting it through the House in such a speedy fashion.

Mr. O'Toole: I recognise the intensive work that has been done by the departmental officials. I thank the Minister, who has been well advised on the legislation, for being so open to the views of Members. The review provisions are crucially

important because it is so hard to keep up with the changes in technology. One can go to the local car park and buy a card to receive various channels. A slingbox allows one to tune into television programming from Ireland on a laptop, irrespective of where in the world one is. The technology is amazing and we must keep up with the game.

I agree with the point made by the Minister. I did not want the Government to interfere with RTE but I wanted to make the opportunity available to it. Perhaps the Minister could write to RTE to encourage it to answer my questions.

The Acting Chairman and the Minister will be interested in the motions proposed for the GAA congress next week. I read them during the week and noted one that suggested the Ard Comhairle make available the official guide to the GAA in all official languages of the EU to spread the game. That is a move forward and it would be nice if other countries could see the games as well.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I thank Senators for their contributions to the Bill. Many of the points raised have been reflected in amendments to the Bill, which have improved it considerably. I acknowledge the contributions from sectoral players and various interested parties. People were positively disposed to the Bill and made constructive suggestions.

The twin issues in this Bill were of particular interest to Members. It is crucial that Irish viewers can enjoy access to a quality free-to-air service and that we look after the needs of the Irish community living abroad in respect of access to Irish public service broadcasting. I thank Members, my staff and the staff of the Houses for their assistance and co-operation in passing this Bill.

Question put and agreed to.

Communications Regulation (Amendment) Bill 2007 [*Seanad Bill amended by the Dáil*]: Report and Final Stages.

Acting Chairman: This is a Seanad Bill which 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. The only matters, therefore, which may be discussed are the amendments made by the Dáil. For Senators' convenience, I have arranged for the printing and circulation of the amendments. Senators may speak only once on Report Stage.

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

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I introduced amendment No. 1 to enhance the whistleblower's provision in the Bill by providing that ComReg may use its discretion when information is disclosed to it. It can decide, if satisfied on reasonable grounds, not to accept or deal with the information. This will allow ComReg the discretion to take no action when the information offered is of a vexatious or frivolous nature. The provision offers operators protection from a disgruntled employee, for example, who may seek to disclose commercially sensitive information to ComReg. It is in addition to protection offered by section 24C against mischievous claims, which makes it an offence to disclose false or misleading information.

Amendments Nos. 2 and 72 were made following discussion on amendments tabled by Deputies Broughan and Durkan on Committee Stage. They provide that, in addition to ComReg's annual action plan being presented to the Minister and made available to the public, it will be laid before the Houses of the Oireachtas and the Competition Authority will lay a copy of the co-operation agreement between it and ComReg before the Houses. This will facilitate Members in keeping abreast of developments in respect of ComReg's activities.

Amendment No. 3 provides clarity in respect of prosecution of summary offences by ComReg. The amendment ensures that ComReg's prosecution powers do not extend to areas where other bodies, such as the Data Protection Commissioner under the data protection and privacy regulations of 2003, have responsibility.

Following discussions on Committee Stage about overcharging, I have accepted the views of the Opposition that oral statements on charges by undertakings would be difficult to prove. Amendment No. 4 deletes oral statements in respect of charges for the purpose of that section. However, oral commitments on telephone charges received by potential customers should be accurate.

Amendments Nos. 5, 6, 7, 9, 71 and 74 are minor drafting amendments made by the Parliamentary Counsel. Amendment No. 71 was made following discussion with the Department of Enterprise, Trade and Employment. It exempts section 4(3) of the Competition Act, as amended by section 22 of this Bill, from the provisions of section 47E. Section 4(3) provides for making a declaration that a specified category of agreements, decisions and concerted practices is not prohibited. Declarations under section 4(3) can only be made with the agreement of the Competition Authority and ComReg. It is not appropriate that such declarations be encompassed by section 47E, which provides for cases

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on which agreement cannot be reached to be referred to the Minister for Enterprise, Trade and Employment for decision.

Amendment No. 8 was made following consideration of points raised by Deputies Durkan and Broughan on Committee Stage. The penalty has been increased from €4 million to €5 million. This brings it into line with the penalty imposed by the Financial Regulator under the Central Bank and Financial Services Authority of Ireland Act. The penalty is up to 10% of turnover if that is greater than €5 million. The court will have discretion, taking into account the size of the undertaking and its annual turnover, to decide the penalty imposed.

Amendments Nos. 10 and 46 allow the Minister to amend the current postal regulations, SI 616 of 2002, the European Communities (Postal Services) Regulations, to grant powers to ComReg to apply to the High Court for the application of a financial penalty to An Post in the event that the latter fails to comply with the direction issued by the regulator in respect of the quality of domestic service or corrective action. The civil enforcement remedy is already available to ComReg under the current regulatory framework governing the electronic communications sector. ComReg takes the view that extending this to the postal services would provide a greater incentive to An Post to comply with directions in respect of quality of service and corrective actions. Amendments Nos. 11, 12 and 13 are technical amendments that arise as a result of amendment No. 10.

9 o'clock

Mr. Kenneally: I welcome this amendment from the Dáil. When the Minister talks about quality of service standards, I presume that includes next day delivery, one of the most important aspects of the work of An Post. ComReg produces a figure of 73% of mail being delivered next day while An Post argues that ComReg's methodology is wrong and 91% of mail is delivered next day. Will the methodology set down by ComReg be used to measure An Post's success in meeting quality standards?

Mr. N. Dempsey: Senator Kenneally has raised an important point and is correct that ComReg and An Post have produced different figures for next day delivery. It was one of the first issues I raised with An Post when I was appointed Minister to this Department. Attempts were made in the previous 18 months to rectify that situation so everyone was using a single set of figures.

Since the new chief executive officer of An Post took over, we have moved towards using one set of figures. If that move is not completed, the ComReg figure will be used but An Post management accepts that ComReg has a job to do and they both must agree a measurement for An Post to measure up to. I have no reason to doubt the management of An Post will live up to that. Just in case, however, ComReg will be in a position when this Bill is passed to enforce that. ComReg, with the recent increase it granted to An Post, made it clear it expected a higher quality of service and this will reinforce its powers.

Amendment No. 14 substitutes the word "service" for "contract" in section 58(*b*). This change is needed to standardise the time references in this section by reference to the ECAS contract as opposed to when the service actually commences. Amendment No. 15 extends the billing period in respect of call handling fees in respect of call handling fees from 28 to 45 days in section 58(*c*)(*i*). This will standardise ECAS payments with other interconnection charges. Amendment No. 16 was included following a proposed amendment from Deputy Durkan on Committee Stage to allow for ComReg to notify the Minister for Communications, Marine and Natural Resources if it deems it necessary with regard to any aspect of the operation of the ECAS. Also in line with a proposal submitted by Deputy Broughan on Committee Stage, I have included a new provision under section 16 that allows for an interim payment mechanism for the current operators of the emergency call answering service. It will remain in place until a new contract for the ECAS becomes fully effective, or for 18 months, or such longer period as the Minister may allow.

Amendments Nos. 17 to 45, inclusive, 47 to 68, inclusive, and 77 to 79, inclusive, are drafting amendments to delete statutory instruments previously listed under section 18 that have been or are to be revoked and under which ComReg no longer exercises any function. Amendment No. 79 deletes Part 15 of Schedule 2 to the Bill. Part 15 had provided for an amendment to the European Communities (Implementation of the Rules of Competition Laid Down in Articles 81 and 82 of the Treaty) Regulations 2004, SI 195 of 2004, to designate ComReg as a competent authority for the purposes of that statutory instrument. The statutory instrument in question, however, comes under the responsibility of the Minister for Enterprise, Trade and Employment and that Department has indicated that it will make the necessary amendments in consultation with ComReg and my Department.

Amendment No. 69 was made following discussion on Committee Stage of an amendment tabled by Deputy Durkan. Under this amendment, any regulation made by ComReg for the purpose of registration of .ie domain names must be laid before each House of the Oireachtas where it may be subject to an annulment resolution passed by either House within 21 sitting days of its laying. Amendment No. 70 was made following discussions between my Department and the .ie domain registry to acknowledge that the .ie domain name can be used from any

location in the world and clarifies the text in this regard.

Amendment No. 76 amends the Post Office (Amendment) Act 1951. It now allows for the sending of offensive and nuisance SMS text messages to be treated in the same way as offensive or nuisance telephone calls. This amendment was first raised in the Seanad by Senator Ryan and his colleagues and, subsequently, in the Dáil by Deputy Broughan.

Question put and agreed to.

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

Mr. Kenneally: I thank the Minister for coming to the House with the changes made to the Bill in the Dáil which enhance the legislation. During the passage of this Bill and the previous Bill, the Minister took Opposition amendments on board, a healthy sign that leads to better legislation. I thank those who contributed on all Stages and thank the Minister's officials for their work.

Ms Terry: On behalf of Senator Finucane, who could not be present tonight, I thank the Minister and his officials for the work they have done on this Bill. I recognise the significant number of Opposition amendments accepted by the Minister. We do not see that often enough and it is recognition of the time and effort put in by all Members. This is a good Bill that will stand for many years to come.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I thank Senators for their interest in this Bill. All sides of both Houses wanted the Bill and I was given early indications that it would receive constructive consideration and would be expedited as swiftly as possible in a manner consistent with good legislation. I acknowledge that is what happened. A number of good amendments were tabled in a constructive manner and I was glad to take them on board, the legislation is better for them.

I thank all those involved for assisting with the passage of the legislation. This is the last Bill I shall have the opportunity of bringing to the Seanad in the lifetime of this Government. I hope to be here many times in the future. I wish to thank my colleague, Senator Kenneally, who has suffered——

Mr. Kenneally: I believe the Minister has been here more often than some of the Senators.

Mr. N. Dempsey: ——long and hard with me over the last couple of months and I wish him well in the election. I hope it has not affected his very good chances of being elected.

Question put and agreed to.

Acting Chairman: When is it proposed to sit again?

Mr. Kenneally: Tomorrow at 10.30 a.m.

Adjournment Matters.

Local Government Matters.

Mr. J. Walsh: In raising this Adjournment matter I call for the establishment of a comprehensive review of the Local Government Act 2001 with a view to addressing the democratic deficit through greater empowerment and resourcing of local public representatives. A competitive report carried out a number of years ago found that Ireland had the most centralised system of local government as against any other country in the world. When one looked at the centralised systems of many of the eastern bloc communist countries, and China, that speaks volumes for the system we have. Coupled with that is the City and County Management (Amendment) Act 1955, which took much of the democratic powers from local authority members and handed them to the county managers. The whole area of subsidiarity needs to be injected into the system.

The reason for my proposal is that there is widespread dissatisfaction among the public and members of local authorities that the good purpose and intention of the 2001 Act has not been realised. One of the purposes of the Act was to put the councillor centre stage, so that he or she had a real democratic input into the system. I have done some surveys and find that four councillors to one are dissatisfied, which equates generally with countrywide discontent as regards the workings of the Act. One of the main purposes of the Local Government Act 2001 was to shift the balance of power towards members and this has not happened.

The corporate policy groups were to be a pivotal and fundamental part of that initiative. Dissatisfaction with the operation of the corporate policy groups, according to the surveys, accounts for 70%, as against 30% who are satisfied. This disparity reflects a significant level of dissatisfaction. The corporate policy group, in effect, was expected to operate on the basis of a mini-cabinet. From a trawl I have carried out of the minutes of many local authority corporate policy groups, it is obvious that nothing of fundamental importance is being included on their agendas. These routinely comprise administrative and ordinary matters that are scheduled and dealt with at county council meetings.

This raises a question and I am not sure whether the Minister of State will have the answer. What specific training was given to the

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cathaoirligh and mayors of local authorities, particularly county and city councillors as well as members of corporate policy groups, to ensure that they would operate effectively? Again, that was one of the areas identified at that stage in the 2001 Act, namely, that training of councillors was to be an essential component for improving the system.

There is somewhat more satisfaction with the strategic policy committees, SPCs. Some 57% declared themselves dissatisfied, but 43% are satisfied that they make a contribution to councils. That probably illustrates that if the positives from many councils, where they seem to be working effectively, can be identified and transferred to other local authorities, and the negatives addressed by perhaps giving much greater scope to the chairs of SPCs, we could see a significant improvement in that area. A question put to councillors as regards leadership within the councils showed that 47% were in favour of a full-time cathaoirleach. The question of a directly elected cathaoirleach, which was opposed by many councillors at the time, now has support among 43%, with 57% opposing.

Among the chairs of SPCs, some 18% believed they should be full-time posts and just short of a quarter of the councillors believed that given the enormous workload and various reports coming before councils, there was now a demand for their far greater and even full-time involvement. The submission of the three representative bodies, General Council of County Councils, the Association of Municipal Authorities in Ireland and the Local Authority Members Association, prior to the enactment of the 2001 Act, suggested that there should be a transfer of executive decisions to the corporate policy group, which should function as a mini-cabinet, with a full-time chair, and other members — whether chairs of SPCs or area committees — in part-time positions. There is a real need for every councillor to have, at least, an office in the council, so that he or she may have a base from which to operate and undertake his or her responsibilities.

As part of the review I suggest that the whole area of councillors' recompense should be looked at. Good progress has been made in this regard, and that has been acknowledged in recent years. Nevertheless, some 43% of councillors expressed satisfaction with the small salary being paid but significantly, 57% were dissatisfied with it, which I considered to be relatively high. However, there is probably a need for this to be review to bring it to the equivalent of a third of a Senator's salary, the level that was sought by the representative bodies at the time.

With regard to the vexed questions of councillors' pensions, which has been raised in this House on a number of occasions, this has support among 89% of councillors, with just 11% opposed. While I acknowledge that justifiably, the gratuity has been significantly improved, much rubbish has been talked by those who oppose the pensions initiative. Many councillors, as all of us know, in order to meet their commitments as public local representatives, have undertaken part-time job sharing. They do this with a commensurate loss of income and subsequently the loss of pension entitlements. They should not be discriminated against, as the only public servants who do not qualify. This should be part of the overall comprehensive review. Given the level of dissatisfaction and valleys in customer service from local authorities, the system would benefit from an impartial review. Any such review, as happened on the last occasion, should not be crowded with county managers, all of whom have vested interests and an axe to grind. If they are to be involved, there should be a balancing opinion from elected local authority members and independent reviewers. The local government system which annually spends billions of euro and employs 35,000 people must be optimised to meet future demands.

Minister of State at the Department of the Environment, Heritage and Local Government (Mr. N. Ahern): The enhancement of the role of the elected local authority member has been a fundamental objective of the ongoing local government reform programme. Key features of the programme include the introduction in 2004 of a single electoral mandate for local government to underline the unique role of local government and the distinctive representational role of councillors; the strengthening of the councillor's policy making role through the establishment of the strategic policy committees; the introduction of the corporate policy group, which provides a forum for the committees' chairs and cathaoirligh to consider policy positions affecting the entire council and act as a mini-cabinet for the council; the widening of the councillor's remit through important structures such as the county and city development boards and joint policing committees. This has been underpinned by comprehensive and modernised legislation in the Local Government Act 2001 and constitutional recognition for local government with guaranteed local elections every five years.

The Local Government Act 2001 provides that the elected council is the policy-making arm of the local authority, while that of county and city managers is one of day-to-day management. Elected members are the board of directors of their authorities. Their functions span a range of important matters including the adoption of the annual budget, the development plan and development contribution schemes. The elected council has various oversight powers for the discharge by the manager of his or her duties.

Strategic policy committees have been introduced to local government bringing elected members together with the social partners and other interests to formulate, monitor and review policies across the major functional areas of local authorities. The committees, designed to be a significant resource for councillors in their policy-making functions, complement the work of the corporate policy groups.

Local government's sphere of influence has been widened through its leadership of the county and city development boards. The boards, on which the corporate policy group sits, represent a real attempt at improving the co-ordination of planning and service delivery across the public sector at local level. It is important that elected members on these boards play their leadership role in this regard to the full.

The remit of local government was further extended last year with the establishment of several joint policing committees on a pilot basis. These committees introduced a partnership process involving local elected members, members of An Garda Síochána, and others to collectively consult, discuss and make recommendations on matters affecting the policing of local areas.

Senator Jim Walsh raised the important issue of the proper resourcing of councillors to enable them to carry out their duties as public representatives. Councillors must have the necessary support to carry out their responsibilities and to serve their communities. Considerable improvements have been made in this regard and, following the enactment for the Local Government Act 2001, councillors now receive an annual representational payment, linked to the salary of Senators. In addition, a gratuity scheme has also been provided for retiring councillors. The gratuity has recently been substantially increased along with other significant improvements to the councillors' expenses system.

With these tangible supports, a major training and development programme has been under way for some time to facilitate the effective participation of councillors on their councils. The programme has been developed in partnership with and with the active involvement of the three elected member associations.

Taken together, the above steps have substantially strengthened the role of local government and its elected members. The immediate focus is to ensure the benefits of the reform programme continue to feed through in better service delivery to our communities. The Department of the Environment, Heritage and Local Government will continue to work to intensify and consolidate the gains being made under the programme. Elected members will play their part to the full in this regard.

I am more familiar with the Dublin local authority scene and it might not be typical of other areas. However, after the last local elections as there was a large turnover in new councillors, the corporate experience was lost. There was too much movement and it may take several years for newly elected councillors to find their feet. The legislation can be in place but it is up to councillors to work the system. The red carper cannot be rolled out for them every day. In some instances, councillors are effective in determining policy but others may expect it to be presented with a ribbon.

Mr. J. Walsh: I thank the Minister of State for his response and positive remarks. Will he convey to the Minister for the Environment, Heritage and Local Government the compelling arguments for a comprehensive review to identify the strengths and weaknesses of the system?

Special Educational Needs.

Mr. Browne: Why is there a waiting list of 18 months for children to access speech therapy in County Carlow? As there are no private speech therapists in County Carlow, affected parents do not have the option of taking the private route. What is the waiting list time for occupational therapy for children?

I was forced to raise this matter on the Adjournment because I could not get a straightforward answer from the Health Service Executive. I would also be lucky to receive the reply after the general election. I must compliment the Department of Social and Family Affairs. Recently I had to send a query in an awkward case to the Department. Not only did I receive a favourable reply, it came in four days. The HSE could learn much from the Department in respect of questions from public representatives. The Department's replies are prompt and positive. The HSE must replicate such a system of excellent delivery.

Mr. N. Ahern: I am taking this Adjournment matter on behalf of the Minister for Health and Children, Deputy Harney. I thank Senator Browne for raising this matter as it gives me an opportunity to outline to the House the issues in regard to the provision of speech and language therapy and occupational therapy services in the Carlow area.

Demand for speech and language therapy and occupational therapy in the health services is very significant, hence the substantial investment which has been provided in them during the past number of years. The number of speech and language therapists employed in the public health service has increased from 281 whole-time equivalents in 1997 to 655 whole-time equivalents at the end December 2006, representing an increase of 133% in that nine year period while the number of occupational therapists has increased from 288 whole-time equivalents in 1997 to 928 whole-time equivalents at end December 2006,

[Mr. N. Ahern.]

representing an increase of more than 220%. Those percentage increases are staggering. The Government has also committed to further investment in disability services — via the multi-annual investment plan — and in primary care services. These services will see further increases in speech and language therapy and occupational therapy resources.

A particular priority for the Departments of Health and Children and Education and Science in recent years has been the expansion of the supply of therapy graduates, including speech and language therapists and occupational therapists. Additional courses in speech and language therapy and occupational therapy were established in three universities. University College Cork, the National University of Ireland, Galway, and the University of Limerick, each established courses in both speech and language therapy and occupational therapy with an initial intake of 25 places on each of the six courses. The University of Limerick courses are at masters level and the first cohorts graduated in 2005. The first cohort from the bachelor degree programmes in both disciplines in University College Cork and the National University of Ireland, Galway, will graduate this year. This investment represents an increase in training capacity of 300% in speech and language therapy and 240% in occupational therapy. The latest information available to the Department of Health and Children indicates that the total number of speech and language therapy and occupational therapy training places now stands at 103 and 120, respectively.

The provision of speech and language therapy and occupational therapy services is a matter for the HSE. In regard to speech and language therapy services, the HSE has advised that there are 99 children awaiting screening or assessment in the Carlow area. On average, children wait three to six months for a first appointment. Some 299 children who have been assessed are waiting for speech and language therapy. The number of referrals to Carlow has increased significantly in the past two years and, on average, there would be up to 30 new referrals each month. There are currently four full-time speech and language therapy posts in Carlow but, in addition to children, these therapists deal with special schools, day centres and adults. The HSE has further advised that it is not aware of any private speech and language therapists working in the Carlow area.

In regard to the provision of occupational therapy in the Carlow area, the HSE has advised that 89 children are awaiting assessment in the Carlow area. The children are prioritised based on their clinical need, those deemed the highest priority are dealt with at the earliest opportunity, usually within a matter of days to weeks. The number of referrals to Carlow has increased significantly due to the increase in population and the demand for occupational therapy service.

Currently there are three full-time paediatric occupational therapists in the Carlow-Kilkenny area. The HSE has advised that it is not aware of any private occupational therapists working in the Carlow area.

I hope this reply has provided the Senator with some information on these services.

Mr. Browne: I thank the Minister of State for his reply.

The Seanad adjourned at 9.35 p.m. until 10.30 a.m. on Wednesday, 4 April 2007.