

Vol. 188
No. 10



**Thursday,
7 February 2008**

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TU AIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Thursday, 7 February 2008.

[illegible]

SEANAD ÉIREANN

Déardaoin, 7 Feabhra 2008.
Thursday, 7 February 2008.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

An Cathaoirleach: I have notice from Senator Brian O'Domhnaill 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 simplify the application process for new housing grant schemes in order to make it easier for the disabled and elderly to avail of the schemes; and if he would reconsider his decision to terminate the HSE special housing aid for the elderly scheme which is due to cease on the 31 March 2008.

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

The need for the Minister for Agriculture, Fisheries and Food to clarify the reason a person (details supplied) who was granted compensation under the decommissioning of fishing vessels has not yet received compensation and the reason this delay is ongoing.

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

The need for the Minister for Education and Science to take steps to ensure that parents of children with special needs, particularly autism, do not have to take the State to the High Court to obtain education for their children in view of the fact that currently more than 150 such cases are awaiting court hearings.

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

The need for the Minister for Justice, Equality and Law Reform to clarify the current position in developing the 24 hour Garda station for north Inishowen both in terms of the personnel and the building of the new facility in Carndonagh, County Donegal.

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

The need for the Minister for Health and Children to intervene in the ongoing dispute between the Health Services Executive and the Irish Pharmaceutical Union and to outline the Government's position regarding same.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I have selected the matters raised by Senators O'Domhnaill, Twomey and Fitzgerald and they will be taken at the conclusion of business. Senators Keaveney and Doherty may give notice on another day of the matters they wish to raise.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, statements on the 70th anniversary of the Constitution (resumed), to be taken at the conclusion of the Order of Business and to conclude not later than 2.30 p.m., with the contributions of spokespersons not to exceed 15 minutes, those of other Senators not to exceed ten minutes and Senators may share time.

Senator Frances Fitzgerald: That is agreed.

Last weekend, eight people died on our roads. Everybody saw the pictures of the horrific accidents on their television screens. On many occasions Senators on all sides of the House have raised the issue of road safety. We were assured that the Government intended to take tough action in this regard and that there would be greater commitment to road safety, both financially and otherwise. However, yesterday the chairman of the Road Safety Authority, Mr. Gay Byrne, painted a picture of the Government's attitude to road safety which seemed to be more a case of passing the buck than showing leadership and determination. I am amazed to read his comments in today's *Irish Independent*. He stated, "I am merely registering the fact that I have had no official reply from the Minister of Transport, Justice or Finance....". He said he had been passed from the Department of Transport to the Department of Justice, Equality and Law Reform and on to the Department of Finance in an effort to roll out a nationwide network of 600 private speed cameras.

If this is the way the chairman of the Road Safety Authority is being treated by the Government, what priority is being given to road safety and speed cameras? Is it merely words, not actions? That is so often the case with this Government — the words are spoken but the follow-up and money are not put in place. Once the crisis is passed, the issue is forgotten. How can the chairman of the Road Safety Authority be treated this way with regard to what he was told was a priority issue for 2006? It now appears it

[Senator Frances Fitzgerald.]

will be 2009 before the speed cameras are in place.

There are a number of other aspects of the road safety issue which received much attention a few months ago. One of them is driving tests. The Minister for Transport put his reputation on the line when he said driving tests would be available on demand by June. Can I bring to the attention of the House the latest figures which are available? There are waiting times of 40 weeks in Clifden, 35 weeks in Raheny, 31 weeks in Wicklow and Roscommon, 30 weeks in Ennis, 29 weeks in Loughrea and 20 weeks in Tullaght. Where is the improvement? How can learner drivers get their driving tests done in time — before the changes are made — when the waiting lists are so long? What action has been taken? Will the Minister resign? He said his reputation would be on the line if changes were not made by June. I ask the Leader to get back to the House about this aspect of road safety. Will this Government promise be delivered? It does not look as if it can be delivered, on the basis of the figures I have outlined.

I would like the Leader to ask the Minister for Transport about the number of foreign drivers on our roads. We have to be careful not to stereotype foreign drivers by saying they are involved in proportionately more accidents. The Government has not taken steps to ensure that road signs are made available in languages other than English, which would be a practical thing to do. Such signs would be of assistance when people from other countries are driving from Dublin Airport to the M50, for example. It is difficult enough for any of us to negotiate the M50. This is a real issue. The recently updated road safety booklet was published in English only. Such matters need to be examined. I am sure specific initiatives could be taken to assist international drivers who come to Ireland and, possibly, make it less likely that they are involved in accidents. Action is needed in respect of each of the three road safety issues I have mentioned.

Senator Joe O'Toole: I agree with Senator Fitzgerald's remarks on road safety, which is being discussed throughout the country at present. The Leader has made time available for debates on this issue in the past. It might be worth discussing it again. It should be recognised that simple things can be done to improve road safety, but they are not being done. It does not take rocket science to do some of them. The current driving test does not involve an overtaking manoeuvre. We are putting people on the roads whose overtaking abilities have never been tested, in effect. It is complete madness that the test does not cover night driving, or driving at speeds of more than 40 km/h. All kinds of problems are being created on our roads as a result.

I would like to mention some related issues, which I have raised previously. It is clear that there should be separate speed limits for wet and dry road conditions. One sees two speed limits on road signs all over the Continent — one for wet weather and one for dry weather. Why can we not do the same? Most countries do not allow drivers to turn right off a main road. Perhaps we should no longer have traffic lights which go amber before they go red. Alternative traffic light sequences should be provided for night time, when a significant number of accidents take place. People who know they have the right of way sometimes collide with those who have broken the lights while travelling in the opposite direction. I suggest that traffic lights on all sides should flash amber throughout the night, so everybody approaches every junction carefully before passing through.

I could put before the House a list of 20 simple proposals which any reasonable and rational person would accept. The first thing I would do is ensure people cannot pass the driving test until they have shown they can overtake and understand the speed of their cars. Drivers who flash their lights at people who are overtaking with a mile and a half of clear road in front of them have no idea of the speed the other car is doing. The House should have a discussion on these issues.

As today is the first day of the Chinese new year, it is appropriate for us to give some thought to the hundreds of millions of people who are suffering under the most repressive regime in the western world, if it can be called the western world — they hope to be in the western world. We are doing business with these people. We are sending them our waste. We are closing our eyes to the repression that is going on. I refer to forced organ harvesting and family planning, for example. There is a lack of human rights in China. There is no Opposition. A million other repressive things are happening there. It is not a very happy new year for 99% of the Chinese population. In this year of the Chinese Olympics, when we will cheer the great buildings we will see on our televisions, we should give some consideration to people in China who are dying in the wilderness and not being allowed to live with normal human rights.

Senator Alan Kelly: I concur with the comments of Senators Fitzgerald and O'Toole on the issue of driving tests. I am concerned that a recent report showed that nine of every ten road deaths are caused by careless driving. That just goes to show the issue with which we are dealing. There is a staggering level of backlog for driving tests throughout the country. The Minister said he had put his neck on the line. He promised that everybody would know about it by June. He accepted that the reputation of the Road Safety Authority was also at stake. The Taoiseach has a decision

to make because the backlog will not be met. I do not doubt that the waiting time will not be reduced to ten weeks. The waiting time in my local area has increased by nine weeks — it is not decreasing. What will happen? We need some measurability, accountability and benchmarks from the Government. In fairness to the Minister, he has set his own benchmark. We respected that benchmark by giving the Minister time to achieve it, but it now looks like it will not be achieved. What will happen? I would like to know the answer.

I agree with Senator O'Toole that the driving test needs to be overhauled for various reasons. I also agree that the language difficulties being experienced by foreign drivers need to be addressed. There are other considerations in relation to the test. We should consider restricting the size of the engines of cars which may be driven by those who have passed their tests within the previous two years. We should consider such a change when we are examining this issue in the future. I believe it has been done in other countries. I am also concerned about the manner in which Mr. Gay Byrne claims to have been treated recently. He has said that various Ministers have put him on a merry-go-round. If he is getting such treatment, it is a sign of the Government's intentions on this issue. We can tell how seriously it is being treated.

I have spoken previously about the issue of workers' rights, which has become a common theme since the economic downturn began. I read today about a man from Pakistan who worked in a restaurant in Dublin for 60 hours a week but was paid just €50, which is an absolute disgrace. We heard about the Irish Ferries case and we know what the Irish Hotels Federation is doing. The lack of respect shown to workers' rights in the service and tourism industries has to stop. The restaurant in this case has not been named for legal reasons, but I would love to know its name. I think we would all like to know where such a disgraceful thing happened. The man in question, who was supported by the State and the Labour Relations Commission, has been awarded compensation of €116,000 and has found a new job. The Minister of State with responsibility for labour affairs and the Minister for Arts, Sport and Tourism should comment on this case. The service and tourism industries need to ensure they do not get a bad name. The Irish Tourist Industry Confederation should make a statement on this issue, making it clear that the most vulnerable people in society should not be exploited in an industry that depends on people with low skill levels to keep going.

Senator Ciaran Cannon: I would like to comment on the looming financial crisis that is faced by farmers, particularly those with small or medium sized holdings. Most farmers are

awaiting their REPS payments. A recent EU directive stated that the REPS payment should be included with the single farm payment near the end of the year. As a result, farmers are now facing a serious cash flow problem. It is proposed that REPS payments should be made in conjunction with single farm payments, probably in October. If any of us were to get the majority of our income in a single payment at any point in the year, we would have to engage in some serious financial wizardry to make our cash flow systems work. I ask the Leader to liaise with the Minister, Deputy Coughlan, to see whether a derogation can be achieved from the requirement that the single farm payment and the REPS payment be received in one lump sum. As a result of the directive, approximately 500 farmers throughout the country who made their most recent REPS applications last November might not be paid for up to 12 months from the date of the application, in October or November of this year. That is creating a major cash flow crisis for them. Many farmers have made serious capital, or financial, inputs into their farm holdings to be eligible for REPS payments. They are now lumbered with some serious loans on their books as a result. They need cash to be able to service their loans. I ask the Leader to liaise with the Minister to see if some resolution to this crisis can be found.

Senator Jerry Buttimer: I join with Senator Fitzgerald and other speakers in raising the issue of road safety. I ask the Leader to invite the Minister for Transport here because it is alarming that, according to today's *Irish Independent*, the road safety chief, Mr. Gay Byrne, stated, "It looks like we will go right through 2008 with no speed cameras, and this makes the members of the board very tetchy and makes me very tetchy." Before 2004 we were promised speed cameras. It is 2008 and we have nothing. The NRA claims responsibility for road provision and if one raises an issue here one is told it is the NRA's responsibility. The Minister is conveniently passing the buck. If that is how he treats the chairman he appointed, what does that say about how he treats the people who require, deserve and demand proper road safety? The Government is tired and jaded and has no interest except being in power. That is the bottom line.

Senator Cecilia Keaveney: Senator Buttimer thinks he is a young fellow and we are tired and jaded. Where is the latest survey?

Senator Jerry Buttimer: The Government pays lip service to the people. We saw it last week from the Members opposite on the Cork docklands, and they should be ashamed of themselves, particularly Senator Boylan.

Senator Cecilia Keaveney: This is a personal attack.

Senator Jerry Buttimer: Last December we were promised in the budget that funding would be provided, and it was not. We were told to wait for the Finance Bill but it is not in the Finance Bill. I am disappointed in the Members opposite who have not the voice to be heard in Government. They should be ashamed of themselves.

Senator Cecilia Keaveney: Senator Buttimer has no voice in Government. People chose not to have his voice in Government.

Senator Jerry Buttimer: I would like a debate on the Cork docklands. We have been treated badly by this Government and its Members should be ashamed of themselves.

Senator John Ellis: We have had much talk on road safety. We need to ensure many of the bangers brought into the country from eastern Europe and which are being driven by eastern Europeans who, in many cases, have neither tax nor insurance, are taken off the road by the Garda. The Garda must up the ante on the vehicles many of these people drive. In some areas it is being done and I hope it becomes nationwide. It is one way of dealing with the situation. In last week-end's road accidents the non-national involvement was very high and in all cases they were in the wrong. We also have a problem with road manners and we see it every day. People are not living within the rules of the road on many occasions.

What progress has been made on my request during the last session for the Minister for the Environment, Heritage and Local Government to come into the House to discuss the last boundary commission report which savaged a number of counties? I note there is no legislation on the boundary commission report planned for this term. If it is not dealt with before there is legislation we will see every county cut in pieces and what have been seen as natural boundaries for years will be done away with. A judgment was given by the High Court in June last year which left tolerance levels very low. When the Constitution was drafted it was aimed at ensuring every area would have proper representation. We need this debate. The Leader might also tell us whether the Minister proposes to bring in the new electoral commission to deal with all electoral matters. If he does not propose to do so urgently we might propose it in this House, even if it means bringing in a Private Members' Bill.

Senator Feargal Quinn: When Mr. Gay Byrne accepted the position of chairman of the Road Safety Authority I welcomed it in this House. I said the Minister for Transport will not allow Mr. Byrne to resign because the Minister did not perform what he promised he would. I read the newspaper today and Mr. Byrne's use of the interesting word "tetchy" is close to resignation.

The Minister will find it difficult to hold his head up and say he has not provided the 600 speed cameras he promised. If Mr. Byrne resigns due to this it will be a scandal for the Minister given the number of road deaths that take place that are technically within his hands. The technology for speed cameras exists. They do not catch people speeding at a single point. They identify a car at one point, and if it reaches a second point in a time that indicates it exceeded the speed limit, the driver is caught speeding even if he or she slows down while passing the cameras. The Minister knows the technology exists and it is up to him to do something, otherwise the scandal of road deaths is on his hands.

I wish to raise the position on donor organ transplants. In France, when a person dies his or her organs are automatically taken to be available for use in transplants unless that person has declared that he or she does not wish them to be used. People are on dialysis and waiting for organ transplants. In Ireland we have not taken that step but it is worthwhile considering. It would be the opposite to the position we have here. Unless a person carries a donor card that agrees his or her organs can be taken, they cannot be used without the permission of the next of kin. It is the other way around in France, and Britain is considering adopting that system. We should consider it here because it will decrease the number of people waiting for transplants.

I applaud the declaration of interest in the next Presidency from the other side of the House.

Senator Shane Ross: Hear, hear.

Senator Feargal Quinn: At least one other female President of Ireland made her name in this House. It is worthy of respect from this House to recognise the declaration at this early stage and I congratulate Senator Mary White on her declaration.

Senator Mary M. White: Gabhaim buíochas leis an Seanadóir.

Senator Jim Walsh: Most, if not all, Members of the House will welcome the Taoiseach's visit last Friday to Ballymena, the heartland of the DUP and the First Minister's constituency. Its symbolism and significance cannot be underestimated. In many ways it illustrates the progress of the peace process and how the harmonisation and cultivation of relations on this island have developed. The Taoiseach's contribution to that, his personality and his commitment and dedication to resolving the issue have been remarkable. His personality in gaining the confidence of the unionist tradition in particular has been remarkable.

I contrast that with the recent revelations to which Senator Norris and others alluded yesterday and which the chief constable of the PSNI

has also mentioned, namely, the threat of the dissident republicans. Everybody here would love to see the day when we have a united Ireland where all the people of the island of all traditions come together to govern themselves and to ensure all elements of society develop as we would like. That will happen only through the type of initiative and effort made by the Taoiseach not through paramilitary activities, which have failed.

I hope the attributes the Taoiseach has brought to this will be with us and available for many years to come because we are at least five or six years from bedding down this process.

An Cathaoirleach: Is the Senator looking for a debate on it? Time is moving on.

Senator Cecilia Keaveney: He has just debated it.

Senator Jim Walsh: I ask the Leader, who is the spokesman on Northern Ireland, if he could arrange a debate on these issues at an early opportunity. The House should express its voice in support of the tremendous historic efforts that have been made by the Taoiseach and many others from all sides of these Houses.

Could I refer to the call for the roll-out of the speed cameras? If the speed cameras were rolled out today it would be a travesty of justice and would bring the laws into disrepute.

11 o'clock Many of our speed limits are far too curtailing relative to the significant improvement in our roads. It is eight years since the chief executive of the NRA said at an Oireachtas committee meeting that the speed limit on the Arklow bypass, and one can now also add the Gorey bypass, which is a very high quality dual carriageway, would be increased to 120 km/h. That should happen as soon as possible and speed limits should be reviewed across the country before the imposition of speed cameras. Otherwise, it will be seen as a money-gathering exercise and will not gain the support of the public. Enforcement is essential but the laws must be realistic when enforcement is taking place in order to gain widespread support, which we all want.

Senator Nicky McFadden: Last week I raised the issue of the proposed primary care unit in Athlone and the Leader suggested that I had the same access to the HSE as he did. In that context, I duly contacted the HSE but the manager, who did his best to give me as good an answer as possible, said that the unit falls under a national directive. I ask the Leader, as a member of the Government, to find out from the HSE at national level when the primary care unit will commence operation. This has been ongoing since 1999. Land has been purchased but the people of Athlone are being treated with disdain.

I also contacted a different section of the HSE with regard to the budget for Mullingar Hospital and the allocation of funding for this year. I was told, in a very bland statement, that it would be the end of February before it was decided how the budget would be spent. I ask the Leader to intercede in this matter because many people are wondering about the discontinuation of ophthalmology, dentistry and other services at the hospital.

Yesterday I attended a very sad funeral of a constituent of mine, 15 year old Ian Evans, who suffered from cystic fibrosis. Ironically, I also read an article yesterday which said that people in Northern Ireland with cystic fibrosis had a life expectancy of ten years more than people living here. We must have a debate about cystic fibrosis in this House and how we treat those who suffer from the disease.

Senator Ivor Callely: I have listened with interest to my colleague's comments on road accident statistics and road safety. We should not underestimate the importance of a good set of tyres on a vehicle and the level of inspection carried out on tyre thread depth. We are often stopped for insurance and tax checks or to be breathalysed, but it is very seldom that one is stopped for a safety check on the tyre thread depth. This is a crucial issue and I ask the Leader to raise the matter with the appropriate authorities. I also congratulate Ógra Fianna Fáil for highlighting this issue in its current road safety programme.

The issue of pharmacies was mentioned by many Senators yesterday. I raised the matter on the Order of Business previously and have also raised it at parliamentary party level. I welcome the support expressed for the community pharmacists. However, the substantive issue is the mechanism available to community pharmacists for engagement with the HSE. The pharmacists want a simple, fair and independent mechanism but the manner in which the HSE has responded to the service providers is unhelpful. Many Senators expressed their concern yesterday and used words such as "dictatorship", "unsatisfactory", "frustration" and so on, with regard to the actions of the HSE on the issue.

I have also heard many Senators being critical of the HSE on other issues and the record of this House speaks for itself in that regard. While the jury may still be out on the success of the HSE, the verdict it is now generally known and accepted. The public have expressed it to all Members of this House. I ask the Leader to outline to the Minister of Health and Children the level of dissatisfaction among Members of this House with the HSE and to stress to her the need to revisit the structure we have put in place to run our health service.

Senator Paul Bradford: Senator Ciaran Cannon made reference to various agricultural policies and schemes which must be addressed in this House. In that context, it would be helpful to have an early debate on the future of Irish agriculture because there is a very serious debate commencing in Brussels regarding the future of the Common Agricultural Policy and various aids to agriculture. We must play a constructive role in that debate at European level. I ask the Leader to invite the Minister to participate in a debate on agriculture.

Senator Cecilia Keaveney made a call yesterday, supported by Senator Jim Walsh this morning, for a debate on Northern Ireland, which was a regular matter for debate here in the past. Often, such debates were sad occasions. However, it would be helpful if we could now debate the great progress made on the political situation in Northern Ireland. I concur with Senator Jim Walsh regarding the Taoiseach's meeting with the Reverend Ian Paisley last week in Ballymena. The House can unite in congratulating both men. The meeting clearly indicates the progress we have made, given that in 1985, on the occasion of the signing of the Anglo Irish Agreement, this House could not unite in supporting what was a very strong building block.

While I recognise that it is unusual for Members from this side of the House to praise the Government, I wish to sincerely congratulate the Minister for Community, Rural and Gaeltacht Affairs, Deputy Éamon Ó Cuív, for his decision to give grant aid to the Orange Order. It was courageous, far-sighted and a decision which challenges all of us to recognise and publicly accept that there is another tradition on this island. The decision forces us to move outside our own little political comfort zone and to recognise that we must acknowledge an alternative viewpoint and vision. The Minister must be commended. I was disappointed to hear that a small section of so-called republicans condemned him because surely those who consider themselves to be republicans know they must recognise and respect every tradition on this island. The granting of assistance to the Orange Order, particularly among the Border communities, is another step forward in the pursuit of a long-term solution. We must support the Minister's actions in that regard.

Senator Dan Boyle: I ask the Leader to organise a debate on the national spatial strategy, which will help us to identify key projects for which resources can be provided, such as the Cork docklands project or the Limerick city regeneration project.

Senator Jerry Buttimer: It is a bit late for that now.

Senator Nicky McFadden: Or the Athlone sewerage scheme.

Senator Dan Boyle: It is important to have such a debate, while not pre-empting any debate on the Finance Bill, which will be a debate about the contents of that Bill, rather than its omissions. I would be happy to discuss such finer points at any opportunity. I only hope that when we discuss the Finance Bill, all Members of the House will inform themselves about the budgetary process and have an understanding of the working of EU state aids and how anything in the Finance Bill—

Senator Jerry Buttimer: That is a completely new departure for the Senator, and he knows it. It is important now that it suits him and his party in Government.

Senator Dan Boyle: —must undergo a certain level of EU approval.

Senator Jerry Buttimer: The Senator was singing a different tune last year when he was in Opposition.

Senator Dan Boyle: One particular scheme which I would like to see happen in the Cork docklands area would need such approval. The scheme would precipitate immediate development and involves giving assistance to IAWS to move from the Cork docklands to a new, green field site. Much remediation work will be needed on the site in the docklands, which is a listed SEVESO contaminated site. For any development to happen in the Cork docklands, the first—

Senator Jerry Buttimer: That has been well documented and the Senator knows it.

Senator Dan Boyle: —thing that needs to happen is the development of this particular area. I am confident the Minister for Finance understands and supports this and will be introducing necessary measures. To do that, we must obtain approval from the EU and I am also confident in that regard. The task force members of the Cork docklands project are fully behind the Government. We need this debate because many misunderstandings are being perpetrated. As someone who has represented the Cork region for the past 16 years, I feel a great deal of emotions, not all of which are positive, but shame is not one of them.

Senator Jerry Buttimer: The Senator was quiet.

Senator Rónán Mullen: I add my voice to those calling for a debate on road safety. There are voices of disquiet concerning the fact that we do not have the speed cameras promised a number of years ago. I speak as someone who amended

his behaviour on the road because of the introduction of speed cameras. Somehow, the momentum has been lost in recent years and I wonder why this is the case. The Government will stand indicted if the chairman of the Road Safety Authority resigns because of the lack of enthusiasm seemingly frustrating its board.

It is important to take an approach that promotes positive citizenship throughout the community. The only way to promote such an attitude is if we as legislators and those in Government show the same type of active and positive citizenship and pursue the issue. We should call speed cameras "safety cameras" because they are concerned with saving lives. The Government falls into the habit of getting bogged down in an issue such as provisional licences, but a number of issues cause the problem, including alcohol and the state of our roads. Regarding the former, increasingly desperate solutions are being proposed. Some have suggested credit cards for young people to ensure they do not purchase alcohol too frequently. The head of the Minister's advisory group discussed sending young members of—

An Cathaoirleach: If the Leader agrees to a debate, that matter can be discussed. There is no use in having the debate on the Order of Business because other Members wish to contribute. Today's time has been extended, but as many as 12 Members could not contribute yesterday.

Senator Rónán Mullen: As I was one of them, I crave the Cathaoirleach's indulgence.

An Cathaoirleach: I understand that, but Members felt peeved with me for cutting them short yesterday.

Senator Rónán Mullen: Will the Cathaoirleach allow me a few more moments? I could recite in my sleep a motion that ran in the House for three weeks concerning the need for a cross-party approach to tackling the problem of alcohol misuse, but unless we discuss in direct terms in the Chamber serious issues like tackling drinks companies, we will not get far with platitudes.

I congratulate my colleague, Senator Mary White, and wish her well in her bid for the Presidency. I suggest that it could be an exciting Presidency, particularly in terms of enhancing the interest of younger people. Were she to move the factory to the back of Áras an Uachtaráin in the Phoenix Park, we might have scenes reminiscent of *Willy Wonka and the Chocolate Factory*. Children visiting the President on a delegation might be known as the Children of Lir.

An Cathaoirleach: This is not relevant to the Order of Business. I call Senator Mary White.

Senator Rónán Mullen: If the Senator needs advice on good election slogans, perhaps she could say that behind her smooth exterior lies a soft centre.

An Cathaoirleach: That is not relevant to the Order of Business.

Senator Mary M. White: Last week, the Taoiseach formally launched the Office of the Minister for Older People. I call on the Leader to invite the Minister of State, Deputy Hootor, to spell out to the House what she intends to do about the human rights of older people in society. For example, there is no free breast cancer screening for women of 64 years of age despite women being more susceptible to breast and other cancers between the ages of 65 and 75.

Senators: Hear, hear.

Senator Mary M. White: The human right of older citizens to remain in employment after 65 years of age if they so wish is a matter of urgency. We are 40 years behind the United States in our attitude to older people. Senator John McCain's age of 71 years is a non-event there.

An Cathaoirleach: The Senator discussed this matter yesterday. I appreciate the important point she is making.

Senator Mary M. White: I am just making a point. I called on the Minister—

Senator Paul Coughlan: The Cathaoirleach has a good memory.

An Cathaoirleach: Senator White, without interruption.

Senator Mary M. White: In 2006, there were 366 road deaths and 409 suicides. There is anecdotal evidence that an increasing number of older men commit suicide, in respect of which we will all know the CSO statistics next April. Will the Minister of State address the House on how to create a more caring and inclusive society for people who live in rural areas or are isolated and on how to reach out and take care of one another?

Senator Quinn raised the matter of organ donors. One of his staff — Margaret in the Superquinn bakery — inspired me to become a donor. I will donate all of my organs because of Margaret, whose son, a young man of 23 years, waited for a heart transplant for 18 months. I had not considered donating previously. The Senator may not remember Margaret well, but her son died from a brain haemorrhage after his transplant. Why should we not all donate our organs?

An Cathaoirleach: The point is made.

Senator Mary M. White: There is a shortage of available organs. Donating would form part of caring for one another. Regarding Senator Mullen's comments, as far as young people are concerned——

An Cathaoirleach: The Leader will reply to the points raised. I do not want other Members replying across the floor. A number of Senators are offering.

Senator Mary M. White: In the previous Seanad, I produced a document on a new approach to children and older people. Young parents and young people are on my agenda in my role as a potential candidate for the Presidency.

Senator Terry Leyden: Hear, hear.

Senator Paul Coghlan: I agree with Senator Fitzgerald and others regarding road safety. The manner in which Gay Byrne, the respected chairman of the authority, has been treated and passed from Billy to Jack and the fact that scant attention has been paid to the serious work undertaken by him and his board are disgraceful. I hope this will not come to his resignation and that the issue of speed cameras can be resolved speedily, but a solution does not seem to be on the horizon. However, if he does resign it will be a clear sign of the Government's failure.

Sadly, some among the increasing number of foreign drivers on our roads may have defective vehicles. I agree with Senator Ellis's proposal for the Garda to be given the power to remove defective vehicles from the road. We should not allow someone from this or any other state on our roads if he or she has not been tested. Given the increasing volume of traffic, allowing people who are unused to driving on the left side of the road to drive without being tested will put more lives at risk.

An Cathaoirleach: The point has been made. A number of speakers are waiting.

Senator Paul Coghlan: I welcome that Senator Ellis raised the issue of boundary changes. From the Leader's response yesterday, there will not be an electoral Bill this session or year, although an electoral Bill might be published this year. The electoral boundary committees are sitting and must report by 20 June. It seems their remit will extend to dealing only with Dáil constituencies used in the previous general election rather than the ones recommended by the commission. Perhaps the Leader might care to revisit that.

Senator Terry Leyden: I join Senators Quinn and Mullen in saying that it is fortunate Senator Mary White has decided to seek the Fianna Fáil nomination for the Presidency.

An Cathaoirleach: The launch of anyone's campaign will not be dealt with on the Order of Business.

Senator Terry Leyden: It is fitting she is present this morning. We have had lawyers elected to the Presidency but we now need an enterprise President in the difficult times we face.

An Cathaoirleach: That is not relevant to the Order of Business.

Senator Terry Leyden: Ageism, suicide and children——

An Cathaoirleach: The Senator must make a point relevant to the Order of Business.

Senator Terry Leyden: It is a very good point.

An Cathaoirleach: It is not relevant to the Order of Business. There will be occasions for that.

Senator Terry Leyden: I accept that. I hope there are two four-year terms rather than two seven-year terms. I am sure the Cathaoirleach would accept that.

Senator Mary M. White: One.

Senator Terry Leyden: One is enough.

An Cathaoirleach: We will move on to the next speaker if Senator Leyden does not have a point relevant to the Order of Business.

Senator Terry Leyden: I ask the Leader to send our best wishes to Garda Commissioner Fachtina Murphy and the team which took the €10.5 million drugs haul yesterday.

A Senator: Hear, hear.

Senator Terry Leyden: A total of €25 million worth of drugs has been seized already in the first five weeks of 2008, which is a massive haul. If this amount has been hauled in, how much more is coming in illegally and how much cannabis is being grown in rural areas in addition to that which is being seized? We should continue the fight against drugs. The Leader and the House should wish the Garda Commissioner and all the team well.

I hope Mr. Norman Turner returns to the Mahon tribunal because I would love to hear his evidence regarding the director of elections for Fine Gael and his links to the leader of Fine Gael.

An Cathaoirleach: This House has nothing to do with the Mahon tribunal. I call Senator O'Reilly.

Senator Terry Leyden: I would be delighted to hear from him. We have heard enough about his passport but I would be delighted to——

An Cathaoirleach: That is out of order. A number of speakers wish to speak on the Order of Business.

Senator Terry Leyden: I hope Norman Turner returns to the tribunal.

Senator Joe O'Reilly: I congratulate my colleague, Senator Fitzgerald, on raising the serious matter of road safety. Its seriousness has been sadly underlined by events in the past week or ten days. That we have not successfully put speed cameras in place is a significant failure of Government. Will the Leader request that immediate action be taken on that?

Will the Leader also ask the relevant Minister to consider the option of requiring a person to produce evidence of having taken driving lessons before he or she obtains a provisional driving licence? I have no scientific evidence but have considerable anecdotal evidence to support the contention that people who undergo formal driving lessons are much better drivers. Many people are taught by a friend, learn how to drive in a rudimentary fashion and then obtain a provisional licence. A person should be required to produce evidence of having taken driving lessons and perhaps the Leader would request this.

Will the Leader suggest to the relevant Minister that a person be required to produce evidence that his or her car is insured before it leaves the garage? A young person, be they a national or non-national, can take a car out of a garage without insurance. They should be required to produce formal evidence of insurance.

Drug testing should be introduced on roads in addition to alcohol testing. The Leader should put it to the relevant Minister that while we must factor in people who take normal medication, people driving under the influence of illegal drugs should be apprehended and taken off the roads.

The issue of different speeds for driving on wet roads should be taken into account.

An Cathaoirleach: We will have a debate on that.

Senator Joe O'Reilly: I am not having a debate but I ask the Leader to obtain answers on those issues and come back to the House with them.

I thank the Cathaoirleach for his indulgence. I join Senators Quinn and Mary White in their support for the view that there should be automatic organ donation if people have not opted out of it. The fact that people are waiting is bizarre.

An Cathaoirleach: My time is up. It has been changed for the Minister and I am sticking rigidly to it. Senator Glynn will be the last speaker.

Senator Camillus Glynn: I will touch on two issues raised by previous speakers. In respect of road safety, it is time we desisted from the ostrich syndrome of burying our heads in the sand. The numbers and ratio of accidents involving non-nationals are of great concern. There is no point in fooling ourselves.

The next matter was raised previously in this Chamber. I have checked with garages and have discovered that they ensure insurance is applicable when they sell a car. However, we all see cars for sale on the roadside and from back garden garages. Do the people selling these cars ensure the appropriate vehicle is insured? I think we know the answer to that.

Organ donation was mentioned by Senator Quinn and I have raised this issue on two previous occasions in this House. There is a constituent in Westmeath who is in contact with me *ad nauseam* about this matter. In many cases, life is interred with the dead. We do not like to admit that but it is the truth. We should look at the situation in mainland Europe in respect of organ donation and perhaps adopt some of the measures in those jurisdictions. As somebody who tragically lost a brother and sister on the road, it is a comfort to know that others live on as a result of that terrible tragedy. This issue must be tackled because it will not go away. We must grow up, be realistic and take whatever measures are necessary to ensure organ donation takes place in this country in the manner outlined by Senator Quinn and others.

Senator Donie Cassidy: Senators Frances Fitzgerald, Joe O'Toole, Alan Kelly, Jerry Buttimer, John Ellis, Jim Walsh, Rónán Mullen, Paul Coghlan, Joe O'Reilly and Camillus Glynn expressed their great concerns about road safety. There has been a complete change 2004 in the respect and attitude of drivers towards the regulations that have been introduced.

I pay tribute to Gay Byrne, whom I have known for a long time, for taking the job of national chairman of the Road Safety Authority. He has come to the assistance of the chief executive. He was also of great assistance to the Oireachtas Joint Committee on Transport, of which Senator Ellis was formerly Chairman, and the Oireachtas Joint Committee on Enterprise and Small Business, of which I was Chairman. Mr. Byrne was very open to doing anything he could to assist.

Members of this House said he would resign but Gay Byrne is made of stronger stuff. It is not in the man's genes to do so. He has highlighted the plight of many sections of our society over the

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years and played a major part in the formation of 21st century Ireland.

The Government has introduced four Bills since 2004 when the figures for deaths and serious injuries on our roads were really bad. The Taoiseach has played a pivotal role in allowing the Government and its legislation committee to prioritise road traffic problems and everything pertaining to road safety since 2004.

Among the four Bills introduced since 2004 has been the Civil Liability and Courts Act, which places on the onus on anyone making a claim to swear an oath and stipulate that if any part of the claim is found to be fraudulent, the claimant will pay the entire costs. That has reduced substantially the number of claims made. I understand one individual made three claims relating to a pothole in Cork.

The Personal Injuries Assessment Board Act was brought before the Houses of the Oireachtas and passed by this Fianna Fáil-led Government. That was a major move. Senator O'Toole is vice chairperson of that body which has brought about significant change. This was requested by all sides which sought to reduce premium claims, from those involved with road safety to the insurance industry.

Since 2004, the Safety, Health and Welfare at Work Act has been passed to help matters. The penalty points system was introduced by the former Minister for Transport, Deputy Séamus Brennan, and passed.

The difficulty is that three Government portfolios handle the area of road safety. More than 100 people are alive since 21 July 2006, however, because of these changes in the regulations. Thousands more people would have been maimed in serious accidents had those Bills not been brought into law.

The manufacturers of motor cars also have a responsibility in this area. In our final report we called on the Road Safety Authority and the Minister in charge to insist that manufacturers put in place something that would cost €15 which would mean if the seat belt was not engaged, the key would not start the engine. We saw that simple road safety process when we spent four days on the campus of Maryland University in the United States. Manufacturers have a responsibility in this area as well as everyone else.

Random breath testing was introduced by this Fianna Fáil-led Government and I played a major part in that. Substance breath testing has been approved but the drug aspect of it is difficult, an aspect mentioned by a Senator earlier. The alcohol aspect of the test is fool-proof but New Zealand is the only country that has perfected the drug aspect of it. The Road Safety Authority and the transport committee might examine that in the current Dáil and Seanad term.

It is neither fair nor factual to say nothing was done here in this area. Gay Byrne and the Road Safety Authority have taken on board the various proposals that were made, particularly in terms of reform of the industry, by the committee I had the pleasure of chairing for the five years. Senator Leyden was also a member of the committee, on behalf of this House, which did whatever it could to ensure these changes took place.

It was the Donegal tragedies, where seven or nine people were killed over two weekends, that made us decide enough was enough and introduce random breath testing. Fear of the law is back in that respect. In 2004, 575 members of the Garda Síochána were in the dedicated traffic corps. I said in the House yesterday that its full complement of 1,200 will be reached this year. Addressing this problem comes down to monitoring the traffic on the roads. If the public sees the traffic is being monitored by the Garda Síochána, this problem will be addressed. What happened over recent weekends, however, was an enormous setback in terms of everyone understanding that attitudes must change.

Senator Ellis, who has a great deal of experience in this area because it was his undertaking during the lifetime of the previous Dáil, raised the issue of ten to 15 year old cars being brought into this country and allowed on the road. One can see such sales in Mullingar on Monday nights and throughout the country, where those from other destinations who have come to this country to work avail of them, just as our Irish colleagues did in America and elsewhere in the 1950s and 1960s when they were trying to get a start in life. People coming to Ireland from a country which drives on the opposite side of the road should be obliged to adhere to a 50 mile an hour speed limit when using our roads.

Perhaps we should consider the possibility of driving on the opposite side of the road in this country. As Senator Kelly would be aware, our biggest tourist destinations are Europe and the United States of America where people drive on the opposite side of the road. There are many good reasons for considering changing it in Ireland. Gay Byrne and the Road Safety Authority might take it on themselves to carry out some research in this area with which we could assist them. I have no difficulty with the House sitting for a day to discuss where we go from here in this regard. We have achieved much in the past three years. What do we intend to do in the next three years? I have no difficulty in allowing a lengthy debate on that issue.

Senator Joe O'Toole raised the issue of the Chinese new year and wished the Chinese people all the best for the future. Regarding human rights, I visited China two years ago with the Taoiseach. I understand a transformation is taking place in China, as is the case in India and many other destinations. The hope is that the

human rights of the people living in those countries will be improved immensely in the coming years. I have no difficulty in passing on the Senator's views to the Minister.

Senator Alan Kelly raised the question of tourism. As I said earlier, I have no difficulty in having a debate on tourism. I hope to set aside time for such a debate which I will announce to the House next Wednesday.

Senators Ciaran Cannon, Paul Bradford and Joe O'Reilly, but the first especially, called on me to contact the Minister for Agriculture, Fisheries and Food to request that the single farm payment and the REPS payment be made at the same time. I will pass on that view to the Minister today. I have no difficulty in having an open debate soon on all matters pertaining to agriculture.

Senator Dan Boyle, the Deputy Leader of the House, covered the Cork docklands position comprehensively and I thank him for that. Senator Jerry Buttimer must be relieved that he has heard the up-to-date——

Senator Jerry Buttimer: I got the Harry Potter version.

Senator Donie Cassidy: ——Government position on this important issue.

Senator Jerry Buttimer: The bottom line is that no funding is being made available.

An Cathaoirleach: The Leader, without interruption, please.

Senator Paul Coghlan: It is like the Leader's failure to mention speed cameras.

Senator Donie Cassidy: Senators Feargal Quinn, Mary White and Camillus Glynn raised the issue of organ donor transplants. I will pass on the Senators' views to the Minister. Everyone should carry a donor card. We should all lead by example. I have a card in my other diary but if any of our organs can be used to benefit a future generation, why not be of assistance?

Senator Jim Walsh raised the Taoiseach's visit to Ballymena, which I covered yesterday. It is a step forward in the peace process. I will try to provide time for a debate during this session but this is a short one. We will have a debate on Northern Ireland at the earliest possible time. I hope to have the Taoiseach present to take the debate.

Senator Nicky McFadden raised the issue of the primary care unit in Athlone and the land that was purchased there a considerable time ago. I am aware of the Senator's plight and am doing everything I can in that regard. The health committee will meet the Health Service Executive and the pharmacy unions at 3 p.m. next Tuesday with the Minister present. That might be an ideal

opportunity for the Senator to bring forward this issue but I will contact the Minister's office regarding her earlier request concerning Mullingar Hospital and the primary care unit in Athlone. I have no difficulty in allocating time in the diary for a debate on the treatment of cystic fibrosis patients.

Senator Ivor Callely spoke about the challenge in the pharmacy sector. That issue will be discussed at 3 p.m. next Tuesday in the health committee. Senator Callely also called on me to consider having a debate on the HSE meeting the requirements put on it when it was given responsibility for operating the health service. I have no difficulty in allocating time to discuss that, although the House will be heavily laden with legislation in the next four to five weeks. That is the reason the sittings are increasing to three days. A number of Bills will come to the House, including the Finance Bill, the Social Welfare Bill and two or three other major Bills.

Senator Paul Coghlan: They will be very welcome.

Senator Donie Cassidy: They must be cleared before the Easter recess. I will endeavour to have time allocated for a debate on health as soon as possible. Senators Walsh and Bradford referred to Northern Ireland and congratulated the Minister for Community, Rural and Gaeltacht Affairs, Deputy Ó Cuív, on the allocation of funding to the Orange Order. This was much appreciated and the traditions of all on this island should be respected. We should champion this and I congratulate the Minister for his foresight on the matter.

Senator White suggested inviting the Minister of State at the Department of Health and Children, Deputy Hctor, for a debate on older people in our society. I have no difficulty with this.

Senators Ellis and Coghlan called on the Minister for the Environment, Heritage and Local Government to appear before the House to discuss the boundary commission report. There are two boundary commissions, one of which concerns the Dáil constituency boundaries and about which Senator Ellis urgently seeks a debate. I have no difficulty with this and I understand there will be a Bill published this year that will address it. This session is short because Easter falls so early but I expect the Bill to pass through the House before the summer recess.

The other commission is concerned with boundaries for local authority elections. Submissions must be received by 14 March and there is a time limit on this so that the report can be issued by the end of June. This is important in respect of the major changes in population, particularly along the east coast. It will have far-reaching implications and many Members are

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examining this. The commission has been set up under the aegis of the Minister for the Environment, Heritage and Local Government. Many Members will be keen to make a contribution on the tolerance level with regard to Senator Ellis's point. I will endeavour to have the Minister attend the debate, which can take place before the Easter recess.

I join with Senator Leyden, who proposes a vote of congratulations to the Garda Commissioner, Fachtna Murphy, on the €10.5 million drugs haul yesterday. We congratulate the Garda Síochána on the wonderful work it is doing and the Commissioner, who is leading the work in this area. The haul shows us the amount of drug-related activity taking place, particularly the amount of cocaine that is sold and trafficked around the country, to the detriment of society.

An Cathaoirleach: Regarding the next item, the Leader referred to contributions lasting 15 minutes but last week it was ten minutes.

Senator Donie Cassidy: It should be ten minutes, that is my mistake. I propose ten minutes for all Senators.

Order of Business agreed to.

The 70th Anniversary of the Constitution: Statements (Resumed).

Senator Eoghan Harris: On the day that is in it, it is worth pointing out that one of the valuable provisions of the Constitution is Article 38, which provides for special courts. I do not want to rain on the peace process but it produces platitudes from time to time. It is good to examine the credit and debit sides. On the credit side, there is the Taoiseach's visit to Dundalk to meet the First Minister and Deputy First Minister of Northern Ireland in the same week as the meeting at Ballymena. On the debit side, there are three areas: basic sectarianism that still exists and that perturbs thoughtful people on all sides; the ongoing sore of the Border, where smuggling creates a culture of paramilitary criminality resulting in the murder of Mr. Paul Quinn, whose parents are in the other House in pursuit of their campaign for justice; and the very serious threat by the Real IRA to re-open its campaign.

I do not wish to be negative but there is a tendency in the Republic, particularly when one resides more than 50 miles from the Border, to see the Northern Ireland situation as done and dusted. It is far from that. We know from our history of the capacity of the IRA tradition to revive and reassert itself.

The Constitution has played a major role in helping to erode the more savage side of Irish nationalism. The decision to amend Articles 2 and 3, the constitutional claim on Northern

Ireland, has done much to ease Unionist fears and make them receptive to dialogue with the Republic. However, the Constitution also has a harder side in Articles 38. From time to time it behoves the State to remind those throwing down challenges to it that the steely side of the State exists. When the Real IRA threatens to re-open its campaign when permanent peace seems in our grasp, the State should formally reply to the Real IRA that the Government will reopen the extensive apparatus available to it in the Constitution to put the organisation out of business. If it means re-opening the Curragh, that should be done.

The trouble with the Real IRA is not so much the hardcore element, which is oblivious to appeal from rational people on all sides of the Irish nationalist tradition, but the spear carriers, those who provide safe houses, those willing to drive a car or store materials for the organisation. These people should be reminded that the State takes a grim view of their activities.

The Real IRA is a serious threat. I take Suzanne Breen's articles very serious and my independent information is that the organisation is busy re-organising and re-arming. Before it gets to the stage the Provisional IRA reached, it should be nipped in the bud. The Constitution provides a range of methods, including the use of special courts, to do so. Those who support the Real IRA should be aware that there are jail terms and consequences to that support.

Senator Jerry Buttimer: Hear, hear.

Senator Eoghan Harris: At the same time, the pressure must be kept on Sinn Féin, which has done good deeds and bad. Recently, Senator Maurice Cummins spoke eloquently on the murders of Paul Quinn and Robert McCartney. The ledger on the good side of the peace process is very attractive but there is a downside that legislators like ourselves must watch. It is not good enough for us to congratulate ourselves platitudinously that everything is going well in Northern Ireland and then put it out of our business and resume our chats about road safety and other matters that concern us in the Twenty-Six Counties. That is all very well. However, those in this House have an obligation to the entire island. What we do regarding Northern Ireland will live beyond us for centuries. What we do about road safety may have some effect next week or the week after and might save a couple of hundred people here and there but what we do about Northern Ireland will save tens of thousands grief and misery in the future if we do it right.

Therefore, knowing now that we have a Constitution which makes no claim on our Unionist neighbours and is a document of which we can be proud, having been amended by experience, it behoves us not to allow this last threat to the state of peace in the two states on the island from the

Real IRA to go unchallenged. It behoves us to keep up pressure on Sinn Féin to bring the murderers of Paul Quinn and Robert McCartney to justice. The Greeks pointed out that when the moral order is disturbed, when someone is killed and it is hushed up and left go, the whole community falls under a shadow and cannot walk in the light until that shadow is removed. A great shadow has been lifted in the south Armagh area since the death of Paul Quinn because of the courage of his parents and the courage of the local people who have supported them.

While I do not want to be gruesome about it, throughout the Troubles it was the habit of the Provisional IRA in that area to insert a meat hook above the knee of people whom they considered to be anti-social elements and to pull down sharply thus destroying the muscle above the knee and giving the victim a permanent limp. As a result the person would be seen to limp and the evidence of the IRA's work would be seen as a warning to the community and a form of intimidation. I am told that the PSNI and the Garda report that culture of intimidation *omerta*. Fear has come to an end and the people of south Armagh are speaking up.

I am pushing matters here in a debate on the Constitution but I was unable to speak on the Order of Business. It behoves us to take up every opportunity we can to show the brave people of south Armagh and along the Border, those who stood up to the culture of criminality, that we are on their side and will help them to walk in the light.

Senator Jerry Buttimer: I wish to share time with Senator Bradford.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Senator Jerry Buttimer: It is with great pride that I stand here in the Upper House of the Oireachtas to pay tribute not only to those who drafted our Constitution 70 years ago, but also to those who have amended it. I refer not to the Judiciary or the Members and former Members of the House, but to the people of Ireland, who are enshrined as beholders of the sovereign power in the Constitution. Like Senator Harris I use this debate to make an earnest plea to the people who are preparing to become engaged in paramilitary activity to stop. When we voted to amend Articles 2 and 3, we, the people of Ireland, took a decision to turn away from the path of violence and war to the path of consent. I share Senator Harris's views on which I commend him.

Our Constitution is one of the oldest written constitutions. As the first former colony to win independence it is little wonder that it was seen as imperative to place power in the hands of the people, and have legislation subject to the control of a Judiciary sworn to uphold rights enunciated

in and derived from a publicly ratified Constitution. Bunreacht na hÉireann is a significant human rights document which, in keeping with a modern and progressive state has seen amendments put, defeated and carried.

Some 70 years on the true value of our Constitution is obvious. Owing to the unique nature of the Constitution which sees the people as the source of authority, we are the only country in the EU that will hold a referendum on the Lisbon treaty. We in Ireland have a unique opportunity to hold a national debate on the pros and cons of our future within the European Union. We have had the opportunity to hold national debates on many occasions since 1942 when referenda have been held.

Each time the people vote in a referendum, democracy is strengthened. The debates and discussion held in the public domain make ours a vibrant and healthy democracy and emboldens our Constitution. I call on the Government to announce a date for the forthcoming referendum on the children's amendment and the Lisbon treaty, so that an informed and vibrant debate may begin. Sometimes people do not appreciate the importance of their role in referenda and occasionally turnout can be much lower than at local or general elections. While this may cause despair among many of us, the fact that people take time to vote and participate in debate on constitutional referenda is an indication of the high esteem in which the Constitution is held.

Earlier in the debate Senator Cassidy said, "In the European Union puzzlement is sometimes expressed about the reason Ireland holds referendums with relative frequency". I hope we, as a nation, follow and continue the procedure for amendment of the Constitution as provided for in Article 46. We have seen many attempts to amend the Constitution since its adoption. Controversial amendments have been dealt with, including topics such as the right to life of the unborn, divorce and the European Union.

I will always support the constitutional right to life of the unborn. It is important that we, as a democratic State, are not afraid to enshrine that right in our Constitution. It is important for us to take positions and stand true to values the Constitution attempted to establish from the outset. Even though we have changed and progressed in many ways, we should hold dear to ourselves values like the right to life of the unborn. It is worth pointing to Diarmuid Ferriter's description of the Constitution as not just a document reflecting the concerns of the mid-1930s but a reflection of values built up over the previous 15 years prior to its drafting.

I am impressed that bilingualism and the status of the Irish language in the State are recognised by the fact that the text appears simultaneously in Irish and in English. Where there are disparities between both languages, it is the text *trí Gaeilge*

12 o'clock

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that takes precedent. It is worth noting that Irish is enshrined as the first language in the Constitution and that should always be the case. Recently the Department of Community, Rural and Gaeltacht Affairs published the substantive and expansive study, *Staidéar Teangeolaíochta*, which shows that not only is the use of Irish in Gaeltacht areas in decline, but that within 15 years the Irish language might no longer exist in Gaeltacht areas at all. I call on the Minister, Deputy Ó Cuív, to act on the recommendations of the report. The failure to act so far has not been helpful and the lip service on the issue must be replaced by a proactive approach to the alarming disclosures in the study which could signal the death knell of our national language. Given that Éamon de Valera presided over the drafting of the Constitution which enshrined Irish as the first language of the State, we should have Irish as a living language. I hope the Minister will act on that.

Senator Paul Bradford: I read with interest the opening discourses in this debate last week involving Senator Regan and the Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan. I would describe myself as being very far removed from being an expert on constitutional matters. However, the Constitution guides and guards the nation. It is a living document having been amended on many occasions and it may need further amendment.

The issue of our electoral system of proportional representation has been addressed by the public in two referenda. In retrospect, in the 1960s what were probably naked political efforts were made to change our system of proportional representation and the people, in their wisdom, rejected those efforts. In the Ireland of the new millennium we will need to reflect on our electoral system and on the multi-seat system of proportional representation and question whether it is the way forward. I concede that in recent elections I have been a political victim of PR but so be it, that is the system which is in place. However, to deal with the challenges ahead I wonder if the current system of multi-seat proportional representation allows us to develop the policies and the thinking which is required. I am a great fan of proportional representation. It is imperative that future Governments and future Parliaments are elected by proportional representation. Only one other country in Europe has the same system of multi-seat proportional representation. I am not convinced it will give us the flexibility in political thinking and policies which will be required in the years ahead. As practising politicians we know that under the current system of proportional system most contests are not between the parties and are not contests of ideas nor of philosophies but rather contests within the

constituencies among those of the same political party. It is a case of candidate A or candidate B who both represent the same party and I am not sure if this will be desirable in the years ahead.

I hope this House will have a mature debate on the electoral system. I wish to express my strong support for proportional representation but also my doubt that the multi-seat system of PR is the way forward.

I wish to reflect on the subject of local government. I refer to a clause inserted as a result of an amendment to the Constitution some years ago which was designed to strengthen local government in some way and guarantee the set period for local government elections and this is to be welcomed. However, as we plan for the new Ireland in the new, better and enlarged Europe and because we lecture Europe about subsidiarity and demand that powers and decisions be taken at the lowest level possible, we have much to do constitutionally to strengthen Irish local government. This must be reviewed in the next few years because local government and local communities must continue to play a greater role in the running of the country. It is ridiculous that most decisions affecting people in local communities are taken in Leinster House and not in the chambers of the local authorities. While certain advances have been made in local government as a result of the 1999 referendum, more needs to be done.

We have been very well served by all Presidents elected, from Dr. Douglas Hyde to Mary McAleese. A President may serve two seven-year terms and this should be examined. We had a presidential declaration in the House this morning, and so be it. I question whether two seven-year terms is appropriate and I would be happier if the term allowed was one single term of seven years or a maximum of two terms of four years. Like most politicians, I can raise issues but I cannot offer the solution but it is a subject which needs to be debated.

I look forward to the contributions of my more learned colleagues. The Constitution is a document for all the people and we all must have our say on the matter.

Senator Terry Leyden: I welcome the Minister of State, Deputy Batt O'Keeffe, to the House. I thank the Leader, Senator Donie Cassidy for arranging this way of commemorating the 70th anniversary of the Constitution. There is nowhere it should be commemorated more than in this House which owes its very life to the 1937 Constitution and for which I thank Éamon de Valera.

I would like to begin by joining other Members in paying tribute to the fine speech last week by the Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan, on the historical, legal and political background to the 1937 Constitution. It is both reassuring and inspiring to hear

our Minister for Justice, Equality and Law Reform speak with such passion and knowledge on the cornerstone of our legal system. I recommend his speech be circulated to colleges and universities for study. It was a most enlightening and inspiring speech.

I also wish to remember the creator of the Constitution. The 1937 Constitution is sometimes called Dev's Constitution but it was when Éamon de Valera's vision was allied with the legal knowledge and drafting skills of the likes of John Hearne that this document came into being, a document which was all the more remarkable for its time in a Europe facing the rise of fascism.

On the 70th anniversary of the Constitution of Ireland, it is worth noting what makes our Constitution different from those of other countries. At a recent Council of Europe committee meeting I highlighted how the Constitution of Ireland makes explicit provision for the protection of the rights of unborn children by Article 40.3.3°. The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect and, as far as practicable, by its laws to defend and vindicate that right.

I made this point at a meeting of the Committee on Equal Opportunities for Women and Men, which was discussing a report on access to safe and legal abortion in Europe, to highlight to the sponsor of the report, Mrs. Gisela Wurm of Austria, the current position relating to abortion in Ireland, which is that the rights of the unborn have been specifically stated in the Constitution since 1983, when 67% of the Irish people chose to amend our Constitution. It is important that Ireland is represented on forums such as the Council of Europe. Ireland is not obliged to adhere to the recommendations of this report as it is not a legally-binding document. However, it is an indication of the direction in which Europe is going in this regard. The report recommends that abortion should be decriminalised in any country which has not done so already. It guarantees women's effective exercise of their rights to abortion. Legalised abortion is permitted in 80% of Europe and we and some other European countries stand alone. It is important to realise the meaningful nature of the Constitution. I quoted the subsection to the meeting in Strasbourg two weeks' ago. A further meeting will be held in Paris to discuss this report and I will oppose it as will the delegates from Ireland at the session next April in Strasbourg. It is against the interests of women that abortion would be provided. I do not wish to become bogged down in this issue but it is relevant. That report is now before the Council of Europe.

Article 40.3.3° is a specific right but as previous speakers have said, an important feature of the Constitution of Ireland is the existence of unspecified rights which have been recognised by

the Judiciary, for instance, the right to bodily integrity. This broad interpretation of the Constitution is possibly one of the reasons the State has been held to have infringed the European Convention on Human Rights a lot less frequently than some of our European neighbours and has one of the best records on human rights of any country in the world.

The people of Ireland have adapted and improved an excellent document over the course of its 70 years to ensure the rights of all people are respected. In 1937 the Irish people enacted de Valera's Constitution. It has since been studied the world over and inspired the drafting of constitutions of other countries. We have also shown willingness, even eagerness, to constantly improve the document. This, combined with refinement of the interpretation of the Constitution by the Judiciary, means that while the document was ratified by an admittedly narrow margin, it still represents the Irish people and the Ireland of today. For example, it is thanks to the enshrining of the sovereignty of the people in the Constitution that alone among European Union members we have the privilege and responsibility of holding a referendum on our future in the European Union. Before the idea of a European Community was even conceived, the drafters of the Constitution realised the need to ensure the people were granted the ultimate power to enter into international agreements. Thanks to their foresight the sovereignty of the Irish people cannot be undermined by the State entering into alliances with groups of other countries without, in most cases, being compelled to consult the people by referendum.

As Senator Regan indicated, it is the interpretation of the Constitution by the Supreme Court which gives character and meaning to our democracy and it is reassuring to see this guardian of the Constitution vindicating people's collective and individual rights. It is, for example, the decision in *Crotty v. An Taoiseach* in the context of European integration which has meant that five times in recent decades the people had a direct say in their country's participation in European co-operation. Thanks to the provisions of the Constitution and their interpretation nobody can claim that Ireland suffers from a democratic deficit in European affairs.

As spokesperson on European affairs I will urge a vote in favour of the Lisbon reform treaty but I will urge primarily a considered debate on the matter and a large, representative turnout in the referendum. With in excess of 4 million people we have a great responsibility to decide the future of Europe's 500 million people. It is an enormous responsibility and I am delighted we have that opportunity. Whether the referendum is in June, September or October, it is vital that every individual is contacted or canvassed and involved in the debate on this issue. If we do not

[Senator Terry Leyden.]

approve the treaty it will have repercussions for Europe but ultimately we have the right to vote for or against the Lisbon reform treaty. The majority of Members of this House are in favour of the reform treaty but there are other parties which, although they participate in European affairs, appear to be against this reform treaty.

Other speakers referred to proportional representation and the transferable vote system. We need only look to the first-past-the-post system used by our nearest neighbour to see the advantages for fair representation inherent in our system. The Minister of State, Deputy Batt O’Keeffe, is aware we debated this issue previously and it was also an issue in the 1960s. The Minister of State probably did not have a vote at that stage. Fianna Fáil was in favour of the single seat constituency with a transferable vote but it was not accepted. I have benefitted from the multi-seat constituency system and I have also had difficulties with it. The Minister of State can testify to that situation himself.

All the institutions of Government are established by the Constitution and it is important that as Members of one of these institutions we ensure we do not lose touch with the people and that, if necessary, we periodically review the structure and nature of these institutions to maintain relevance and accessibility. I have no doubt that all branches of Government, but more importantly the sovereign people, will continue in their wisdom to ensure this excellent legal and social document continues to serve the country as well for the next 70 years as it has for the past 70 years.

I hope some event will be organised to mark the 70th anniversary of the Constitution. It is an excellent and meaningful document and we should mark its 70th anniversary in some way to pay tribute to those who were responsible for bringing it forward and to those who voted in favour of it in 1937.

Senator Alex White: I thank the Leas-Chathaoirleach for the opportunity to participate in this interesting and important debate on the Constitution passed by the people on 1 July 1937 and commenced on 29 December 1937. We are a bit late to have an event to commemorate the 70th anniversary in the manner suggested by Senator Leyden but perhaps we can consider something more elaborate for the 75th anniversary which is four years away.

The Constitution is a very important document. It is the central legal document of the State. Senator Leyden described the Constitution more than once as Dev’s Constitution. None of us is unaware of the fact that Mr. de Valera was centrally involved in the drafting of the Constitution. While he drafted it with a little help, perhaps,

from some clerical and ecclesiastical friends, there is no doubt he was at the heart of it.

It is 70 years on and there is an important point to be made in this House and for us to accept about the Constitution. For the constitution of any state to be as live and important as this document, it must pass on from being the property or the province of one individual, however important historically that man may be. I do not get too carried away with people using phrases such as “Dev’s Constitution”. That is fine. I will not fall out with people over that but the Constitution belongs to the people and that is the important fact we need to acknowledge, especially at this stage.

When I began to read the Constitution as a young person I had a sense that elements of it were overly influenced by Catholic teaching. I refer to the inclusion of phrases such as women’s “duties in the home”. Many such phrases, which arguably are quite confessional in tone, occur in the Constitution, especially in the Preamble. They have always made me very uncomfortable but they do not have the effect of undermining the fundamental importance and value of the document itself.

I am a member of the All-Party Committee on the Constitution and if I were asked to bring my shopping list of aspects that might be taken out and other issues that would be included, I would have a few of them. We ought to think twice about having such phrases as the opening line of the Constitution: “In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred”. I do not make this point remotely in any sense to disrespect religion or the importance people attach to closely held religious views and practice, but whether it belongs so prominently in the central legal document of the State is worthy of debate.

During the debate held on the previous day I heard the Minister respond to something Senator Regan said about Garret FitzGerald’s constitutional crusade in the 1980s. I thought the Minister’s speech was a little dismissive of what Senator Regan said about the contribution of Garret FitzGerald and others during the 1980s. There is nothing wrong with opening up sensitive issues to public debate and, if necessary, seeking to amend or nuance the Constitution in a way that is more appropriate to today. Senator Mullen indicated that was being done to curry favour with the Unionist community in the North. That may well have been part of the context but some issues such as this are worth examining in their own right in the context of where we are as a State and society. I accept these issues were sensitive in the 1980s, and still are, but if we believe, as I do, that the Constitution requires some changes, they ought to be made for our own reasons rather than it being said we were doing it simply for

some ulterior purpose, important though it might be.

Other speakers referred to Dr. Dermot Keogh's recent book which is a fascinating study of the drafting of the Constitution and how it came into being. Many Members have read it and I recommend it to those who have not. It shows that the debate in the Dáil in the lead-up to the passing of the Constitution in 1937 was quite partisan. That it was passed by less than 51% of the population on an election day may have been part of it. Mr. de Valera spoke on the proposed Constitution at something like 20 or 25 rallies throughout the country. There was a highly politicised general election campaign going on at the time. It is not really obvious whether people were voting on the document itself or along party political lines on the day in question. According to Professor Keogh, approximately 50,000 Labour Party voters, for whatever reason, did not vote in favour of the Constitution. That may have been more bound up with the politics of the day and the general election than with the content of the document.

Dr. Gerard Hogan, SC, who has written widely on what is sometimes claimed to be the Catholic or confessional nature of the document, has argued quite compellingly that perhaps this criticism is overstated in the sense that while there are phrases to which objection could be made, the identity of the authors of the various Articles is of little relevance, even if they were written by Archbishop John Charles McQuaid or whoever. This is especially the case when considering the Articles which deal with the vindication of personal and fundamental rights, such as the right to privacy.

Since the 1960s the Supreme Court has come to regard the Constitution as a live document which is not set in stone. It has been prepared to interpret it, sometimes, it must be acknowledged, very liberally and perhaps in a way never envisaged by its authors in the 1930s. This brings me to a point Senator Leyden mentioned in respect of the 1983 referendum on the so-called pro-life amendment to the Constitution. It is important to recall that the Supreme Court interpreted the amendment in a particular way and whereas Senator Leyden made the point that we have the protections of the Constitution, I must remind him and the House that the Supreme Court has, in fact, decided that what the Constitution means is that abortion is lawful in this State in certain circumstances. That is the constitutional position, yet the Houses of the Oireachtas have failed to legislate.

My party is in favour of legislation being introduced in respect of the X case decision but regardless of whether that happens we need to be aware of the facts. When we laud the Constitution as an outstanding document and speak of the 1983 amendment, we must remember it has

been interpreted to the effect that abortion is legal in certain circumstances. That ought to be legislated for in these Houses but it has not been done. Last week the Minister said we should not visit the issue but we need to do so. Why would legislators ever state they will not legislate in respect of such an important question? While it is a sensitive matter, it is wrong that we as legislators should seek to set it to one side.

I do not want to pre-empt the deliberations of the Joint Committee on the Constitutional Amendment on Children, of which I am a member, but we need to exercise great care on any amendment to the Constitution. We need to exercise even greater care in circumstances where we propose to reduce or remove rights that currently exist. I am not saying that we ought not to do it but we need to be clear-headed in our thinking. The only time we have ever put an amendment in the Constitution that effectively renders something immune from constitutional challenge was in 1972 when we joined the European Union, where a provision was inserted into the Constitution to the effect that nothing in it invalidates any provision which relates to our joining or being a member of the European Community.

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

Senator Alex White: In that context we rendered immune from constitutional challenge anything that would arise in the future. The current proposal on the child protection element of the children's referendum would render immune from any future constitutional challenge a provision that would be brought forward in law in respect of child protection. I do not say that this is not an extremely sensitive and important issue to be addressed after the Supreme Court decision in the CC case, as is the question of statutory rape and what that offence should consist of. However, as always in such situations, there are competing rights and we should not lightly take rights out of the Constitution or render immune from challenge a particular legislative provision, irrespective of its content. In the coming weeks and months we need to be careful about that and to scrutinise in great depth any change to the Constitution that entails the loss of citizens' rights, which is what is at stake.

The question of property rights and the privileged position that they enjoy in the Constitution is a matter that arises repeatedly and not only on the question of development land. We in this country have a right to join associations and here I am thinking of trade unions but there is believed to be a constitutional bar on requiring an employer to negotiate with a trade union or on introducing legislation that might make recognition of trade unions compulsory. That is not new and there are similar provisions all over the

[Senator Alex White.]

world, including in the United States which enacted trade union recognition legislation in the 1930s.

We are told here that the property rights provisions in the Constitution mean it is essentially a property right of an employer not speak or negotiate with a trade union. The constitutional review group looked at this and thought that it was not appropriate that there should be a constitutional amendment and that it would be better dealt with by legislation. It was dealt with by legislation in the late 1990s and 2000, but it is now under significant pressure after the decision in the Ryanair case. In view of this, the question of the proper balance between trade unions and employers and property rights is an area that should be revisited. The trade unions are right to look for this issue to be reopened, whether in the partnership talks or, ultimately, by means of seeking a constitutional amendment.

Senator Jim Walsh: I join in the welcome to the Minister of State, Deputy Batt O’Keeffe, to the House. I also welcome this interesting debate. Reference was made by some to the 1922 Constitution and the fact that aspects of it were incorporated into the 1937 Constitution, but the significant difference is that the former was to some extent underpinned and recognised by an enactment in the British Parliament whereas the latter was very much part of the self-determination ethos of that entire era.

There was a fascinating period from 1916 to 1938, which may even date back to 1912 with the increased activity of the volunteers and also the activities of labour rights and the various strikes and labour leaders at that time. It gradually transformed the shape of Ireland. The 1916 Rising, the centenary of which we will be commemorating in eight years’ time, the War of Independence and so on was significant. It was also significant that while we had the treaty in 1922 and the continuing activity and control of Dáil Éireann over society, with the republican side, through Fianna Fáil, getting into Government in 1932, efforts were then accentuated to achieve real independence and sovereignty, to assert those rights, and to set aside as much of British influence as possible. That process led ultimately to the economic war.

Something lost sight of in this, which I think was an historical event, was the meeting of Éamon de Valera and many of his senior Ministers with Neville Chamberlain in April 1938, at which the annuities issue was determined and set aside. That and other issues were very much part of the economic war — the oath of allegiance obviously had been already dispensed with — particularly the acquisition of the ports to bring them under Irish control. That this laid the foundation for our neutrality in the Second World War

was significant, particularly when we consider the atrocities and inflictions imposed on many countries during that period.

The philosophy of the time was the philosophy of Sinn Féin and of self-sufficiency. The Constitution was described by some as the urge of Irishmen to manage Ireland in Ireland’s interest. That was significant at the time because the apparatus of the State, which was the Civil Service, had been continued from what was there under British rule. The Constitution was, if one likes, a throwback to an earlier era, perhaps back as far as the high kings, to connect sovereignty and our independence. It is a significant document as a consequence.

Like many others here who have been visiting the North for 30 years or more and talking to politicians there, I am struck by the assertion of this independence, which allows me to empathise with the thinking of the 1930s in its assertion and the breaking of the links with Britain. I am amazed by the number of UUP and DUP politicians to whom I have spoken, a small but significant number, who reflect the same philosophy and have said privately to me that they get nothing from the English and the sooner they get greater activity and connection with us, the more it will be in their interest. Therein, perhaps, lies the foundation for building a new Ireland. All the attempts and supports we have for all-Ireland activity and an all-Ireland economy and approach reflect the benefits that will be got by local people making decisions in their own interests, rather than a remote parliament making decisions in the interest of what is secondary to its overall priorities.

Senator Bradford touched on an aspect of this that affects us, namely, the issue of local government. We have had local government recognised in the Constitution, yet we have the least evolved system of local government of many of the OECD countries.

Senator Eoghan Harris: Hear, hear.

Senator Jim Walsh: The whole ethos of subsidiarity is much honoured in speeches and sentiment, but the principle is not given practical effect. There is a lesson in that for Government and the Houses on the need to play a role in that regard.

The name of Éamon de Valera will be forever linked with the Constitution, as being the main motivator, instigator and, perhaps, author of it. However, even he acknowledged the tremendous role played by our civil servants in drafting the document. Reference has been made to Professor Keogh’s book, *The Making of the 1937 Constitution*. My sister Pauline gave me a number of books for Christmas, of which that was one. However, I chose lighter reading, such as the Tim Flood story about Wexford hurling in the 1950s,

Ronnie Delaney's book about winning his medal in Melbourne and the autobiography of Lee Sharpe, the Manchester United player, which I read during January. I regret now I did not read Professor Keogh's book because I would be much more knowledgeable about the issue if I had applied myself to it. I am looking forward to digesting it, because all I have heard and the flick-through I have given it indicate it is a fine account of the Constitution, a document that has stood the test of time.

It is interesting, given the state of legal affairs and some legislation at the time, particularly that enacted from 1922 up to the drafting of the Constitution, that legal and other queries were made with regard to their status on adoption of the Constitution. An aspect that struck me as interesting was the original understanding that was adopted and emerged subsequently in law. Some of our learned legal people will be probably familiar with this. Subsequent interpretation by the Supreme Court went back to see what was the thinking of the people in 1937 in this regard. That is a sound principle.

With the utmost of respect to the Supreme Court, and to the comments made by Senator Alex White which reminded me of it, I do not think that when the decision was being made on the case in 1992, it reflected the thinking of the people in incorporating a right to life of the unborn in our Constitution. That amendment to the Constitution clearly allowed for a situation of the equal right to life of the mother. I think the intention of all concerned was that this would be in a health emergency where decisions had to be made as to the danger of the loss of life of the mother. It provided some discretion to the medical profession. How that was extended to a situation where a risk of suicide equated to the right to life of the unborn is a matter the average person would find difficult to comprehend. Let us not forget, the Constitution is a document of the average person and to be interpreted by the legal profession in that light.

I will conclude with two points. Many of us who participated, Senator Cummins included, in the debate in these Houses when we incorporated the European Convention on Human Rights into Irish law were very struck — it was acknowledged by all sides of the House and the Minister at the time, who had a good legal brain — by the inclusion of practically all of those rights in a Constitution drafted 70 years earlier. It is remarkable that the foresight, vision and manner in which we should deal with each other and society were reflected so strongly in that document.

Mention has been made of the EU treaty, a topical issue. In a democracy, all power flows from the people. We are fortunate to have a Constitution which gives the right to the citizens at large to make decisions of significance that will affect them in the future. Therefore, the rights

of the Oireachtas and public representatives are restricted. We are only the people's representatives and we should not assume or presume to take powers unto ourselves that are rightly vested in the people. The Constitution has stood the test of time and is a document of which the authors and those associated with it can be very proud.

Senator Feargal Quinn: I welcome the Minister of State at the Department of Community, Rural and Gaeltacht Affairs, Deputy Carey, to the House. I also welcome this debate.

When Senator Eoghan Harris was nominated to this House, he said he went and read many speeches from the 1930s and before. I did something similar when elected 15 years ago. I was very impressed by what I read because this House is a creation of that Constitution. I was most impressed with the speeches. I hope a future reader of the speeches made in this debate, both last week and today, will consider them equally interesting. Members who participated in this debate had the opportunity to say something that, hopefully, future students will study.

Senator Bradford said he did not regard himself as an expert on the Constitution. I certainly do not consider myself an expert on it either. However, when I was a university student I had the opportunity to study constitutional law and in the 1960s when I, as a young man, was subject to 37 prosecutions for breaking the law, I found a defence under Article 44 of the Constitution. I was selling meat after 6 p.m. I remembered a little of my constitutional law, which provides that it is unlawful to discriminate on religious grounds. A statutory instrument that was passed excluded meat killed under the Jewish ritual method, kosher meat, and as it did not apply in that case I was able to use that defence to ensure I was not prosecuted for selling the meat. While I am not an expert, I was chuffed to discover this from the education I received.

It is something of a political cliché to issue a paean of praise for our Constitution on occasions such as this. I have no problem praising it. I believe that, by and large, the Constitution has done a good job, and has served the country well for the past 70 years and two months. Nevertheless, however much we approve of the Constitution, that should not blind us to its faults. We should not shrink away from the need to retire it gracefully in favour of a completely new document, if and when that need arises. I believe it does arise. Although the Constitution may have served us well over the past three generations, it has passed its "sell by" date. Instead of this seemingly endless process of amending the document as if we were patching an old quilt, it is time to go back to square one and craft a new fundamental law for this country.

Why should we do this? The most important reason is that the Constitution is a creature of its

[Senator Feargal Quinn.]

time. Ireland has changed profoundly in the 70 years since it was enacted. Trying to fit the Constitution into the Ireland of today is like trying to force a square peg into a round hole — it takes an enormous amount of unnecessary effort and the end results are always far from satisfactory. We heard some references to that today and Senator Alex White concentrated on a number of the issues. Ideally, of course, a constitution should live forever. It could do so if it were genuinely a basic law, a flexible foundation that was capable of adapting painlessly to the inevitable changes in society that could not be foreseen at the time it was written. In the real world, however, constitutions are written within the mind-set of their own time, and that mind-set always carries a load of baggage that becomes more and more inappropriate as time passes.

For this reason, rather than expecting our Constitution to be perfect and capable of lasting forever, we should admit that any constitution is likely to go out of date sooner or later and we should be ready to promptly retire the existing text and make a fresh attempt to define the nation's basic law. The Ireland that gave rise to the Constitution had a fundamentally different view of its place in the wider world than it has now. It was an inward-looking, isolationist, protectionist State, driven by the belief that it could pursue its destiny in a self-contained cocoon of cultural, political and moral values. One need only read the words of the Constitution to confirm that.

The Constitution was written in the early days of the State, when it was a priority to underline and copperfasten our sovereign independence as a nation. The State had been in existence for only approximately 15 years at that time. Seventy years later, however, we share our sovereignty with the wider European Union of which we are a willing member. It is inappropriate that such a radical shift in the structure of our governance should be acknowledged only by means of an enabling amendment, as occurs when an EU treaty forces us to include it and as will be required by the reform treaty. Our basic law should now fully acknowledge the fundamentally changed situation and set out a changed framework of governance that will guarantee an efficient and a democratic system of government for Ireland as part of Europe — a system that balances both our national aspiration for autonomy and our need to play a full role in the wider community of which we are proud to be a part.

Also radically changed since 1937 is the nature of our relationship with the part of Ireland that is outside our jurisdiction. Before the amendments made after the Good Friday Agreement, our Constitution was undeniably irredentist. It claimed territory that had been lost. With the inclusion of the amendments, we have a Consti-

tution that is, equally undeniably, partitionist. We need a new document that will rise above such temporary issues, and which positions our State in a value-free space that is flexible enough to incorporate any changes that may occur in the future and is neutral enough to be fully acceptable to anyone living on the island.

An equally fundamental change in our society since 1937 relates to matters of gender equality. In the 1930s a man's wife was regarded as his chattel, all female civil servants were required to give up their jobs when they married and it was so unconceivable that a woman could become President of Ireland that the Constitution brazenly repeatedly refers to "he", "his", and "him" so many times that no reasonable person today can read it without squirming in embarrassment.

Social partnership, which now plays such a large part in how the country is run, had not even been dreamed of in 1937. Instead, there were the corporatist theories of the 1930s, of which the Seanad is a living relic. A central part of our system of governance therefore takes place on a totally extra-constitutional basis, while within the framework of the Constitution the bones of a long-dead social theory continue to rattle. We need to bring social partnership into the constitutional space and design a second legislative chamber — if we are to have one and I believe we should — in a way that reflects our democratic ideals rather than insults them. I am not happy that the structure of this House and how its Members are elected are correct. A fundamental change is required in that regard. That would require a constitutional change and we should consider that as an objective.

I have mentioned a few matters but I could point to further aspects of the Constitution that are frozen in the aspic of the 1930s, and point also to aspects of our present way of life that are unacknowledged by the Constitution and should be. That is our responsibility. I believe I have said enough to establish my basic point, that we are operating under a constitution that no longer serves our purposes as a nation. It is high time to retire the 1937 Constitution, place it with reverence and thanks on the bookshelves of history and move on to better things. It is a challenge but it is time we faced it.

I welcome this debate because it gives us the opportunity to discuss matters such as this, which otherwise would not come to the forefront.

Senator Maurice Cummins: I welcome the Minister of State, Deputy Pat Carey, to the House. The 1937 Constitution is undoubtedly an important and enduring document. We have been talking about its role in Irish politics, but it is not enough to consider it in isolation. We must consider the circumstances of its creation and endurance in the context of other comparable countries. The Irish Constitution has been used as an

example by other fledgling or transitional states which were seeking a measure of higher law that is balanced, robust and durable. It is well known that the Irish Free State Constitution of 1922 was a progressive, liberal and secular document. It was drafted during a period of turmoil, not just in Irish politics but across the wider European political front. New countries, with new boundaries and forms of governance, were being formed across Europe at that time. The new constitutions which were being drafted were based on idealism. Old institutions and sources of power were being shaken off. The Austrian Constitution of 1920, the Weimar Constitution of 1919 and the Irish Free State Constitution of 1922 were drawn up as part of the liberal and secular break from the institutional and colonial past.

While the 1922 Constitution was drawn up during a period of international idealism and liberalism, the 1937 Constitution was written during a period of comparative international conservatism, when the retrenchment of individual rights and liberal philosophy was felt by all. Thanks to the skill of its drafters, Bunreacht na hÉireann, uniquely among similar documents of that era, is a flexible and progressive document. It has served us well for 70 years. Great credit for its success must be attributed to those who drafted the Constitution. They were led by a remarkable Waterford man, John Hearne, who was the legal adviser to the then Department of External Affairs. In their recently published *The Making of the Irish Constitution 1937*, Professor Dermot Keogh and Dr. Andrew McCarthy noted that the drafting team transcended the limitations of their times and helped to infuse the document with balance and basic humanity.

Dr. Gerard Hogan, who is an expert on constitutional law, described John Hearne recently in *The Irish Times* as not only a “skilled drafter” of some repute, but also as having “an unrivalled knowledge of comparative constitutional law and international law”. When Senator Cassidy spoke at the beginning of this debate last week, he used the same quotation from Dr. Hogan’s fine piece in *The Irish Times*. Fianna Fáil would do well to carefully and properly give credit to those who drafted the Constitution. The importance of the role played by John Hearne and his drafting team, as well as the jurists who influenced them including the Chief Justice of the time, Hugh Kennedy, and others like Mr. Justice Gavan Duffy and Mr. Justice Kingsmill-Moore, is often overlooked in the fervour of party politics and historical legacy. It is time for us to express, on the record of the Seanad, the gratitude of the Irish people for the care, skill and ingenuity employed by Mr. Hearne and his team in drafting the Constitution. While posthumous acknowledgment is belated, it is essential in this case if we are to recognise the fine work that was done. It also serves as a means of expressing implicitly our

appreciation of the fine drafters of today, without whose skill and commitment this country would surely be worse off.

The Constitution has served us well. The various amendments which have been made to it over the decades reflect the change from an authoritarian and, in many ways, closed society to the more open Ireland of today. The various EU treaties which have been accepted in constitutional referendums have contributed to these changes. The most innovative aspect of the Constitution is that it is rigid — a referendum is required if it is to be changed in any way. I do not think any democrat will object to the necessity for a vote of the people of Ireland from time to time.

I commend Senator Harris, who referred to the killings of Mr. Paul Quinn and Mr. Robert McCartney and the threat posed by the Real IRA. I hope the change in people’s attitudes, which is helping them to co-operate with and trust the police forces on either side of the Border, will bring an end to the culture of *omerta* that has been prevalent for far too long. I hope such changes will help to crush the Real IRA, which is threatening the institutions of this State as created by the 1937 Constitution.

An Cathaoirleach: When is it proposed to sit again?

Senator Jim Walsh: At 2.30 p.m. Dé Céadaoin seo chugainn.

Adjournment Matters.

Fishing Vessels.

Senator Liam Twomey: It is appropriate, in light of what I am about to say, that we have just finished a debate on the 70th anniversary of the Constitution. Senators have spoken about what the Constitution means to the people of Ireland. Two sensitive cases which have made the news headlines over recent weeks have brought to our attention the abuse of citizens’ constitutional rights by two Departments and two Ministers. The Minister for Education and Science, Deputy Hanafin, has decided that it is better to bankrupt the family of an autistic child than to provide a suitable educational service to that child. The Minister for Health and Children, Deputy Harney, has decided that a child whose life is being endangered by spinal difficulties should have to wait until 2010 to get treatment. In the latter case, a decent and honourable individual has stepped in, fortunately, to make the HSE do what it should have done from the outset.

The case I wish to raise on the Adjournment concerns a fisherman in County Wexford who is also suffering at the hands of the State, which is using its power and money to crush him and his

[Senator Liam Twomey.]

family. I ask the Minister of State responsible, Deputy Browne, who is from County Wexford, to do the honourable thing by dealing with the case of the man in his Department. I do not want to outline the complex details of the case, which we could discuss all afternoon. The basic point is that the man had an issue with the Department about the decommissioning of a fishing boat. When the Department decided to establish an independent inquiry, it asked an independent senior counsel to examine the man's case. The senior counsel decided that the man should receive compensation but, for some reason, the Department has initiated a judicial review rather than paying the compensation. If that is not an abuse of State powers, I would like to know what is.

The Department, with the consent of the Minister, established an independent inquiry to handle any complaints about the compensation scheme. The person whose case I am making submitted a claim to the inquiry, which ruled that he should be granted compensation. Why is the Department seeking a judicial review of a decision taken by a body it established? I contend that it is trying to crush the individual in question because it knows he does not have the financial resources and legal firepower to protect himself from the Department.

I do not want the Minister of State to tell me about nitty-gritty matters like dumping at sea, compensation or numbers of fishing days. The independent senior counsel and the Ombudsman have adjudicated on all such issues. The only body that seems to be acting out of order in this case is the Department. Rather than hiding behind the mistakes which have been made over the last 12 years, or feeling that it cannot walk away from this case without egg on its face, the Department needs to show some respect by paying the man in question the compensation to which he is entitled. It needs to bring the threatened High Court case to an end, as it would break the individual to whom I refer. This affair has been going on for the last seven years. The man in this case is expected to pay fees to tie up his boat. He is not sure if he can decommission the boat as things stand. It is not as if we are talking about a trailer or an old banger in his backyard — the boat in question weighs 180 tonnes. The Department needs to deal with this case in a way that is fair to the individual. When the Minister speaks I would like to know what is going on. I do not want to hear the background legal arguments. The senior counsel, the Ombudsman and people in the Department are more *au fait* with this and the independent individuals involved agree with this fisherman. I would like the Minister to make his contribution and if I have other questions I will put them at the end of his contribution.

1 o'clock

Minister of State at the Department of Agriculture, Fisheries and Food (Deputy Trevor Sargent): Ba mhaith liom buíochas a gabháil leis an Senadóir Twomey as an cheist seo a ardú. It is a sensitive matter and in the context of a proposed judicial review I must be careful what I say. The Minister of State with responsibility for fisheries at the Department of Agriculture, Fisheries and Food, Deputy Browne, has asked me to apologise that he cannot be here. He is taking a keen interest in the matter.

Under the Terms of the EU Common Fisheries Policy, CFP, the primary mechanism for reducing fishing effort and finding a balance between the fleet size and available fishing entitlements is decommissioning. In Ireland it is widely accepted that there are too many boats chasing too few fish in most species.

This basic imbalance leads to problems such as pressure on fish stocks through over fishing which in turn has led to the new range of EU restrictions on fishing activity and effort; a volatile economic and financial environment for the boat owners, the fishers and the processors in the industry; and an underlying temptation to exceed fishing restrictions which can in some instances lead to legal actions against fishermen and by the EU against the Irish Government.

The central recommendation of a review carried out under the chairmanship of Mr. Padraic White in 2005 was that the Government should back a decommissioning scheme to remove 25%, that is 10,937 gross tonnes, of the whitefish fleet, polyvalent and beam trawl segments, and to reduce the scallop fleet to a level of 4,800 kW. There are overwhelming benefits to getting the fundamental imbalance adjusted between fleet capacity and fishing entitlements. It would result in a secure future, based on attractive economic returns, for those remaining in the whitefish and shellfish industries.

The economic analysis carried out for the White review demonstrated that whitefish stocks would have to be some 30% greater to yield a viable and attractive return for the boats now in the demersal sector. There is no prospect of the stocks and permitted fishing activity increasing by this amount in the foreseeable future. Accordingly, decommissioning is needed to provide a secure economic return for the boats remaining. This will lead to less pressure on fish stocks leaving the remaining boats to make a good living within the permitted fishing effort or allowable catches.

Council regulation (EC) No. 2792/1999 lays down the detailed rules and arrangements on Community structural assistance in the fisheries sector and specifies that to be eligible for a decommissioning grant, or scrapping premium, a vessel must meet the following criteria. The vessel must have carried out a fishing activity for at least 75 days at sea in each of the two periods of 12

months preceding the date of the application for permanent withdrawal; the vessel must be ten years old or more; the vessel must be operational at the time the decision is taken to grant the premium; and prior to its permanent withdrawal, the vessel must be registered in the fishing vessel register of the Community.

The purpose of the decommissioning scheme for the demersal and shellfish fleets is to establish a better balance between fleet size and available fishing entitlements. Ireland's fishing fleets, like those of all our European partners, are governed by the rules of the CFP, a complex policy that incorporates a significant volume of legislation. Ireland's fisheries are subject to a range of management measures put in place to ensure the sustainable exploitation of fish resources. These obviously impact both nationally and at an individual level, and significantly affect how each fishing vessel or fisherman may conduct business. There is a complex range of instruments employed under the CFP to manage fishing within the EU.

The uncertainties facing the demersal and shellfish sectors because of quota and effort restrictions have been compounded by a range of other factors. The cumulative effect is the realisation that there is no real economic future for some of the participants in these sectors unless a large proportion of the fishing capacity can be taken out in order that those remaining can look forward to working in a fishing industry with good economic prospects. A national decommissioning programme is seen as the best way of taking out the necessary fishing capacity.

Following the review of the decommissioning needs of the whitefish and shellfish fleet by Mr. White in July 2005, the scheme to permanently withdraw capacity from the demersal and shellfish sectors of the Irish fishing fleet, commonly referred to as the fishing vessel decommissioning scheme, was launched on 5 October 2005. The closing date for receipt of applications was 1 November 2005. Some 64 applications were received on time by BIM, which was the implementing authority for the scheme. Successful applicants were approved for decommissioning in two tranches in November 2005 and February 2006. Grant aid was paid in two instalments, 50% on administrative decommissioning, that is the surrender of the sea fishing boat licence and de-registration of the vessel, and 50% on physical destruction of the vessel. Council Regulation (EC) No. 2792/1999 of 7 December 1999 sets down the detailed rules for the payment of grant aid for decommissioning of fishing vessels. The scheme was drawn up in full compliance with the terms of the EU regulation. Under the terms of the decommissioning scheme there is a right of appeal to an independent appeals officer appointed by the Minister, a non-statutory arrangement.

An updated analysis undertaken in the Cawley review in 2006 indicates that whitefish stocks generally, and available quotas in particular, would have to be some 45% greater to yield a viable return for the vessels now in the demersal, whitefish and nephrops sector. On this basis, and taking into account the current capacity of the polyvalent and beam trawl segments of the fleet, the Cawley report recommended that in total 14,318 gross tonnes should be decommissioned of which 3,178 gross tonnes has been scrapped to date. Thus the revised target for the planned decommissioning scheme is set at 11,140 gross tonnes.

The person involved applied for the decommissioning of his vessel. BIM wrote to the applicant on 1 September 2006 advising him that he had been unsuccessful in his application because he had not met the minimum criteria of the scheme. The applicant appealed this decision and on 5 September 2007 the appeals officer granted his appeal. In all the circumstances and conscious of the State's legal obligations under EU law the Minister has taken further legal advice in the matter. In that context the case has been re-examined. I expect this matter will be the subject of litigation and I expect it will be dealt with fully in the courts. Accordingly I am not in a position to discuss this matter further at this stage.

Senator Liam Twomey: Only two paragraphs of the Minister's response related to the matter I raised. I am sorry to say we are no better off. Of the 64 applicants how many were refused? How many are in the same position as the one I raised? This is a case of the State being unhappy with the outcome and taking the person to court knowing he does not have the resources to challenge the State in the High Court. The State is denying people their rights. The Government established the independent commission and appointed an independent senior counsel. Why cannot it accept her decision? She has no vested interests in this case but the Government did not like the outcome. How many more cases like this are there?

An Cathaoirleach: The Minister outlined at the end of his speech that this matter is going to the courts.

Senator Liam Twomey: The number of cases is not a matter for the courts. If there are 64 applicants——

An Cathaoirleach: Senator Twomey's adjournment debate request was on a specific case.

Senator Liam Twomey: We should know how many similar cases there are if the Minister is taking this person to court.

Deputy Trevor Sargent: I regret I do not have that information. I am prepared for this debate, which——

An Cathaoirleach: The Senator has referred to a specific case.

Senator Liam Twomey: If there is only one case, it will cost more to take it to the High Court than to pay compensation. That is typical of the conduct of the Health Service Executive and the Department of Education and Science.

An Cathaoirleach: The Minister of State has dealt with the issue as comprehensively as he could, given that it is before the courts.

Senator Liam Twomey: We cannot use the courts as an excuse. I heard another Senator make many comments on what the courts and the Director of Public Prosecutions should do. We are right to expect answers from the Department on this case.

An Cathaoirleach: In the courts, everyone is given ample opportunity to defend his or her case.

Senator Liam Twomey: The State will ensure the person in question does not have the opportunity to do so.

Special Educational Needs.

Senator Frances Fitzgerald: Once again, I am talking about families who have to go to court, but in this case I know the number involved. There are 150 families awaiting a hearing who have taken a case against the State to obtain services for their children. Why is the Department of Education and Science allowing this situation to develop? It is extraordinary that 150 cases await court hearings at present. How has the Government and the Minister for Education and Science, Deputy Mary Hanafin, allowed a situation to develop whereby parents feel they have no choice but to undertake legal action to obtain an appropriate education for their children? These cases involve children with special needs. Why has this situation been allowed to prevail at the tail end of the Celtic tiger and why does the Department believe this is the way for parents to obtain services for their children?

No parent wants to go to court or engage in a media scrum outside a court building while trying to fight for educational equality for his or her child. No parent wants to risk the financial safety and stability of the family unit in taking such cases. However, parents often have no choice. It appears the approach adopted by the Minister and her Department has created this environment of stand-offs rather than engagement and consultation with parents. Everyone in this House knows that parents of children with special needs have better things to be doing than fighting court cases, getting legal opinions and taking on the cost of such cases.

Today in this House we heard statements on the 70th anniversary of our Constitution, a document which recognises the role of parents as the primary educators of their children. The hands-on experience, knowledge and in-depth understanding every parent has of his or her child is ignored by the Department, however, when it comes to autism. If the Department were to put as much time and resources into providing sufficient, adequate and appropriate educational facilities for children with autism as it does into court cases, the country would be much better served.

The Minister and her Department should accept some responsibility for their part in the overall cost of the various court cases. In the recent Ó Cuanacháin case, for example, the family's legal costs should be met by the Department of Education and Science. Those costs were only incurred because of the Department's failure to address and meet the educational needs of Seán Ó Cuanacháin. The case lasted as long as it did because of the legal arguments put forward by the Department and while I do not want to dwell on costs, one must ask how legal costs of this magnitude developed in the case in question.

There are 150 cases concerning special needs education awaiting a court hearing. The Minister must address the question whether every case will be taken in the manner of the Ó Cuanacháin case or whether we will see proactive engagement by her Department so that parents do not have to follow the legal route. Is the Minister of State, Deputy Trevor Sargent, as a member of a party in Government with Fianna Fáil, who raised this issue when in Opposition, happy to see what is happening at the moment, whereby children are not getting the treatment and services they need and their parents must go to court on their behalf? It is appalling.

We have a major problem with disability and it emanates from the Disability Act 2005. I ask Deputy Sargent and the Green Party to pay attention to that fact. An implementation plan for the education of persons with special educational needs is lacking. I do not detect a seriousness on the Government's part. The eye has been taken off the ball in providing services to people with special educational needs.

The Minister of State must explain to the House why this situation has developed and inform Members whether 150 other families will be forced to go through what the Ó Cuanacháin family went through. Will the Minister for Education and Science put in place a model of education which includes applied behavioural analysis, ABA, to meet the needs of children with autism?

Deputy Trevor Sargent: I thank Senator Frances Fitzgerald for raising this matter. She correctly notes that, as a former school principal,

I have a particular interest in autism and special education and have worked with many of the families, as she has. It sickens me to the pit of my stomach that people who face such considerable challenges must take on the onerous task of going to court.

The Minister for Education and Science, Deputy Mary Hanafin, regrets she cannot be in the Seanad today but has asked me, knowing of my personal interest in autism and special education, to read her reply on her behalf.

The Government recognises that parents of all children with special needs make great sacrifices and is determined to ensure all children get the support they need to reach their full potential. There is no doubt the record of the State over decades, in providing for children with special needs, was very poor and we are still playing catch up. Significant advances have been made in recent years, however, improving the lives of children with special needs and their families.

Approximately 17,000 adults work solely with children with special needs in mainstream schools. This compares with just a fraction of this number a few years ago. The procedures for accessing extra support have been improved with the establishment of the National Council for Special Education. Parents and teachers have local special educational needs organisers to work with them and help them obtain the appropriate support for their children.

A sum of €900 million will be invested in special education this year, which is an increase of 40%, or €260 million, on the 2006 figure. Further improvements in services are on the way with the roll-out of the Education for Persons with Special Educational Needs Act 2004 and the implementation of other commitments in the new programme for Government.

With regard to specific provision for children with autism, the Government believes that as each child with autism is unique, he or she should have access to a range of different approaches to meet his or her individual needs. This view is informed by advice received from international experts on autism, the National Educational Psychological Service, NEPS, and the inspectorate. An analysis of research, including the report of the Irish task force on autism, also supports this approach, while autism societies in other countries also caution against relying on just one method. By enabling children in special classes to have access to a range of methods, including ABA, the Government is doing what it has been advised is in the best interests of such children.

The Department of Education and Science has supported the use of ABA for many years and training is provided for teachers in its use. The Department does not accept, however, based on research, advice and best practice, that it should be the only method used. While ABA can address certain needs, in particular behaviour,

other methods, such as treatment and education of autistic and other communication-handicapped children, TEACCH, and picture exchange communication system, PECS, are just as important, particularly in developing children's communication and speech skills. It is important children have access to a range of methods so their broader needs can be met.

Hundreds of children with autism are integrated into mainstream schools and hundreds more are in autism-specific classes. More than 275 autism-specific classes have been approved throughout the country while more are being set up. A testament to the scale of progress being made in this area is the fact that the number of such classes has increased by more than 40% in the past year alone.

There are a maximum of six children in each special class, with a teacher and at least two special needs assistants, or SNAs. Extra assistants are provided where the children need them. A child can have his or her own SNA if required. Children in special classes have the benefit of fully qualified teachers who are trained in educating and developing children generally and who also have access to additional training in autism-specific approaches, including ABA. The level of such training available to teachers has improved dramatically in recent years and is a major priority for the Government. Children in special classes also have the option, where possible and appropriate, of full or partial integration into mainstream classes and of interaction with other pupils.

The Department of Education and Science and the National Council for Special Education have been working hard to ensure that all children with autism have access to a range of approaches in special classes. A number of years ago before this extensive network was in place, some centres were approved for funding under the ABA pilot programme. The Government is committed to long-term funding for these pilots subject to agreement on certain standards, such as appropriate qualifications for staff and the type of educational programme available to the children. Discussions have taken place with Irish Autism Action with a view to advancing this commitment as soon as possible. Other centres are seeking to be funded under the pilot scheme. However, now that a national network of special classes is available, new centres will not be brought into the pilot programme. We are determined to ensure that each child has access to the autism-specific education being made available to schools throughout the country.

It should be noted that the Department of Education and Science does not initiate legal cases. From time to time, there are references in the media to the Department "dragging" people through the courts. This is absolutely not the case and the Department does not take any decision

[Deputy Trevor Sargent.]

to defend cases concerning children with special educational needs lightly. Every effort is made to resolve the issues without going to court and cases are generally only litigated where no potential settlement is acceptable to both sides and the Government's authority to decide issues of policy is at stake. It is the right of individuals to proceed with litigation if they so wish. In those circumstances, where the Department believes that the education provision available is appropriate, it must defend the case.

The number of cases taken against the State has shown a downward trend in recent times that is partly attributable to the substantial improvements made in services for children with special needs. There are 74 live cases involving children with special educational needs in which the Department of Education and Science is a named party, some 47 of which relate to children with autism.

The Government is committed to expanding the services for all children with special education needs, autism in particular, and I assure the House that this will be a priority for us in the months and years ahead.

Senator Frances Fitzgerald: I thank the Minister of State. I note his statement that he was sickened by parents, as the media commented, being dragged through the courts. The Department may not believe it is dragging people through the courts, but the parents believe they have no choice. That is the reality. Will the Minister of State ask the Government to pay the Ó Cuanacháin family's legal costs because it brought what was effectively a class action?

The Minister of State mentioned that the Department defends cases only where policy is at stake. Will he review the policy so that it will not inevitably mean that parents will be brought to

court? The Department's policy may need to be reviewed instead of asking parents to change taking action. Measures could be taken. Will the Minister of State give the House a guarantee that the people in the 74 other cases will not face the same experience as the Ó Cuanacháin family?

Deputy Trevor Sargent: I would very much like to be able to give the guarantee requested by the Senator. On reflection, she would appreciate that I cannot pre-empt the outcome of a court case.

Senator Frances Fitzgerald: Defending the cases is the issue.

Deputy Trevor Sargent: We are discussing costs. As the outcome of this debate will testify, I will make the Senator's case strongly. I met the individuals concerned in Wicklow for whom it is an issue of considerable distress given the outcome and costs facing them. I will make the Senator's sentiments clear and revert to her directly.

Policy decisions, which are the Government's prerogative, can sometimes be at issue. This is not to say that policy is not kept under review. The best advice can change as determined by educational development, psychology and case histories. It is not to say that policy does not change, but I cannot say which policy changes have come about as a result of legal actions. While it is no comfort to families that have gone through the trauma, the evidence presented in court is listened to carefully and could have an impact on policy. However, I cannot be specific without the details before me.

Senator Frances Fitzgerald: I thank the Minister of State.

The Seanad adjourned at 1.25 p.m. until 2.30 p.m. on Wednesday, 13 February 2008.