

Vol. 188
No. 16



**Tuesday,
26 February 2008**

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Tuesday, 26 February 2008.

[illegible]

SEANAD ÉIREANN

Dé Máirt, 26 Feabhra 2008.
Tuesday, 26 February 2008.

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.
Prayer.

Business of Seanad.

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

The need for the Minister for Education and Science to make a statement on the current conditions of and future plans for Gaelscoil Bharra, Cabra, Dublin 7, in particular ensuring the school yard, which is flooded on a regular basis, is resurfaced and four classrooms, which are currently rented and in a dreadful condition, are replaced.

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

The need for the Minister for the Environment, Heritage and Local Government to address the seriously deteriorating situation of Killarney House and to clarify his plans for its future.

I regard the matters raised as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion re the Council framework decision on combating certain forms and expressions of racism and xenophobia; and No. 2, Criminal Law (Human Trafficking) Bill, 2007 — Committee Stage. No. 1 will be taken, without debate, on the conclusion of the Order of Business and No. 2 will be taken on the conclusion of No. 1.

Senator Frances Fitzgerald: A number of Members were disappointed when the debate on special educational needs concluded last week because they did not have an opportunity to contribute. Perhaps the Leader might ask the Minister to return to the House for a further debate on this important topic in order that everyone might have their say.

I am sure Members will join with me in extending condolences to the family of the young Polish man who was horrifically murdered in Dublin at the weekend. His death raises questions regarding the number of unprovoked assaults taking place and the level of disorder on our streets. We have a national strategy on drugs but we do not have a proper national policy on alcohol. A number of task force reports have been submitted but there has been no response from the Minister in the context of outlining a comprehensive national policy on alcohol. The Minister for Justice, Equality and Law Reform referred to examining the position in respect of the number of off-licences and perhaps introducing some changes. What we need, however, is a comprehensive approach to integrate the drugs strategy with a similar strategy on alcohol.

I ask the Leader to arrange a debate on the need to introduce a proper national policy on alcohol. We have avoided this matter for some time and there has been a great deal of strong lobbying in respect of it. Change has been avoided but this can no longer be the case. We must give serious consideration to the type of national policy we wish to introduce.

By publishing advertisements in today's newspapers, the HSE has shown that it expects the dispute involving pharmacists to continue. It appears that it will be a head-to-head affair, with no negotiation. The Minister for Health and Children will not be coming before the House this week to debate the matter because, again, it is not listed on the Order Paper. I regret the lack of political debate in the House on this topic, despite the number of requests made by Members in recent weeks. It seems there is no political accountability or responsibility in respect of this matter. The HSE has been left to do the work and has caused a crisis. I hope the Leader will be able to inform the House that discussions will take place between the pharmacists and the HSE before the 1 March deadline.

Eamon Timmons from Age Action Ireland referred last night to the representations being made to him by elderly people who are concerned that they will not be able to have their prescriptions filled. The last thing we want is rural pharmacies closing down and people becoming distressed about whether they will be in a position to obtain their medication. Perhaps the Leader will indicate whether he received a positive response from the Minister for Health and Children regarding our requests for her to come before the House to debate this matter prior to the 1 March deadline.

Senator Joe O'Toole: Will the Leader consider arranging a debate on the annual report of the National Competitiveness Council, particularly as the House has discussed the council's previous reports? I requested on a prior occasion that we debate the report because it brings to light certain issues. At this time of the year, when people are

[Senator Joe O'Toole.]

involved in negotiations relating to national wage agreements, there is much discussion regarding labour costs, etc. The report to which I refer is an eye-opener in the context of what really costs in this country. If one examines the areas in which unit costs are highest in international terms, one can see that it is not a matter of labour costs because we can supply labour quite cheaply. It is interesting but hardly surprising that the report indicates that the two highest unit costs in Ireland are the cost per hour for the services of a lawyer and the cost of mobile telephone calls. When put in the context of all the discussions we have had over the years about rationalising telecoms and selling off Eircom to make it more competitive and allow for cheaper prices, it is a joke that we are now the highest in the world in terms of the costs of mobile calls for people setting up business here. We are also the second highest in international comparisons in terms of the cost of water and waste. It is important that we make known our views on these issues and are aware of items and services that are expensive. It demonstrates where changes have taken place. For example, insurance costs have improved over the years, through political force more than anything else.

I have not been in the habit of making complaints about the HSE because plenty of other people have been doing so. I am interested, however, in the way it does its business and two issues concerning the HSE that arose in the past week are of serious concern to me as a public representative. I hope this concern will be shared by others.

In one case, the HSE has pulled its advertising from a radio station which had the cheek and audacity to follow it up on issues where the station felt the HSE was not giving a proper service. Rightly or wrongly, a radio station which has been following up on issues with the HSE, which is what the media is there to do, has had advertising pulled. I would like to hear someone explain that to me as there is something fundamentally undemocratic and wrong about it. I have very little sympathy for the HSE if it is not prepared to take punches and fight back.

Deputy Joe Costello has had a weekly demonstration outside the accident and emergency department of the Mater Hospital for the past four and half or five years to bring attention to certain aspects of the department he feels should be highlighted. He also takes the opportunity each week to speak to patients there. This is a praiseworthy action. I do not stand here to defend Deputy Costello and I regularly have been ready to complain about him. I have had many difficulties and differences with him in this House. It is praiseworthy for an elected public representative to see how the public service gives its service at a local level and is seen to do so. It is good for politics. He has now been told he is not wanted there anymore and that he should not be there.

These two issues cause concern for me because of political accountability, what we intended the HSE to do and our relationship with the executive. I would like a discussion on the matter.

Senator Alex White: I ask the Leader to invite the Minister for Transport to the House for a debate on the proposals of the consultation document he has published in respect of public transport and transport strategies. I am particularly interested in Dublin city but it is clearly a national question and a crisis that affects the entire country.

It is commendable that the consultation document appears to finally grasp the nettle in seriously encouraging alternatives to the car and private motor transport. The difficulty is that although the document is to be welcomed, it is a consultation document. We have reached the stage in our development where we have had a great deal of consultation. As welcome as this is, we have had plenty of it. What we now seek and what is required is action.

I saw a survey from my own area around Rathfarnham and Terenure recently which indicated that more than 90% of children in some primary schools are driven there. That is an extraordinary figure for children living in the suburbs. It is almost unheard of now for children to cycle to school and few walk there. This is the sort of challenge with which we are dealing and the Minister is right to put the subject out for discussion. I would like a debate in this House, where the Minister could indicate his opinion and the rest of us could put forward our proposals for concrete action to deal with this challenge, rather than simply having a further level of consultation.

One important aspect of this issue is the question of the metro and the Luas. For example, there is a major question mark over the capacity of the current Luas line to Sandyford at this stage, as trams are full at peak hours and throughout the day. There is significant pressure on the system. We need to think big in respect of public transport and the metro. We are building a metro to the airport and tunnelling in the city centre. Let us extend that to the Cherrywood line and have a proper system of heavy rail provision for public transport in the city. It is not enough for the Minister to say he will not provide extra buses for the city, as the Labour Party advocated in the last election because he is afraid they will sit idle in Parnell Square. Why are buses sitting idle in Parnell Square? Since I was a child I have noticed buses idle in Parnell Square. Why can that not be addressed? The Minister was commendably honest today in saying there had been a failure of policy in respect of the Government's climate strategy. That outbreak of frankness and honesty on his part is good. It is coupled with an equally honest and frank statement by the Deputy Leader of this House in recent days in which he made clear in public his concerns about events connected with the Taoiseach. What was wrong

with Senator Boyle's comment that his party leadership had to disown it?

Senator Jerry Buttimer: That is right.

An Cathaoirleach: We are on the Order of Business and that is not relevant.

Senator Alex White: A few months ago the leadership of the Green Party described the Taoiseach as "dead man walking" on the basis of what we knew then. With what we know now, how else can we describe him?

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

Senator Déirdre de Búrca: I would like the Leader to invite the Minister for Health and Children to the House to address the new regulations for nursing homes which the Health Information Quality Authority approved yesterday. They are welcome because they cover many of the issues raised in recent scandals in nursing homes for the elderly which showed that the standards in public and private nursing homes left much to be desired. The regulations tackle the level of staff training, dignity and choice for elderly people in nursing homes, improving the physical environment and so on, and are welcome. There also will be 90 inspectors visiting public, private and voluntary homes. The fair deal arrangement imposes a levy on the estates of elderly people after their deaths to cover the costs of nursing home care. Will the Leader invite the Minister to the House to flesh out these proposals for us in order that we can be aware of how exactly those new financing arrangements will work?

Senator Jerry Buttimer: Where is the Bill?

Senator Déirdre de Búrca: In general I welcome the package and look forward to an opportunity to discuss it with the Minister for Health and Children.

Senator Paul Coghlan: I am disappointed and saddened to note that the Health Service Executive is pressing ahead with plans to breach contracts and endanger vital frontline health care service to hundreds of communities throughout the land. That is no way to do business. It endangers patients and threatens many rural pharmacies.

An Cathaoirleach: Is the Senator requesting a debate on this topic?

Senator Paul Coghlan: I join Senator de Búrca's call to invite the Minister for Health and Children to the House and add a request that the Minister address this issue because we have not heard about it and we should not let the matter drift any further.

I welcome the announcement made in Kerry last Friday. The Leader perhaps knows more than I about it and if so I would welcome his comments. Deputy Jackie Healy Rae made the announcement.

Senator Jerry Buttimer: He is the real Minister for Kerry.

Senator Paul Coghlan: No. This could be a sub-part of the programme for Government and I would like to hear the Leader's comments on the funding he stated has been secured for Killarney House. The house is a major historic property of national interest that has been much neglected. I thank the Cathaoirleach for including my matter on the Adjournment when I look forward to hearing the Minister for the Environment, Heritage and Local Government flesh out the full picture because he is sincere and genuinely interested in this issue.

Senator Jerry Buttimer: Hear, hear.

Senator Camillus Glynn: Efforts have been made, including those of Fianna Fáil's spokesperson in this House, Senator Feeney, to resolve the difficulties that face the country in respect of the pharmacy issue. It is important that both sides should endeavour to traverse the middle ground. Whenever a dispute exists, the middle ground is always safe ground for people to head towards because it is where resolutions are to be found. Even at this late stage, common sense should prevail on both sides and there should be a meeting of minds in an endeavour to resolve this difficulty.

Last week I raised a matter in the House which was brought home to me again a few days ago when I attended a funeral in County Roscommon. A brother-in-law of my wife told me he had received a letter from a person who advised him that he had been nominated as a benefactor in a will and that the authors sought his bank account number and other details. I understand from my inquiries that this practice is widespread and I raised the issue in the House last week. I am deeply concerned because while many people would be wise to such a scam, unfortunately some people in the community take the bait and consequentially are swindled out of their hard-earned money. Something must be done as this has been ongoing for some time. I have taken the opportunity to ring one of those involved because, as I noted last week, I received such a message myself. However a debate on this subject is required. This matter should be brought centre stage because it is not going away and must be tackled and dealt with.

The other matter I wish to raise is that some time ago, and not for the first time, concern was expressed in this House regarding the number of accidents involving non-insured cars. While a debate was held on this matter in the previous

[Senator Camillus Glynn.]

Seanad, another would be timely because this issue remains outstanding and is not going away.

Senator Joe O'Toole: Hear, hear.

Senator Camillus Glynn: All Members can articulate the reason it is continuing. One can instance car sales, roadside sales, back garden garages or anything one likes but the nub of the matter is that the problem still exists and something must be done about it because innocent people are losing their lives.

Without being racist, and Members must be factual in this Chamber, there appears to be a high incidence of non-nationals involved in accidents in proportion to their numbers. The percentages exist. While I am not trying to cast aspersions on anyone I believe that both those who come to Ireland and those who are indigenous must use the roads in a safe way that takes into account the safety both of themselves and of others. I seek an early debate on these issues.

Senator Jerry Buttimer: I join Senator Alex White in paying tribute to my County Cork colleague, the Deputy Leader, Senator Dan Boyle, on his conversion to his position as stated on the radio.

Senator Frances Fitzgerald: Hear, hear.

An Cathaoirleach: Is this relevant to the Order of Business?

Senator Jerry Buttimer: It is.

An Cathaoirleach: That is what we want.

Senator Jerry Buttimer: Given that Senator Boyle was one of the chief midwives to the birth of the Government——

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

Senator Jerry Buttimer: I raise the matter in this context. Given that Senator Boyle was a midwife at the birth of the Government and that he has asked for a timeline regarding the Taoiseach's tenure in office, has the Leader managed to procure a date from the Taoiseach regarding a visit to the House? Given the Taoiseach will appear before the United States Congress in March and given the Deputy Leader's comments that he might be gone from us, can the Leader advocate for his appearance before the House?

I join Senator O'Toole in seeking a debate on the role of the Health Service Executive, and its remit. I was appalled, as I am sure was the Leader, to read that the HSE decreed it would not advertise with a particular radio station. Does that mean those who offer a critique on the running of the HSE will be refused treatment on the basis of their comments?

Senator Paul Coghlan: That is a good point.

Senator Jerry Buttimer: An urgent debate is needed on the HSE itself and with regard to the pharmacy dispute. Senator Glynn, for whom I have great respect, spoke of the middle ground, but that cannot be achieved by the Minister hiding behind the HSE, which is bullying and instilling fear in ordinary people in rural Ireland. I ask the Leader, at this late stage, to invite the Minister to the House this week to address this matter.

Senator Denis O'Donovan: I wish to briefly raise two issues. I ask the Leader to stimulate a debate on an environmental issue concerning the serviced sites initiative, an important measure introduced by local authorities. A problem in this area arose in the past and was partly resolved by local authorities providing serviced sites to young people, sometimes at approximately 10% of their market value, a wonderful initiative which works very well. Local authorities demand a first priority charge on the title but it frequently arises that banks refuse to accept a second charge, which creates an *impasse*. This matter is primarily one for the Minister for the Environment, Heritage and Local Government and perhaps the Minister for the Finance. This practice is ridiculous. I know of a young couple who obtained a serviced site, on which they secured planning permission after a struggle and now at the last hurdle they find the banks are not prepared to play second fiddle. The local authority wants a first priority charge on the site because it sold the site with all the services——

Senator David Norris: Like a building society, as in the case of St. Luke's.

Senator Jerry Buttimer: Interest free.

Senator Denis O'Donovan: The same applies to the building societies. Their approach is similar to that of the subprime lenders in pointing out that they are not prepared to give a mortgage, which creates a practical difficulty. I request the Leader to arrange for a debate on this matter. I am sure this problem is encountered by people in many counties and not only by people in County Cork.

I also request a debate on tourism. As we are nearing the Easter recess, perhaps the Leader could arrange for such a debate next session. I am not being parochial but I laud Fáilte Ireland which, in conjunction with many local committees, launched a wonderful walkway, the Beara Breifne Way, in Bearra. It is approximately 600 km of a walk and cycle route on which some €7 million or €8 million has been spent. The first section of the walkway, from Millstreet to Allihies and Ardgroom, was opened yesterday.

Walking in Ireland is far more popular than golf. It is a concept of activity tourism we are neglecting and one on which we should have a

debate. I could do with walking a little more. I try to walk a few kilometres every weekend.

An Cathaoirleach: The Senator should bring a few of us with him.

Senator Jerry Buttimer: A few of us could join the Senator.

Senator Denis O'Donovan: It is like the line written by the great poet, *Anois teacht an ear-raigh beidh an lá dul chun síneadh*. It is now spring and we should recognise the potential of such activity that is unique to this country. There are cultural aspects to such tourism and the Heritage Council is involved. We should promote and embrace our beautiful amenities and sites instead of jetting off on sun holidays three or four times a year. I would love to have a debate on this area. More continental walkers are coming to west Cork, Kerry and other places in the west. We should grasp this nettle. We would have less health problems if we all did a little more walking.

Senator David Norris: I advise Members, in case they have not received notification and in light of tomorrow night's debate on civil marriage for gay people, that a briefing on this matter has been organised by GLEN in the AV room. People of different views might find it useful to attend that.

The Leader graciously agreed to take a motion on landmines this week if possible. I do not know if it would be possible to take it on Thursday, which is usually a reasonably slack day. Perhaps he would let me know if there has been agreement from the Minister responsible on this matter.

I agree with what Senator Fitzgerald said about the tragic situation of the two young Polish men. They seem to have been decent young people. I heard their landlord talk about them on a radio programme yesterday. He said they were dream tenants. The neighbours all spoke highly of them. They went out to work early in the morning, they were not rowdy and they kept their place spotless. What has happened is shocking.

Senator Fitzgerald is right in what she said. There has been an astonishing increase in such crimes. A well known academic who spoke about this on a radio programme today
3 o'clock made the point that one year in the early 1960s there were two homicides in Ireland; the number of homicides each year is now in the eighties. He talked of a contagion of violence. I remember saying some years ago that this would be an inevitable consequence of the troubles fermented, to a certain extent, by the republican movement, that we were all being conditioned to violence and that there would be a cross over. I am afraid, tragically, this is what has happened. I do not think it is tolerable and we must resist it and fight back against it.

I ask the Leader to consider giving time to No. 15 on the Order Paper. I will not rehearse the whole item but it refers to the extraordinary rendition situation. A report was issued by the Irish Human Rights Commission but this has never been discussed in the House. Important documents produced by a Government agency should be examined by the House. I hope my final point would be a very telling one with my friends on the Government side, many of whom took at face value the assurances given by Condoleezza Rice and George Bush although we all knew that they were lying. We now have absolute proof that the most significant of what they said was a downright lie, despite the fact that the Americans categorically stated that no prisoners ever went through British territory in those planes and we now know they have had to confess, to admit and to acknowledge that a plane that has also used Irish airspace — I have put its registration number on the record of the House several times — passed twice carrying prisoners and landed on British sovereign territory. The lies they told the British they are equally capable of telling to us. I would like a debate in light of this important fact.

I wish to extend my sympathy to the Taoiseach in his current difficulties, particularly with regard to the quality of those who are supporting him. I heard the Tánaiste, Deputy Brian Cowen, say that Deputy Enda Kenny was like Napoleon in Elba. That may be so, but the Duke of Wellington, Bertie is not.

When I heard——

An Cathaoirleach: On the Order of Business, Senator.

Senator David Norris: ——the lamented former Senator Martin Mansergh squeaking petulantly on the electric wireless at Senator Regan and saying, "Respect your betters", I recognise the true Cromwellian flavour of certain sections of that noble party over there.

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

Senator Dan Boyle: I wish to be associated with the opinions of Senators Fitzgerald and Norris regarding the horrendous incident in Dublin last night involving the two Polish nationals and which has resulted in the death of one man and the serious injury of the other. Everyone in this House will have similar opinions as regards the nature of that attack and the fact that it should not happen at all in this country.

I will be led by the Cathaoirleach's ruling as to how I should respond to earlier contributions by Members of the House——

Senator Jerry Buttimer: Go on, Senator.

An Cathaoirleach: I would prefer if we did not become involved in any matter relating to other people from the other House.

Senator Jerry Buttimer: The honeymoon period has ended.

Senator Dan Boyle: I have possible suggestions. The Defamation Bill is coming back to this House next week and I may speak to that in this regard——

Senator Alex White: When the Senator is covered by privilege.

Senator Dan Boyle: With regard to Senator Buttimer's contribution the fact the Nurses and Midwives Bill is also due to be discussed in the House might be another pretext. While I am greatly honoured——

Senator Jerry Buttimer: I hear the Senator is very good at delivering babies.

Senator Dan Boyle: ——that my opinions are so highly valued by fellow Senators——

Senator Jerry Buttimer: The Senator has changed it again. Has he done a flip-flop again? Is he changing his opinions again?

Senator Dan Boyle: I wish to put on the record the context of what I said because it could be easily dealt with here rather than in a subsequent debate. In the course of a radio interview yesterday, I expressed an opinion that the holder of political office, having expressed the fact that they will not hold that office in the near future, will, in the first instance decide for themselves and second, decide with their party when such a change of office will occur.

(Interruptions).

Senator Dan Boyle: I also went on to express the opinion that ——

(Interruptions).

An Cathaoirleach: We are on the Order of Business and I am strongly of the view that this is not relevant to the Order of Business.

Senator Dan Boyle: I also went on to express the opinion that my own role and that of my party is not to decide who should be the leader of another political party.

Senator Jerry Buttimer: The Senator is like Lanigan's ball — changing his mind and coming in and coming out.

Senator Dan Boyle: It is a principle——

Senator Jerry Buttimer: His party cannot make up its mind.

An Cathaoirleach: Please, Senator Buttimer.

Senator Dan Boyle: ——I would recommend to members of other parties in this House and other Members of this House. I would have strong opinions——

Senator Jerry Buttimer: The Senator's knuckles were rapped; he was a bold boy and shame on him.

(Interruptions).

Senator Dan Boyle: I was of the opinion that the abilities of leaders of other political parties would not fit in with my own template of what a political party should do.

An Cathaoirleach: That is not relevant to the Order of Business. If we start that, we will be discussing someone's problems every day.

Senator Frances Fitzgerald: I am not sure what the Senator is saying.

Senator Dan Boyle: I recognise that——

Senator Frances Fitzgerald: Is he distancing himself?

Senator Dan Boyle: —— having decided upon who their leader should be, that is not a process into which I intend to interfere on either of their parts.

Senator Alex White: No one ever said it was.

Senator Nicky McFadden: Today Dr. Gilmarin, president of the Irish Thoracic Society spoke about us having one of the worst incidences of respiratory disease in the world. Of all the people diagnosed with lung cancer in this country, only 9% survive, which is a very stark and upsetting statistic. For the umpteenth time I ask that the Minister for Health and Children should come to the House to discuss the serious situation of the number of children suffering from asthma and the fact that Sligo still has no respiratory consultant while Waterford had one appointed just last year.

Last week I was advised that 5,000 children are awaiting hearing tests. There is a two-year waiting list for eye testing. Children with lazy eyes are waiting to have their eyes tested and may always have problems with their sight as a result. This is not a Third World country. We have more money in this country than many other countries, yet we have a Third World health service. I will not mention all the areas in my constituency I have raised in the House umpteen times. The Minister, Deputy Harney, needs to come to the Seanad and answer questions rather than blaming the Health Service Executive and using it as a backdrop for her own failings.

The Minister for Education and Science, Deputy Hanafin, decided to terminate the sum-

mer works scheme on 6 December. The Taoiseach came to my constituency the day before the general election to announce the building of a school. We were informed last week this school will not be built. Athlone community college, which is at design stage, will not be built. Killucan national school, which I raised in the Seanad, is now not due to be built. The Minister needs to come to the House and answer——

An Cathaoirleach: All those matters can be discussed in the debate.

Senator Nicky McFadden: Those are the reasons I am calling for a debate. The two Ministers in question need to come to the House and answer the questions.

I wish to make the Seanad aware that this is national fair trade fortnight. Tomorrow a coffee morning will be held in Leinster House 2000. We use Fairtrade coffee in this building and Senators should use Fairtrade products themselves.

Senator Geraldine Feeney: Senator McFadden is wrong in claiming that Sligo has no respiratory consultant. The appointment has been made and the post will be filled in July.

Senator Nicky McFadden: It is not filled yet.

Senator Geraldine Feeney: There is one coming to Sligo and the appointment has been made.

Senator Nicky McFadden: So I am right. Sligo has no respiratory consultant.

Senator Geraldine Feeney: I support other Senators in asking the Leader to arrange for the Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan, to come to the House to debate the lack of safety for young men on our streets throughout the country. I say this in the light of the terrible tragedy of last Saturday. The unprovoked attack took place at 6 p.m. in a very settled, quiet community when people were out shopping. The tragedy ended with the fatality of one of the young men.

It is not a single attack. Random attacks occur daily. I know of one that took place on College Green two weeks ago at 8 p.m. The sad thing is that they are being carried out by young teenagers. It is not young teenage boys; they are being joined by young teenage girls also. They are carrying out savage attacks. Communities are held to ransom because they are afraid to come out even in the middle of the day.

Earlier today when I was driving to the House, I heard Joe Duffy remark that people in Leinster House do not seem to care about what is going on. In addition, he said that no one in Leinster House is doing anything about it. However, I am glad to hear so many speakers in the House raising this issue as a matter of importance. I ask the Leader to take that on board and try to arrange

for the Minister to attend the House to debate this terrible situation.

Senator Paudie Coffey: One of our most progressive third level colleges, Waterford Institute of Technology, currently has an application with the Minister for Education and Science for elevation to university status. More than a year ago, the same Minister commissioned an independent assessment of that application, which was carried out by Dr. Jim Port. We have waited almost eight months for that report to be published. It has been discussed by many Senators from both sides of the House and I have tabled an Adjournment matter on the issue. Now that the report has been published, I do not know what all the secrecy was about or why we had to wait for eight months. The Minister for Education and Science should attend the House to discuss this critical report which says that no clear Government policy or criteria have been set down to deal with such applications. That is a damning indictment for any progressive college that wants to obtain university status. The independent report acknowledges that the application has great merit and should be judged accordingly, so I look forward to hearing the Minister's view if the Leader can arrange for her to attend the House for such a debate.

Cancer is a major killer that affects many families throughout this society. In the south-east region, and specifically in Waterford city and county, we still do not have a BreastCheck facility. Prior to the previous general election, the Taoiseach promised that service would be available in October 2007, yet we still do not have the BreastCheck facility and no date has been set for its introduction. This is another indictment of the Government which has failed people in this regard. Valuable time has been lost while we await such a service in the south east. I appeal to the Leader to ask the Minister for Health and Children to act on this matter. Only a few months ago, she said we would have the BreastCheck service, yet we still do not have it, which is a shame on the Government. The matter should be dealt with as urgently as possible.

Senator Lisa McDonald: I support Senator Coffey's comments in favour of a university for the south east. I have called for such a debate before now, so I hope the Minister will attend the House to get all these issues aired. The south east is the only region in the country that does not have a university and the young people there deserve one.

I welcome last week's remarks by the president of the American chamber of commerce, Mr. Paul Rellis, who called for a "Yes" vote on the EU reform treaty. His comment that inward investment might be affected by a "No" vote is noteworthy. It should be highlighted that 100,000 people are employed by American companies in this country.

[Senator Lisa McDonald.]

I ask the Leader for an update on the invitation we extended to the president of the European Parliament, Hans-Gert Pöttering, to address the House. It would be a great opportunity to exchange views on the treaty.

Senator Joe O'Reilly: I support the proposition by Senator Fitzgerald for an urgent debate and, more importantly, urgent action on the alcohol problem in our society. While we correctly focus on the difficulties concerning hard drugs such as cocaine and heroin, this may have distracted us from the fact that the fundamental problem in this country arises from alcohol abuse. It gives rise to so much domestic violence and anti-social behaviour generally. Ultimately, alcohol consumption can lead to harder drugs. A new phenomenon involves below-cost sales of alcohol in supermarkets which prompts drinking at home and in public places. A drinking pattern is developing outside the traditional public house culture and while pubs created their own difficulties, the new phenomenon is different and is causing major problems because the drink is much cheaper and more easily accessed. I ask the Leader to treat this matter as serious, urgent and in need of rapid action.

Senator O'Toole referred to the Health Service Executive removing advertising from a radio station. It would be extraordinarily serious if this type of censorship were to become widespread. Public bodies cannot be allowed to threaten media outlets such that if they do not sing from the same hymn sheet, they will receive no further advertising. We must put a stop to this immediately before it effectively stifles the free press. Senator O'Toole is correct that this is a serious issue.

Senator Paudie Coffey: It is a diktat.

Senator Joe O'Reilly: Most of our media depend on advertising revenue and the threat of losing that revenue could silence many outlets. It is a matter of serious concern.

Senator Nicky McFadden: Hear, hear.

Senator Ivor Callely: I join other speakers in expressing concern about the level of unprovoked and vicious violence on the streets. I look forward to a comprehensive debate where we can agree sound resolutions to address this issue.

I recently asked the Leader about the implications of the pharmacy dispute for community drugs schemes and reimbursement prices for pharmacists. Can he give the House a progress report on this issue and relay any feedback he has received from the Department of Health and Children or the Health Service Executive?

I always listen with interest when Members express concerns about the waiting lists for certain hospital and other medical procedures. The

Official Report shows Members raising this issue over many years, whether in reference to hip, heart, cataract, ear, nose and throat procedures or otherwise. The National Treatment Purchase Fund was established in response to these long-standing concerns but it is not being utilised. People remain on waiting lists even though funding is available for the procedures to be carried out privately. That is regrettable. Perhaps the Leader will arrange a debate to discuss how an equilibrium can be achieved to ensure the moneys available are utilised fully.

There has been much discussion in recent times of the issue of autism. At 6 p.m. today, here in Leinster House, the Irish Society for Autism will announce formally its decision to join the Celtic Nations Autism Partnership. The formation of this partnership is an important occasion for all those involved and interested in autism. I encourage all Members who can to attend the launch in the audio-visual room.

Senator Paschal Donohoe: Will the Leader organise a debate on the private rental sector and the regulations and standards pertaining to it? In my constituency of Dublin Central, I see far too many streets and neighbourhoods that have been ravaged by the problems arising for both tenants and neighbours of poorly maintained rental properties. Given that the quantity of rental accommodation is expected to grow, it is imperative we learn from the mistakes being made. We must ensure the sector is properly regulated, tenants are looked after and those living in the vicinity are respected and protected.

I especially urge the Leader to focus on the incidence of anti-social behaviour in private rental accommodation. We must ensure the relevant bodies have greater power to deal with that issue. In regard to the maintenance of private rental property, I understand the existing regulations are not in keeping with the modern cities and communities in which we live. The organisations that maintain those standards must have the powers and resources necessary to do their job properly.

Senator John Hanafin: Will the Leader consider a debate on energy security with particular focus on the interconnector with Britain and the rest of Europe? There are now up to three different pipelines, all coming from one source in Russia, supplying much of Europe's energy needs. Although this is a reliable supply source, we might consider presenting the case for Ireland as a place where back-up could be provided for Europe in terms of green energy, given the resources available to us along the west coast.

While I am talking about Europe, I should mention that I am glad it was mentioned this afternoon that the Taoiseach is not like the Duke of Wellington or Napoleon. It is true that despite their best efforts, neither of them achieved what

the Taoiseach achieved, which was to be President of a united European Council.

Senator Marc MacSharry: I join other Senators in calling for a debate on the Health Service Executive, especially on its accountability? While it is scandalous that the HSE has withdrawn advertising from a radio station, it is merely a symptom of what is going on, in general terms, throughout the country and the health service as a whole. I do not suggest that all the HSE's efforts are wrong, but some things certainly are wrong. The word "Stalinist" comes to mind when one considers the HSE's actions in the case of the radio station. I read in one of today's newspapers that the Labour Court has ruled the HSE's postponement of recruitment represented a breach of the social partnership agreement. It is not acceptable that the HSE is acting in an independent way, as if it were a private company.

I suggest the Leader should ask the Taoiseach to make himself available to the House for a discussion on the accountability of an organisation that was established by the Oireachtas. We must ensure the HSE remains accountable to the Houses of the Oireachtas and, ultimately, to the people on a wide variety of issues, not least cancer care services for the north west, which I have mentioned on many occasions. When one listens to Members, it is clear the health service is the common denominator. It requires attention. We must hold the HSE to account on behalf of the people. I ask the Leader to arrange a debate on the matter as a matter of urgency.

The second issue I wish to raise is just as important as the first. Perhaps we can have a debate at some stage on the issue of sexual health. Some Senators will have noticed it was announced in recent days that the incidence of HIV-AIDS and certain sexually transmitted diseases has increased substantially over the past two years. I commend the actions of students who highlighted the issue of sexual health awareness during their recent rag week festival. As part of a debate on this issue in the House, we should exchange our views on how to raise the level of awareness of this issue and ultimately protect people's sexual health.

Senator Labhrás Ó Murchú: I have always felt that a sense of fair play and concern for human rights is synonymous with public service. People in public life are in a very privileged position. That is especially true of Members of the Oireachtas. I am sure we all measure carefully the consequences of what we say on the perception of the character of others. It seems to me, having listened to the debate for a long period, that fair play is not being extended to the Taoiseach. I say that because he has made an exceptional contribution to the life of this country. He is possibly one of the most successful Taoisigh in the history of the State. I can only outline my personal reaction. I have always found him to be a honourable,

likeable and accessible gentleman. I cannot accept that he has been involved in corruption in any way. It is possible that the nature of the tribunal, with its lack of due process, contributes to an environment in which that is allowed to happen.

Senator Alex White: Is that in order?

Senator Labhrás Ó Murchú: I have noticed in recent times——

Senator Alex White: On a point of order, that is an accusation that the tribunal does not have fair procedures. That is quite a serious allegation, a Chathaoirligh. It must be out of order.

Senator Labhrás Ó Murchú: If I could finish this point——

Senator Jerry Buttimer: The tribunal is following due process.

Senator Labhrás Ó Murchú: Others were allowed to make their points.

Senator Alex White: That is out of order, a Chathaoirligh.

Senator Frances Fitzgerald: It is a serious allegation.

Senator Labhrás Ó Murchú: May I finish this point, a Chathaoirligh? Many journalists are now saying that there is no longer an appetite among the public for what is happening.

Senator Alex White: That is what Fianna Fáil hopes.

Senator Labhrás Ó Murchú: Never was it more evident than on "Questions and Answers" last night, when several speakers, most of them young, refused to make an anti-Taoiseach comment.

Senator Jerry Buttimer: How many of them were plants?

Senator Labhrás Ó Murchú: That proves something to me.

Senator Jim Walsh: I support the calls for a debate on youth hooliganism, particularly in light of the recent episode where a young person was savagely attacked and died as a consequence. Apart from this being a policing issue, it also raises issues relating to education, self-discipline and parental responsibility. Given the extent of the problem, we do not have the mix right. A debate on those issues could be constructive in finding a resolution or improving the situation.

I support Senator Ó Murchú's comments on the Taoiseach and the tribunals. When will the Tribunals of Inquiry Bill 2005, which was intro-

[Senator Jim Walsh.]

duced in the Lower House a few months ago but has not advanced, be introduced in this House? The Bill provides for commissions of investigation as a mechanism to inquire into issues of public importance rather than tribunals of inquiry. What is happening at the tribunals may be fodder for the media and so on but it revolves around pantomime and farce.

Senator Alex White: The Senator has a problem with the Taoiseach's own words.

Senator Paudie Coffey: Senator Walsh is uncomfortable and we understand that.

An Cathaoirleach: We are not debating the tribunal of inquiry now.

Senator Jim Walsh: The comments made by various people show we need to move to a different, more effective and fair system of dealing with important issues in a way that ensures due process——

Senator Alex White: The Taoiseach is condemned by his own words and admissions.

Senator Jim Walsh: ——and, ultimately, will give the Houses the response they seek and not ten years later when many barristers and legal professionals have become multimillionaires as a consequence. That was never intended. It is a disgrace and should be brought to an end.

Senator Camillus Glynn: What about the €5 million senior counsels?

An Cathaoirleach: That is not in order. We are not discussing this issue.

Senator Maurice Cummins: An allegation has been made that the tribunal is not ensuring due process for certain people involved in it. The tribunal was set by the Houses of the Oireachtas and that is a serious allegation to make in this House. It should be withdrawn that due process is not being allowed to any person because if that were the case, that would not be correct.

Senator David Norris: Hear, hear.

Senator Maurice Cummins: I support Senator Coffey's comments regarding the application by Waterford Institute of Technology for university status. It is imperative the Minister for Education and Science comes to the House to explain Government policy on this issue, which is very important to both Waterford and the south east.

An Cathaoirleach: I will allow questions to be raised on the general issues of tribunals of inquiry but reference to specific evidence that amounts to a re-enactment of the proceedings of the tribunal is a breach of Standing Orders. I do not

know how many times I have reiterated that I do not want Members to discuss what is happening at the tribunal, good, bad or indifferent. Senators are commenting on the tribunal almost every day. The tribunal's proceedings are *sub judice* and I do not want them discussed. I appeal to Members to co-operate with my rulings on that.

Senator Donie Cassidy: Senators Fitzgerald, Coughlan, Glynn, Buttimer, Norris, Boyle, Feeney, O'Toole, Reilly, Callely, MacSharry and Walsh called for various debates on the health service and the HSE. Many serious calls were made to invite the Minister for Health and Children to the House. As I informed the House last week, I made the request that the Minister be present if possible before the end of business on Thursday next. She has made a commitment to the Dáil for the slot I had intended her to take on Thursday. I will update the House tomorrow on the possibility of finding another slot in her diary for the debate.

The HSE receives in excess of €15 billion, which is a long way from the amount paid ten years ago. All fair minded people would agree those in responsibility in the HSE have to get their act in order. Those of us who sat on the health committees, including the Cathaoirleach and Senator Glynn, will recall a Holy Thursday in 1985 when protective notice was served on two thirds of the staff of non-emergency services. We have come a long way in terms of providing for those needing care. The money has been put in place so let us hope the expertise called for in various reports will be made available.

With regard to the pharmacies, the Minister will have to update the House before close of business on Thursday. I will endeavour to ensure that happens.

On Senator Fitzgerald's question regarding special needs, the Minister for Education and Science made a forthright contribution on that issue in the House last week. I will ask her to return after the Easter recess because legislation has priority until the end of this session.

On behalf of the House, I offer my condolences to the family of the young Polish man horrifically murdered in Dublin, as well as to the family of the man who accompanied him and who is now critically ill in hospital. Respect for life and law and order is not felt among certain citizens. This new dimension is regrettable and is at variance to the respect for life and property we were brought up to have. It is the responsibility of the Government and the Minister for Justice, Equality and Law Reform to put fear back into the law. I will have the Minister attend the House to hear the views of Senators on putting fear into the law through the imposition of sentences for these terrible tragedies that occur on a daily basis. I join with Senators in calling for this debate before the Easter recess.

Senator O'Toole alleged that advertising was withdrawn from a radio station by the HSE. I will

share with the Minister our serious concerns and have the matter investigated before reverting to the Seanad on it in the next few days. For generations we have worked towards freedom of speech and thanks be to God we have had such freedom for the past several decades.

The Senator also sought an urgent debate on the recent report by the National Competitiveness Council. This is the greatest challenge facing our country in terms of continuing the progress made over the past ten years. Allowing captains of industry to make profits and compete is of the utmost importance for sustaining employment. I hope to arrange for the Minister for Enterprise, Trade and Employment to receive the views of Senators within the next two weeks or at the earliest opportunity. The Senator also noted the high costs in this country of water, legal and telephone bills. I will pass these views on to the Minister. As Chairman of the Committee on Enterprise and Small Business in the last Dáil, I played a central role in reducing insurance costs. The cost of insurance for motor, public liability or employer's liability, has been substantially reduced by 30% to 35%.

Senator O'Toole referred to Deputy Costello, who was formerly leader of the Labour Party in the Seanad, and the issue of political accountability. I will pass the Senator's views on that issue to the Minister.

Senator Alex White called for a debate on transport in the context of the consultation document. He correctly pointed out that in some privileged areas of Ireland more than 90% of students are driven to school. We must give our consideration to the various public transport initiatives being undertaken by the Government to ensure that the people of a modern country like Ireland have alternative choices of transportation.

Senator de Búrca called for a debate on health services, and nursing homes in particular. She called for choice for the elderly and welcomed the 90 new appointments that have been made. I have no difficulty in arranging time for a debate on the matter.

Senator Coghlan congratulated his friend and colleague from Killarney, Deputy Healy-Rae, on playing a major role in getting funding for Killarney House.

Senator Paul Coghlan: I hope it will be expanded.

Senator Donie Cassidy: I am sure we can all join the Senator in congratulating the Deputies from Kerry South, including Deputy Healy-Rae, who is a great friend and colleague.

Senator Glynn sought a debate on the high percentage of uninsured motor vehicles. We are told by the insurance industry that the proportion of uninsured vehicles could be between 7% and 10%. The National Roads Authority should investigate the handset detectors used by the

dedicated traffic corps in New York. I will pass the Senator's views on to the NRA.

Senator Glynn also warned the House about people outside the State who send e-mails regarding inheritance scams and ask for the bank account details of Irish citizens in order to relieve them of their hard-earned money. The Senator's warnings should be taken seriously.

Senator O'Donovan asked that the Minister for the Environment, Heritage and Local Government attend the House for a debate on the views he expressed on first and second mortgages. I have no difficulty in arranging a debate on that issue. In a very valuable scheme, local authorities purchase sites in areas of heavy demand for housing and resell them to people on housing lists for 10% of the cost. I can see the benefits of this scheme for areas of my county of Westmeath. However, the council has to take a first mortgage charge while the second charge is taken by the building society or bank. The Senator also called for a debate on all-year tourism.

I will revert to Senator Norris in regard to his questions on No. 15 on the Order Paper and his proposed motion. I will discuss it with the Senator after the Order of Business.

Senators Boyle, Walsh and Ó Murchú expressed their views on what is taking place at the tribunal. We have given the three eminent judges the job of deliberating over matters and of making their findings known. As soon as that happens, I assure the House that every Senator will have the opportunity to discuss the findings in full. I abhor this daily editing of the evidence of all those who appear before the tribunal, and I refer to all Taoisigh and not only to one Taoiseach. A lot of Senators would do well to take on board the views of Senator Ó Murchú, the president of Comhaltas Ceoltóirí Éireann and an eminent Member and experienced Senator.

Senator McFadden called for a debate on respiratory diseases and asthma, for which I have no difficulty leaving time aside. She also asked about the summer works projects and the few schools in County Westmeath which were not fortunate enough to be included. I must, however, welcome the announcement of a new 16-classroom school for Mullingar, an eight-classroom school for Kinnegad, a new primary school for Clonmellon and a huge extension for Gainstown. We must welcome all the announcements, despite the disappointments. The Senator and I work hard on behalf of the people of County Westmeath and we will continue to do so.

Senator Nicky McFadden: What about the summer works scheme?

Senator Donie Cassidy: Over the past two years the two Oireachtas committees of which Deputy Penrose and I were Chairmen held joint sittings on Fairtrade and invited the people of Mullingar to make a contribution. I am pleased to inform the House that Senator Daly arranged

[Senator Donie Cassidy.]

with me earlier to leave time aside next week for statements on Fairtrade. I look forward to hearing Senators' contributions on that issue.

Senators Coffey, Cummins and McDonald raised the issue of Waterford IT being given university status. We all look forward to that happening and I will pass on the Senators' views to the Minister for Education and Science.

Senator Coffey called for a debate on waiting lists and the National Treatment Purchase Fund. I have no difficulty arranging such a debate. Senator Donohoe called for a debate on private rented dwellings and all that pertains to that type business. I will arrange a debate on that issue. Senator Hanafin called for a debate on energy security and a reliable supply of energy in the presence of the Minister. I have no difficulty arranging a debate.

Senator MacSharry called for a debate with the Minister for Health and Children on sexual health and matters pertaining to that very important issue. Senator Coffey called for an urgent debate on BreastCheck and the updated position in regard to Waterford and the south east. I will make inquiries about that.

Senator McDonald welcomed the fact the Dublin Chamber of Commerce and the IFA have come out strongly in favour of a "Yes" vote in the forthcoming referendum. I am endeavouring to find a date in the diary of the President of the European Commission so that he can be present in the Chamber for a debate. Hopefully, that will be in the week after we come back following the Easter recess.

Order of Business agreed to.

Council Framework Decision: Motion.

Senator Donie Cassidy: I move:

That Seanad Éireann approves the exercise by the State of the option or discretion provided by Article 1.11 of the Treaty of Amsterdam to take part in the adoption of the following proposed measure:

a proposal for a Council Framework Decision on combatting certain forms and expressions of racism and xenophobia by means of criminal law,

a copy of which proposed measure was laid before Seanad Éireann on 7th January 2008."

Question put and agreed to.

Criminal Law (Human Trafficking) Bill 2007: Committee Stage.

SECTION 1.

Question proposed: "That section 1 be deleted."

Senator Alex White: Could we hear the Minister of State's comment on that?

Acting Chairman (Senator Cummins): Will the Minister of State explain the reason section 1 is opposed?

Minister of State at the Department of Justice, Equality and Law Reform (Deputy Brendan Smith): This is simply a drafting amendment. In the present draft, the Short Title and commencement section is at the beginning of the Bill. Apparently, it is more usual to put such a section at the end as the last section and that is achieved in amendment No. 15, which I commend to the House.

Question put and agreed to.

SECTION 2.

Acting Chairman: Amendments No. 1 and Nos. 4 to 8, inclusive, are related and may be discussed together by agreement.

Government amendment No. 1:

In page 4, between lines 21 and 22, to insert the following:

" "trafficked person" has the meaning assigned to it by *section 5(1)*;"

I will first explain amendments Nos. 1, 5 and 8. Amendment No. 8 is the substantive amendment and amendments Nos. 1 and 5 are consequential. The Minister, Deputy Brian Lenihan, undertook to consider the feasibility of drafting an amendment which would criminalise availing of the services of a trafficked person. Following consultation with the Parliamentary Counsel, which drafted the amendment, it was decided that the most appropriate way to draft it was to use existing terms which were well understood by the courts.

Under section 7 of the Criminal Law (Sexual Offences) Act 1993, it is an offence to solicit or importune in a public place for the purpose of prostitution. Although the expression "solicits or importunes" is not statutorily defined, it has been the subject of case law and is well understood by the courts.

Subsection (1) in the proposed new section 6 creates an offence of soliciting or importuning a trafficked person for the purpose of prostitution. The soliciting can take place anywhere — in public or in private. The person who is solicited can either be the trafficked person or another person, such as a pimp or minder or even the trafficker. No offence can be committed by the trafficked person. The offence can only be committed by the customer even where the customer is another trafficked person. This could happen where, for example, a person trafficked into Ireland for labour exploitation solicited a person who was trafficked for sexual exploitation.

Subsection (2) makes it an offence to accept or agree to accept any type of payment from the person who solicits. Again, this offence does not apply to the trafficked person who has been solicited. Accordingly, under subsections (1) and (2) where a trafficked person is solicited for the purpose of prostitution — in other words, for a sexual purpose — an offence will be committed by the customer, irrespective of whether the customer has been also trafficked, and any person who accepts or agrees to accept any kind of payment in exchange for the prostitution of the trafficked person. In no circumstances can the trafficked person who is solicited commit an offence.

The new section 6(3) sets out the penalties. I am making the offences arrestable in order that the Garda will be in a position to arrest, on the spot, the customer and any person — apart from the trafficked person — who has accepted or agreed to accept payment from the customer for the sexual services of the trafficked person.

The new section 6(4) provides a defence for the customer that he or she did not know, or had no reasonable grounds to believe, the person in respect of whom the offence was committed was trafficked. Such a defence is essential if justice is to be done. The wording is similar to that in an analogous amendment tabled by the Labour Party in the Lower House. It was the latter that gave rise to the tabling of amendment No. 8. Senator Mullen also includes the defence to which I refer in the amendment tabled in his name.

The new section 6(5) makes it clear that this provision is not in substitution for section 7 of the Criminal Law (Sexual Offences) Act 1993. While both sections criminalise soliciting for the purpose of prostitution, there are major differences between them. Under section 7 of the 1993 Act, the soliciting must take place on a street or in some other public place. It is essentially an anti-nuisance provision and does not take a moral stance. The person soliciting can be the prostitute, the customer or a third party such as a pimp. It is a summary offence with modest penalties. The new provision proposed in the amendment is confined to soliciting a trafficked person. The offence can be committed anywhere, including in the types of places — such as a brothel, a hotel room or an apartment — in which a trafficked person is likely to be solicited. The trafficked person cannot commit an offence of soliciting under this section. Both the customer and the person who accepts some form of payment for the service to be provided by the trafficked person can commit an offence. The final significant difference is that the penalties are more severe in this proposal than they are in the 1993 provision.

The new section 6(6) provides definitions. The reason it is necessary to define a trafficked person for the purpose of this section is that the term was only used in the Bill in section 5, which deals with the trafficking of adults. That is also the reason it has been found necessary to make minor

drafting changes in sections 2 and 5, as provided for in amendments Nos. 1 and 5, respectively.

The amendments arose as a result of strong and compelling arguments made on Second Stage in this House and during the debate on the Bill in the Lower House. It is clear there was support on all sides for amendments along these lines. It was explained on Second Stage that any amendments would have to be credible. This provision is not merely a decoration in the Bill that is intended as some form of moral judgment or a sigh of disapproval in respect of those who have sex with trafficked persons. It would be bad law and bad practice to create an offence that would be impossible to enforce.

In light of the matters to which I refer, the format used in the amendments is regarded as the one most likely to make a practical difference. It largely applies and extends current laws on soliciting into an area that can be employed specifically to target the users of the sexual services of trafficked persons.

The amendments tabled by the Labour Party and Senator Mullen are based on amendments put down in the Dáil. The latter, in turn, gave rise to the Government amendments to which I have just referred. I am advised by the Parliamentary Counsel that the form of words used in the amendments tabled by Senators is too broad and would prove difficult to prosecute.

By expressing the offence in terms of soliciting for the purpose of prostitution, it would be easier to gain convictions. For example, it would not be necessary to prove in court that the customer actually had sex with the trafficked person. The offence of procuring is already well covered in Irish law. Under the Criminal Law (Amendment) Act 1885, it is an offence to procure any girl or woman to have sex with any other person or persons. Under the same Act, it is an offence to procure any woman or girl to become a prostitute or by threats or intimidation to procure or attempt to procure any woman or girl to have sex. That offence also applies where a person, by false pretences or false representations, procures any woman or girl to have sex. In addition, it is an offence to procure a person for the purposes of sexual exploitation. Senators will agree that the offence of procuring is well catered for under our existing legislation.

I wish to make a final point in respect of criminalising having sex with a trafficked person. If the trafficked person is clearly not consenting to sex, rape might be the appropriate offence with which to charge the customer.

I commend amendments Nos. 1, 5 and 8 to the House. In my opinion, they meet many of the concerns raised in the Lower House and on Second Stage in this House.

Senator Alex White: I understand what the Minister of State is saying and I acknowledge that his Department has prepared these new amendments in the context of the strong and compelling

[Senator Alex White.]

arguments put forward by Deputies on all sides in the Lower House. My party colleagues in the Dáil raised this matter and, as the Minister of State correctly indicated, the amendment tabled in the names of Labour Senators mirrors that put down in the Lower House. Debate in respect of this matter took place in the Lower House with the Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan.

I am willing to accept the Minister of State's comments to the effect that the officials of the Department examined the amendment tabled by Deputy Rabbitte in the Dáil. I have no difficulty saying they have, to some considerable extent, improved on it. This matter was in no way adequately addressed in the Bill, as drafted. However, the Minister of State has now firmly grasped the nettle in that regard. I welcome that development.

There is no doubt about what the Minister of State said regarding the familiarity we have, under our legal code, with the concepts of procurement and soliciting. I do not wish to engage in any self-criticism beyond that which is necessary but the phrase "supplies or avails of the services of" used in our amendment may well have been improved on in the Minister's amendment. We certainly do not wish to include in this important Bill any provision which is compromised in terms of the ability to have it enforced. If the Minister of State, on the basis of the analysis he has carried out, advises the House that the wording now before us is more likely to be amenable to enforcement and that he is confident that convictions are more likely to be obtained in circumstances where the crimes to which he refers are being committed, I am more than willing to accept the Government amendments.

Senator Rónán Mullen: I agree with much of what Senator Alex White said. The key point is to seek, where possible, to obtain convictions. However, I am somewhat concerned about the use of language alluding a reluctance to take a "moral stance". The law has an interest in enforcing morality. It is true that not every issue of morality should be subject to the interests of the law. However, it is certainly the case that most of that which the law seeks to criminalise is immoral. I would, therefore, be concerned if there was any possibility that the proposed new section 6 might bring about a situation where those who avail of the sexual services of trafficked persons might not be penalised.

I would welcome clarification as to whether the phrase "solicits or importunes" leaves open the possibility that a person who walks into a brothel and avails of the sexual services of a trafficked person would be liable to prosecution. I reiterate what I said on Second Stage, namely, that it would be anomalous if victims of trafficking could be potentially viewed as either breaking the law for soliciting or, as provided for under the Immi-

gration, Residence and Protection Bill, being in the country illegally, while those who avail of their services through prostitution would escape criminal liability. Will the Minister of State further clarify the position in respect of this matter?

Senator Denis O'Donovan: I welcome the amendment proposed by the Minister of State on behalf of the Government. It goes a long to allaying my fears regarding concerns that unfortunate women are trafficked and led into a life of prostitution or sexual exploitation. It may not necessarily be prostitution as the exploitation could take the form of other services. There is the view that those who use such people, primarily men although not all the time, are not subject to the full rigours of the law. There is also the view that this area has not been addressed fully.

I understand there appears to be sufficient legislation to take to task and prosecute a person availing of services or using prostitutes. Leaving aside trafficking, prostitutes have
4 o'clock been preyed on and used. From my knowledge of the law in this regard, there has historically been a tendency to blame the unfortunate women or prostitutes — it may not necessarily be a woman and could be a male child that is used and abused — and prosecute them in court for soliciting clients and so on. That is the perception of many women groups, which I can understand. Sweden has taken a more robust approach to dealing with the issue by introducing specific legislation to target the people who use, abuse and avail of trafficked women in prostitution, lap dancing clubs or some other type of call-out cases.

I applaud the Minister of State, his officials and the Government for considering the matter sympathetically. This is the first opportunity we have had to deal with such a Bill and it is the first opportunity in a long time that we have had such an open debate, both in the other House and here. As Senator Alex White noted, there is cross-party agreement on the matter and we want to get the legislation as near to perfect as we can. Legislation will always change.

In his response, the Minister of State might further allay our concerns. The Government amendments have come a long way in easing my mind but are there administrative sanctions involved? What do other European countries do in regard to the people who avail of these services, abuse women and take advantage of them? It is appalling to have women trafficked but it is something else to put them into a slavery. I will not go into that because I spoke on it with some vigour on Second Stage.

There is clearly a serious concern about this matter. It could be a moral question. Historically, prostitution is one of the oldest trades, almost going back to prehistoric times, before the Roman Empire and before we heard of the stoics and the sophists in Greek philosophy and myth-

ology. It is my perception that women have historically suffered.

The Bill specifically deals with people who are trafficked, be they women, children or young boys. Historically there is a perception that the woman is punished for the crime, which she would normally commit for financial reasons or to deal with a drug habit. In the case of trafficked women there is no choice, as the women are brought here and more or less led into slavery. They would then be abused or taken advantage of for financial gain. In many cases this would be done by serious criminals operating underground, who would also be involved in the drug trade and all sorts of illegal activity.

We should be realistic as the trafficking of women has gone totally underground. It is like a secret operation, as phone numbers would be listed in secret places. It is a cloak and dagger activity. If it was the case that these trafficked women were walking the streets, they would be seen and could in some way be protected by the Garda or others.

In these cases, the specific people who would be affected by this Bill are usually held under lock and key against their will in apartments or back rooms in some houses, where they have no freedom. We must be very clear that the people who use these services should be subject to all the moral opprobrium that is necessary and the rigours of the law. That is the reason I am concerned.

I must take due regard of the amendments. The Minister of State might refer to the points I have made. We must get this legislation as close to perfect as possible. There is no utopian legislation and although we sometimes say the law is an ass, we do our best to get it right. Sometimes we make mistakes. I commend the Minister of State for moving legislation that will be as close as possible to what we all consider to be the ideal solution.

Senator Mary M. White: Last week in the Seanad, in the presence of the Minister, I stated that trafficking of people — men, women and children — should be treated as a criminal offence. Will the Minister of State develop this further and spell out the current position? How do we compare internationally on this issue? This is a sinister and disgusting underground activity, as Senator O'Donovan indicated. Will the Minister of State provide more information on how we can deal with these people who are utilising trafficked women?

Senator Lisa McDonald: I broadly welcome the amendments as the Bill goes some way towards alleviating the horrific issue of the trafficking of women. We have not gone far enough and we must criminalise the purchase of sexual services. Until we grasp that thorn and deal with that matter fully, we will never fully eliminate the problem of human trafficking.

Various arguments have been put forward with regard to the moral issue and the policing of it. Murders still take place although murder is a crime. We will never have a utopia and it does not exist, nevertheless, we must ensure our legislation is as perfect as possible. Until we get to that stage there will be a lacuna and a gaping hole in our legislation that discriminates against women and children.

Deputy Brendan Smith: There have been a few points raised and I welcome all the Senators' positive comments in regard to the amendments which have been moved. All of us have the same purpose, which is to deal with this horrendous activity of people who traffick human beings and have them involved in prostitution. It is totally unacceptable. What I stated at the outset was reflected by everybody else; we want to ensure our legal system will be able to secure prosecutions and criminal convictions for those who are involved.

I hope I have taken Senator Mullen's question correctly when he asked would a person walking into a brothel and availing of the services of a prostitute commit an offence. I am satisfied an offence would be committed as in these circumstances some form of payment would be exchanged.

Some of the many issues raised by Senator O'Donovan are pertinent to some of the later amendments we will discuss. The law on prostitution provides that the client may be prosecuted. I understand clients are regularly brought before the courts for soliciting.

With regard to the comments of Senators Mary M. White and Lisa McDonald, we all want to address the expressions of concern outlined in this House by Senators on Second Stage and the issues discussed by Members on all sides in Dáil Éireann. Our legal advisers in the Department, the Office of the Attorney General and the Parliamentary Counsel have given this the utmost consideration. The counsel advises strongly that the form of words in these amendments is too broad and crude and that they would be difficult to prosecute. By expressing the offence in terms of soliciting for the purpose of prostitution it will be easier to gain convictions, which is what we want. There is no point in having law that cannot be implemented or cannot achieve the desired outcome. Everyone in this House wants robust legislation to protect people and to have a legislative framework in place to enable us to convict people who are guilty of crime, as this legislation provides.

Our law covers the offence of procuring. It is an offence under the Criminal Law (Amendment) Act 1885 to procure any girl or woman to have sex with any other person or persons. Under the same Act it is an offence to procure any woman or girl to become a prostitute or by threats or intimidation to procure or attempt to procure any woman or girl to have sex. That

[Deputy Brendan Smith.]

also applies where a person by false pretences or representations procures any woman or girl to have sex. In addition, it is an offence to procure a person for the purpose of sexual exploitation.

Subsection (1) of our proposed new section 6 creates an offence of soliciting or importuning a trafficked person for the purpose of prostitution. The soliciting can take place anywhere in public or private. Senator O'Donovan referred to that in particular. The person solicited can be either the trafficked person or another, such as a pimp, minder or trafficker. The trafficked person can commit no offence. Only the customer can commit an offence, even where the customer is another trafficked person. This could happen where, for example, a person trafficked into Ireland for labour exploitation solicited a person who was trafficked for sexual exploitation. We must ensure the legislation is robust, has the safeguards and the wherewithal to effect prosecutions where necessary and have criminal prosecutions in place. I strongly commend this amendment to the House. All the contributions to the debate reflect that position.

Senator Rónán Mullen: The more I read the Government's proposed section 6, the more I wonder. The intent behind the discussion that took place on this matter in the Dáil and the Minister's proposal on Second Stage that we come back with suggestions on whether those who used or availed of the sexual services of trafficked persons should be criminalised was to reduce trafficking by creating a serious disincentive for anyone who might use or avail of the services of a trafficked person. While I agree with the Minister of State about the desirability of securing convictions and of matters being enforceable, the law operates as an educator too. Even where the offence would be declaratory and it would be difficult to get a conviction, that would be valuable.

Does the Government's wording in its proposed section 6, "for the purposes of the prostitution of a trafficked person", imply that for a person to be criminally liable for availing of the sexual services of a trafficked person, he or she must have intended to prostitute a trafficked person? If so, where is the disincentive because one wants to fire a warning shot across the bows of potential users of prostitutes by establishing that if the prostitute turns out to be a trafficked person, the user will have committed a criminal offence. I do not care if that is sometimes difficult to prosecute because we are trying to create a serious disincentive.

We spoke on Second Stage about the potential anomaly that a victim of trafficking could be prosecuted under this or other Bills but that a person who avails of his or her services might not be. Will the Minister of State bring forward an amended version of this proposed new section on Report Stage to clarify that, regardless of whether

the person who availed of the sexual services of the trafficked person knew the person was trafficked, or intended to prostitute a trafficked person, that person will be liable to criminal prosecution for using the sexual services of a trafficked person? My amendment No. 9 covers that situation and more.

Deputy Brendan Smith: Before and after the Second Stage debate in this House the Department, the Parliamentary Counsel and the Office of the Attorney General considered this matter. The robust advice to us is that our amendment will deal with the issue in the most comprehensive way. We all want to achieve the elimination of such behaviour, if possible, or to minimise it to the greatest extent possible. A threat of prosecution will never equal the reality of effecting prosecution and ensuring the person involved would be criminalised. Threats do not always work. Introducing a criminal offence for educational purposes would not be the best of law in any circumstances. I do not have any legal training but offences must be such that they can be prosecuted.

Senator Rónán Mullen: It is a matter of evidence.

Deputy Brendan Smith: In most people's terms offences should lead to prosecutions. The Government amendment provides the best way to ensure we reach prosecution stage and it must be enforceable.

Senator Mary M. White: Last week I heard a young woman on the radio speak about working in a lap-dancing club. On the surface lap-dancing clubs can seem frivolous and not exploitative. This girl said, however, that young women who work in many clubs must pay to work and that after a certain age they are disposable. I was shocked. I have no personal experience of this. The girl said she was 26 and that if she kept fit she would have a few more years left. That is repulsive. These are not necessarily trafficked women but in our society women are being treated as disposable objects. It is insulting to every woman in the world that men would treat a woman that way and that she must be a certain age.

While the average lay person is unfamiliar with the reality underlying such issues, it is frightening when one learns of it.

Amendment agreed to.

Section 2, as amended, agreed to.

NEW SECTION.

Acting Chairman: As amendment No. 2 is a logical alternative to amendment No. 3, amendments Nos. 2 and 3 will be discussed together, by agreement. Is that agreed? Agreed.

Senator Rónán Mullen: I move amendment No. 2:

In page 4, before section 3, to insert the following new section:

3.—The Minister shall promulgate a code of victim's rights in respect of victims of trafficking which shall address the following issues:

- (a) protection of private life of victims;
- (b) appropriate medical assistance to victims;
- (c) secure accommodation;
- (d) recovery and reflection period (minimum 3 months);
- (e) temporary residence permit (minimum 6 months);
- (f) translation and interpretation facilities where necessary;
- (g) access to counselling and information services, in particular, as regards legal rights, in a language that can be understood;
- (h) access to legal aid;
- (i) right of access to education for children;
- (j) right to access social welfare benefits as necessary;
- (k) voluntary repatriation and return of victims;
- (l) facilitating access to the asylum process;
- (m) special protection measures for child victims;
- (n) family reunification;
- (o) right to work;
- (p) right to access vocational training and education; and
- (q) compensation and facilitating legal redress against traffickers.”.

This amendment is based on amendments that were tabled in the Dáil previously by Deputy Pat Rabbitte. The only difference between my amendment proposing a new section 3 and that tabled by the Labour Party relates to subsection (d), in which the Labour Party amendment proposes a recovery and reflection period of a minimum of 30 days whereas I propose a recovery and reflection period of a minimum of three months.

This amendment is concerned with recognising that victims of trafficking form a special category of persons. Such people are highly vulnerable and while those who traffick them may be subject to the criminal law, this does not address the question of the particular needs of trafficking victims. Therefore, it is appropriate that this Bill should comprehend effectively a victims' rights charter for the protection of such persons. This can be considered to be similar to the directive principles of social policy in the Constitution, which basi-

cally set out values to be aspired towards and achieved for the sake of particular persons. A panoply of needs is dealt with in the amendment, including protection of the private lives of victims, appropriate medical assistance and secure accommodation. Members should imagine a person who may have been brought in from within or without the EU. Such a person may not speak the language of the host country, may have been physically or sexually assaulted, coerced and deceived or may not have any friends to call on in the country. Effectively, people in this position are in a form of modern slavery. Consequently it is incumbent on Members to reach out in legislation by setting out specifically the protections and supports that will be available to them.

I note the Minister stated that such matters would be dealt with in the Immigration, Residence and Protection Bill. However, that Bill relates only to the recovery and reflection period and to temporary residence status. Moreover, because it is an immigration Bill, these provisions will apply only to trafficked persons who come from outside the EU or the European economic area, EEA. However, Members are aware that trafficking of persons can involve persons from within the EU. Moreover, persons who come from those parts of the EU that do not enjoy freedom of movement within the EU, such as Bulgaria or Romania, will be even worse off than those coming from outside the EU or the EEA, who at least will receive some limited benefits under the proposed immigration legislation.

It is appropriate to set out the protections in this Bill categorically and in depth. While this proposal was rejected in the Dáil, I ask that it be accepted in this House. I again stress that if this Bill pertains only to the criminalisation of the trafficker and does nothing to address the practical personal needs of the trafficked person, I fail to see how Ireland is complying with the spirit of its international commitments.

Senator Alex White: I agree wholeheartedly with Senator Mullen's contribution. I have heard the argument made and have noted the Minister has made statements in the Dáil and elsewhere to the effect that essentially, this Bill was a piece of criminal legislation and was not an appropriate place in which to deal with such measures. Perhaps the Minister of State will respond to Members in due course in this manner. However, it is entirely appropriate that in addition to introducing the measures in the Bill, one should have serious regard to the plight of victims of trafficking. It would be extraordinary were Members simply to state this was a matter for another day, because it should be dealt with and confronted in this debate and measures should be introduced to deal with the effects of trafficking on the affected individuals. This Bill does not so do and it is neither sufficient nor acceptable for the Government to state the matter will be addressed on another day or in another place.

[Senator Alex White.]

Senator Mullen's point is correct and I await with interest the Minister of State's response in this regard. I understood the Minister for Justice, Equality and Law Reform, Deputy Brian Lenihan, to state that those issues ought properly to be dealt with in the immigration legislation. However, as has been correctly pointed out and as Members are aware, that legislation only deals with and comprehends immigration from countries outside the EEA. Even from anecdotal evidence, Members are aware that a great proportion of trafficking in this context is taking place from other countries within the European Union. Therefore the victims of trafficking, largely young women, from east European countries within the European Union will not have their rights dealt with in legislation at all, in so far as Members are aware. This is not acceptable in the context of the legislation before the House.

The Labour Party has congratulated the Minister on introducing this legislation and has commended the Government for so doing. However, Labour Party members are not satisfied that such a serious gap will be left in Ireland's approach to this extremely serious phenomenon of trafficking. I await the Minister of State's comments regarding the vital importance and necessity of addressing all the issues set out from subsection (a) to subsection (q) in Senator Mullen's proposed amendment, as well as in the almost identical amendment tabled by the Labour Party Members. I refer to issues such as the protection of victims, an adequate meaningful period of recovery and reflection and access to legal aid. While the Minister of State may assert that a legal aid system is in place, why not incorporate into this legislation and regime a reaffirmation of the rights that victims of necessity must have in the context of dealing with trafficking? Many of the amendment's proposals, including the right of access to education for children of victims, social welfare benefits and so on, as well as voluntary repatriation and return of victims have been drawn from existing international instruments with which Members are familiar. Members cannot turn their backs on this vital aspect of the trafficking phenomenon and leave it for another day.

Senator Mullen's proposed section 3 (d) calls for a longer period of recovery and reflection and on reflection I am prepared to support his advocacy of a longer period in circumstances where 30 days, which is the timeframe in amendment No. 3, which I tabled, seems to be a little less than generous.

Senator Denis O'Donovan: I can see clearly where my colleagues, Senators Mullen and Alex White, are coming from. The Labour Party amendment and Senator Mullen's amendment are almost identical in their drafting. I fully concur with the sentiments expressed. I made the point forcefully on Second Stage that people who

are trafficked here, particularly for sexual or other exploitation which is akin to slavery, must be assisted in every way possible. I quoted from a survey carried out in various countries, particularly in Canada, where the approach taken was that the trafficked person when detected was sent back to his or her country of origin, which compounded the difficulties and problems he or she experienced. I expressed clearly my wish that we should take a more humane attitude in such circumstances and that, hopefully, we would learn from the mistakes of other countries.

I chaired a committee that dealt with the removal of a judge from office. I took great interest in way the Canadians dealt with such a matter. It dealt with 11 such instances. Its experience of dealing with them provoked a better understanding of how such a matter could be dealt with here.

What is proposed in the amendments tabled by Senator Mullen and the Labour Party is a type of charter of rights. I have some reservations in that respect and question if it is appropriate, in this and other legislation dealing with asylum seekers or migrants to Ireland or other member states of the European Union, that we should provide a charter of rights for different groups of people?

A proposal to introduce a EU constitution, put forward to Ireland and other member states of the European Union, floundered because some member states rejected it. We will now be asked to vote on its replacement, namely the Lisbon treaty, in a few months' time. I have advocated and support that, within Europe under the Lisbon treaty, we would have a uniform way of dealing with refugee status, asylum seekers and the movement of people. The movement of people to Europe is similar to the movement of people to United States and Australia in the past. Such movement at a particular time can constitute an 8% or 10% increase in the influx of people.

The trafficking of women to Ireland was not an issue 20 years ago or even ten years ago. Statistics show that fewer than 90 women are alleged to be have been trafficked here for sexual exploitation or otherwise. I must be careful in using the word "women" because, while the majority of those trafficked are women, they are not all women. We do not have a history of such trafficking. I am not in any way pouring cold water on what my good colleague Senator Alex White and Senator Mullen said. I have great empathy with the points they raised but I am not sure if the inclusion of a mechanism in this Bill to provide a charter of rights in this regard alone is appropriate, without having regard to the European Union and our obligations within an enlarged Union, which possibly can be dealt with by the so-called EU constitution in terms of the Lisbon treaty to be voted on by the Irish people. While I envisage difficulties with the proposal, there is great merit in it. I will be interested to hear the Minister of State's response.

Senator Joe O'Reilly: I am pleased my constituency colleague, the Minister of State, Deputy Smith, is present to deal with this legislation. I welcome him to the House.

On behalf of the Fine Gael Party, I join Senator Alex White in welcoming this legislation. Second Stage has been dealt with and I do not propose to make a Second Stage speech, other than to cursorily state — as I did not participate in the Second Stage debate — that I unequivocally and wholeheartedly welcome the legislation. It is timely, appropriate and most necessary.

We could never ever in any form of words, regardless of the form of words or prose, convey the horror of human trafficking in all its intensity. It is a horror, base, uncivilised, inhuman and beyond contempt and acceptance. The legislation must be viewed in those terms.

I support and commend the amendments to the Minister of State and the Government on the grounds that they seek merely to deal with the condition of the unfortunate victim after the event. When the victim has been found and released from such horrendous captivity, mechanisms enshrined in legislation should be in place to assist the victim through a process of recovery. God knows for many of them the most effective help probably would be for them to be returned to their homeland as soon as possible, and in such instances, that should be facilitated. However, if the most effective assistance is for them to remain here, that also should be facilitated in terms of their requirements, be it education, accommodation, orientation or counselling. I do not propose, in the interests of dealing with legislation efficiently, to recite every subsection of the amendments because they are on the record. I see no merit in doing that other than to appeal to the Minister of State to incorporate the amendments. I take the point that future legislation might deal with these proposals.

I approach this matter — as the Minister of State humbly said he did — without legal training, without formal, professional legal training, although I have studied some law. I approach this matter without the formal training Senator O'Donovan would bring to his approach to it. From a lay perspective and having read some law, it appears it is not outside the spirit of the legislation or practicality in terms of its implementation to incorporate in it a recuperative, rehabilitative and readjustment process for the victims of this horrendous crime.

I support the amendments on those grounds. If they can be incorporated — I see no reason they cannot — they should be. I am sure no Member on any side of the House in a civilised society would aspire to a position where such provisions would not be made. No Member of the House would contemplate or wish a world where such crime would be suffered by a victim. Why can we not enshrine these provisions in legislation and in that way we would be true to our Christian ethos

as a society. These provisions are worthy of enshrinement in the legislation and I fail to understand how that would conflict with the spirit or the enactment of the legislation. However, I bow to the knowledge of people who are professionally trained in this sphere but I cannot see the conflict.

I commend the amendments. The Bill is right, as are the fines. It is very important that the Oireachtas legislates for disincentives and an attack on human trafficking. Everything associated with human trafficking is alien to our culture and to everything indigenous to the true national spirit of Ireland and to the record of our missionary priests in the developing world. It is at variance with all this and it is a horror. I suggest the Government join in enshrining custodial sentences and fines and be extra affirmative by giving legislative effect to putting a process in place to deal with the victims.

Senator Lisa McDonald: There seems to be cross-party support for the broad thrust of Senator Mullen's amendments. As other speakers have said, there does not seem to be anything wrong with including the proposals in the legislation. To wait for future legislation in order to enshrine the principles on which we agree appears to me to be somewhat kicking to touch or putting it back to a different issue which could never fully address the issues pertaining to this matter. It is known that many of the trafficked women coming to this country are from eastern European countries which are in the European Union. I do not know how the Immigration Bill will deal with this fact and I would be interested to hear the Minister of State's comments. The matter of temporary residence should be included in the Bill.

With regard to the protection of victims, the Minister stated last week that the full services of the State will be available to victims. In that case, victims rights should be enshrined in this legislation. I refer to drug rehabilitation programmes and other rehabilitation programmes which are enshrined in legislation. Even those who have committed crimes are given help to put them on the road to recovery. It may be due to a lack of understanding of what the women who are caught up in sexual trafficking endure that this provision is not in the Bill. We have never experienced it and therefore cannot be expected to know how difficult it is to get oneself back on the road. I have listened to victims and I have spoken to people in Ruhama and we must give them the benefit of the doubt and believe what they are saying, that it is incredibly difficult. The victims of this heinous practice must be given full protection.

Deputy Brendan Smith: I thank all Senators for their contributions. The House will recall that during Second Stage the comprehensive strategy which has been put in place to ensure that Ireland

[Deputy Brendan Smith.]

will be in a position to ratify the Council of Europe convention against trafficking in persons, was explained in detail and a number of Senators referred to the question of how our international obligations would be met. To ratify the convention will require enactment of the criminal law provisions of the convention as provided for in this legislation. An enactment of the immigration issues which are provided for in the Immigration, Residence and Protection Bill. The convention also obliges State parties to provide for the protection of victims and the provision of services to them. I have concentrated the arguments to date on the policy initiatives underpinning the holistic approach we are pursuing in the challenge we face in breaking up the trafficking gangs who prey on the desperation and hopes of persons in underdeveloped countries. Central to this approach is putting the traffickers out of business and behind bars therefore we must take care to include nothing in the legislation that would allow the traffickers to escape justice, the law of unintended consequences, as it is sometimes known.

As an example of how well-meaning statutory provisions aimed at supporting victims of trafficking could cause problems, I refer to the observations of the Irish Human Rights Commission on the general scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill, from which the trafficking provisions of this Bill have been extracted. It is important to recall these comments of the Irish Human Rights Commission:

The provision of explicit rights for victims in a prosecutorial statute may potentially be characterised as an inducement to give evidence, thus possibly undermining the case for the prosecution. Where certain rights and privileges are extended to victims conditional on co-operation with a police investigation and/or prosecution, a plausible defence may be mounted to the effect that the victim has been incentivised to give evidence. This may, in turn, diminish the impact of such evidence.

In other words, we must also be aware of the legal implications of our actions. This is not an academic or theoretical issue.

In the case of the *Director of Public Prosecutions v. Gilligan*, the Supreme Court considered whether evidence given by persons in the analogous position of being on a witness protection programme, could be admitted in court. While the court ruled that such evidence was admissible, a note of caution was nonetheless entered in respect of evidence from such persons. Such an approach reflects concern for due process, for the presumption of innocence and for a fair trial.

In the USA, victims of trafficking can avail of special visas which permit temporary residence while co-operating with police investigations. It has been reported that perpetrators had claimed

or tried to claim a defence of unlawful or improper incentive arising from the grant of the visas and there were some acquittals on that particular ground.

It is clear that great care must be taken when providing for the residency of alleged victims of trafficking and the services provided to them while availing of those rights. This is the reason it was advisable to have given the utmost consideration as to how the residency issues would be dealt with in the Immigration, Residence and Protection Bill and to have sought the best legal advice. Similar care will need to be taken when providing for the administrative services that will be made available to alleged victims. It is no accident that these can be provided administratively in order to comply with the Council of Europe convention but we are required to provide them and if we were to fail in that respect, we could not ratify the convention and this would be at variance with Government policy. I assure the House the convention will be ratified.

The high level group to which I previously referred will draw up the national action plan on trafficking and this will be implemented by the relevant Departments and agencies which have representation at senior official level on that group. The establishment of an anti-trafficking unit within the Department of Justice, Equality and Law Reform, which is exclusively dedicated to co-ordinating and facilitating a new national strategy to address human trafficking, was recently announced. A competition for the post of executive director of the unit was held and a successful candidate has been appointed and has taken up office. The director has made it clear that she will be working with both governmental and non-governmental agencies in developing and implementing a comprehensive strategy to prevent trafficking, prosecute traffickers and protect victims.

I am satisfied that our approach to the challenges posed by trafficking in human beings is the correct one and that it adequately addresses those challenges, both from the point of view of assisting victims and getting convictions in court.

I can appreciate the concern for victims which has been voiced by all of us but at this stage we ask to be judged on the outcome of the strategy to deal with the problem in a holistic and fully considered manner. Both of the amendments tabled by Senator Mullen and by the Labour Party, provide for periods of reflection and recovery as well as temporary residence. These are dealt with in the Immigration, Residence and Protection Bill which has gone through Second Stage in the Dáil and will be consequently coming to this House for a full debate.

A number of the issues raised by Members concerned our international obligations which I assure the House we are meeting and we will be in a position to sign the European convention. The national action plan to be drawn up will have widespread representation including the Depart-

ment of Justice, Equality and Law Reform, the Irish Naturalisation and Immigration Service, the Garda Síochána, the executive director of the new anti-trafficking unit in the Department, the office of the Minister of State with responsibility for children, the Department of Enterprise, Trade and Employment, the Department of Health and Children and the Health Service Executive. This high-level group would importantly bring on board as appropriate new members from other offices and agencies that have a contribution to make to ensure the response of the State is co-ordinated and comprehensive. The group will decide on the most appropriate way to engage constructively with the non-governmental organisations.

Some of the groups that work with women have been mentioned here. We appreciate their contribution and that of many individuals, interested parties and advocacy groups that we have met in recent times. We appreciate their input that will be given the attention it deserves within the high-level interdepartmental group. Many of those individuals who are working with the victims of this awful behaviour are very well aware of the needs of those particular victims. We want to call all those groups in the non-governmental organisation community and put them under that umbrella. They will have an important role to play in that regard and also in the provision of services.

Legislation is often passed without having the follow-up implementation plans, policies or resources in place to deal with the issues. Senators will note from my comments that the new executive has been appointed. That unit will be particularly important. The high-level interdepartmental group has a vital role to play in drawing up the national action plan. All those measures are under way already and they will deal with important issues. It is important to have them in place in advance of the legislation being passed. That shows clearly the intent of the Government and of all of us as parliamentarians to achieve the desired result and put in place adequate services for victims.

At the outset of discussion on these amendments it was mentioned that where there are no immigration issues the persons trafficked into Ireland would be protected under the national action plan, which is being drawn up by the high-level group. If those people come from within the European Union, they have a right of residency. The national action plan has been drawn up under the European Union directive on trafficking. What we are doing is in accordance with what is permitted under the Council of Europe convention. From my comments, Senators will note that the international obligations, mentioned by most contributors, are being met.

Senator Rónán Mullen: While I thank the Minister of State for his response, I am unconvinced by much of what he has said. Reference

was made to the Human Rights Commission's concern that in criminal legislation there might be some kind of incentivising of trafficked persons to give evidence in such a way as might — I think what is being suggested — bring into question the possibility of a fair trial or that the person being accused of trafficking might be able to claim that the process had been corrupted. I do not believe any of this arises. There is no suggestion of conditionality in either my proposed amendment or that of the Labour Party. I will defer to Senator Alex White who is a barrister of much more experience than I am.

What is being proposed is a code of victims' rights in respect of victims of trafficking. If anything that seems to suggest that it having been established that a person was a victim of trafficking, which would seem to imply that the business of prosecuting the trafficker had already been taken care of or was well in hand, the person who is known to be a victim of trafficking would be entitled to avail of the benefits as set out in paragraphs (a) to (q). As there is no conditionality there can be no question of the matter which was of concern to the Human Rights Commission arising. There is no suggestion that these rights are conditional on assistance being given by victims of trafficking to the process of prosecution or investigating offences and prosecuting them.

To some degree we are dealing with the curse of the party Whip system. I note that Deputy Shatter wrote a letter to *The Irish Times* to this effect yesterday. I am convinced of the sincerity of my colleagues across the floor in Fianna Fáil. I have been impressed by the speeches on both Second Stage and Committee Stage of Senators O'Donovan, Mary White, and McDonald. Yet there appears to be no give from the Government. We are getting responses to our proposals which are about parrying our proposals and not on the basis of very strong argument.

I welcome the high-level group and encourage its work. I am pleased that NGOs are involved in its work. However, we have not heard any consistent, comprehensive, coherent or persuasive argument for not including either my amendment or that of Senator Alex White and the Labour Party.

Senator Alex White: Once again I find myself in full agreement with Senator Mullen's comments on his amendment, which is more or less identical to the one proposed by my party. I am perplexed by some of the arguments put forward by the Minister of State on this occasion. Not only I am entirely unconvinced by them, but also they raise other questions in my mind. The Minister of State is right in saying we need an holistic approach to the issue. If we are to have a holistic response as he advocates, how can we ignore the question of victims? How can it be a holistic response, such as he is advocating, if we set that aside, for the purpose of this legislation? I accept he has said it will be addressed in other ways and

[Senator Alex White.]

is not saying that it is not relevant. As an earnest of our intentions as legislators and as an earnest of the Government's commitment to this question and the holistic approach the Minister of State advocates, I cannot understand the attitude he has taken to this proposal.

I note what Senator McDonald said. While I do not want to paraphrase her, what she said made great sense. She said that if we all agree these are issues that need to be addressed it is somewhat begrudging — that was not the Senator's word — that we should leave ourselves open to the accusation of paying lip service to the question of victims and not incorporate it in the legislation. Of course the Minister of State is right to say that the fundamental objective of the legislation is to attack the problem by breaking up the gang and not allowing offenders to go free. It is a criminal statute and that is its central objective, on which I agree with him. However, I find perplexing the notion that we go from that point to this strange argument — which needs to be addressed again by the Minister of State — that protections we put into legislation for victims could in some way arguably undermine the intention of legislation or could take from it in some way.

I again draw attention to the amendment, which states: "The Minister shall promulgate a code of victim's rights in respect of victims of trafficking which shall address the following issues:...", followed by a list of categories of matters that should be addressed in promulgating such a code. There are plenty of occasions in legislation where a Minister is enabled to introduce a code of conduct to include under one provision all of these important areas we all agree need to be addressed. For the life of me, I cannot see what the problem is with inserting an enabling provision in this Bill allowing the Minister of the day to introduce a code to address each and every one of these questions. The amendment simply says that the code should address the following issues. It is not absolutely prescriptive as to what precisely the Minister should have in the code. It allows quite a considerable degree of freedom to the Minister as to how precisely he or she would provide for these different questions. It is therefore not a provision that ties the Minister's hands in any respect. I cannot understand how the Supreme Court's strictures in the Gilligan case, and the risks associated with the evidence of persons in witness protection programmes, are being transported into this debate. I do not see where they belong because each of these proposals is a humanitarian provision in respect of human needs. As Senator Mullen correctly said, it is not remotely suggested that extending any of these rights or protections is contingent upon co-operation in criminal prosecutions. I do not understand this linkage. With all due respect to the Minister of State, it looks like a red herring to

introduce the Gilligan argument in respect of a possible undermining of prosecutions. I simply cannot see it.

The Minister of State made the point, fairly, in respect of a national action plan but he did not address the question concerning the Immigration Bill's remit. I interpret his silence on the issue as an agreement to the unanswerable proposition that one cannot deal comprehensively with the rights of human trafficking victims in the Immigration Bill because that legislation provides for immigration from outside the EEA, while we have this phenomenon within the EEA. Therefore I will interpret the Minister of State's silence on the question as meaning that we are right in that regard. Manifestly there is a gap in respect of this matter. If the Minister and the Government want to be holistic I see no reason this amendment cannot be accepted. The Minister of State's argument, that great care needs to be taken on what precise rights and protections are extended to victims, is not one against having rights and protections. It is an argument that we should exercise care as to what those rights and protections ought to be, but it is not an argument against having such rights and protections.

Senator Lisa McDonald: I note the Minister of State's response but I have deep reservations, as other Senators do. I ask him to reflect on this matter before Report Stage with the Minister, Deputy Brian Lenihan, and the departmental officials. The Minister of State will have an opportunity to do so over the coming week.

Senator Denis O'Donovan: I am unclear in my mind about this issue. The amendments tabled by the Labour Party and by Senator Mullen suggest a charter of rights for victims of human trafficking. While the concept is laudable, I am not sure whether it can be dealt with practically within our domestic legislation as opposed to dealing with it as a whole within the European Convention on Human Rights. While not wishing to detract from the strength of the arguments of my colleagues on the Opposition side, is there currently a charter of rights for crime victims? I fear not. Although we hear much about the rights of the criminal, we must espouse the rights of victims of assault, burglary and other offences.

I am unclear about this argument, however, and if the Minister of State is not in a position to answer my questions, perhaps he can reflect not alone on amendments Nos. 2 and 3 but also on the concepts I have raised. If this refers to a charter of rights, is it appropriate to have such a charter in every specific piece of legislation dealing with whatever circumstances? In addition, does it transgress the notion we should have anyway within domestic and European law of a general charter of rights for victims? I can imagine a hue and cry being made because we are providing for a very specific set of victims. While I am not saying it is wrong, one must be careful and heed the

old Latin maxim *inclusio unius est exclusio alterius*, that by including one thing, one can exclude alternatives.

I urge caution but unfortunately I do not have all the answers. I am teasing out the issue, which is the purpose of debates such as this. I understand that we are not taking Report and Final Stages this week, so before concluding our work on the Bill perhaps a more serious and in-depth analysis can be made of the points raised and amendments moved concerning the general area of a charter of rights for victims of human trafficking.

Senator Mary M. White: While I agree with my colleagues on the Government side, I laud the amendments moved by Senator Alex White and Senator Rónán Mullen. Having participated with the CORI group, the Sisters of Charity and Ruhama, I feel we owe it to them to put more time into this. The Minister of State sorted out the child care subvention scheme.

Senator Alex White: I will let that go.

Senator Mary M. White: He did.

Senator Alex White: I would rather talk about something else.

An Cathaoirleach: Senators should address section 3.

Deputy Brendan Smith: We will have to revisit Senator Alex White's contribution on that.

An Cathaoirleach: Senator Mary White without interruption please.

Senator Mary M. White: This issue is really a matter of life or death. It is below the surface and we do not meet it every day. As legislators, we have a serious responsibility to educate, as Senator Mullen said. If it is taken as a serious offence to be a client in such a situation, they must get the message that it is not acceptable in Ireland. We must provide a good example and do it in our own unique way. We do not have to be bound by any other countries' methods. Irish missionaries have worked in Africa to bring people out of poverty and destitution. I feel I have an obligation to all the priests and nuns who are doing stellar work in combating the terribly murky area of human trafficking. The Minister for Justice, Equality and Law Reform should examine these amendments more closely because they are good.

Deputy Brendan Smith: Senator Mary White rightly stated that our objective must be to communicate the message that such behaviour is not acceptable in this State. One way of ensuring it is not acceptable is to have a body of legislation in place that allows us to criminalise and prosecute those who abuse others in this way.

Senator Mullen remarked that he appreciated the sincerity of certain individuals on this issue. I hope he is not implying by omission that there is not the same sincerity on the part of the Government.

Senator Rónán Mullen: I thought the Minister of State was about to mention himself and I was going to include him in the roll call of good will. However, I am not convinced of the Government's bona fides on this issue.

Deputy Brendan Smith: I will not be offended if the Senator does not include me in any roll call. However, I wish to put on record that the Government is sincere and determined in its objective to get this legislation right. We do not have to accept comments from any individual in regard to who is sincere and who is not. We are putting this legislation through the House and we are also putting in place the services to deal with this issue. I was disappointed that Senator Mullen, whether by implication or inadvertently, seemed to omit certain people who were in the Chamber at the time he made those comments.

Senator Rónán Mullen: I was referring to the fact that Government Members are making excellent points but that there is no give from the Government on the proposals.

Deputy Brendan Smith: No, Senator Mullen referred to "sincerity". There is no doubt about the sincerity of the people who spoke. Nor is there any doubt about my sincerity as I speak on behalf of the Government today. I wish to state that clearly.

Senator Rónán Mullen: I did not dispute that.

Deputy Brendan Smith: I make that statement personally and on behalf of every member of the Government. That must be put clearly on the record.

We will not ignore the observations of the Irish Human Rights Commission. It seems those observations are quoted here at length only when it suits people. The amendments tabled by Senator Alex White and his colleagues in the Labour Party and by Senator Mullen, respectively, are essentially enabling provisions. I could easily accept these amendments and do nothing for the time being. Our objective, however, is to get on with providing the necessary protections and services to help those people who have been or will be victims. That is the reality.

If I remember correctly, Senator Alex White spoke critically about enabling provisions on Second Stage. I hope I am not misrepresenting the Senator but it is my recollection that he contended that enabling provisions are of little benefit if the follow-up services and regulations are not put in place.

Senator Alex White: Will I have an opportunity to respond to that?

Deputy Brendan Smith: Absolutely. I hope I am not misrepresenting the Senator but that is my recollection.

Senator Alex White: I will respond presently and inform the Minister of State of my precise position.

Deputy Brendan Smith: Senator Alex White spoke about the need for an holistic approach. The reality is that this Bill is part of exactly such an approach. The Immigration, Residence and Protection Bill 2008 and the national action plan are equally important measures. "Holistic" does not mean providing all the necessary protection services in one Bill.

Senator Alex White also referred to victims' rights. It was never intended to deal comprehensively with victims' rights in the Immigration, Residence and Protection Bill 2008. Rather, it was always the intention that they be included in the national action plan. My understanding is that this position was outlined clearly from the beginning. Work is under way on the national action plan and we are determined to ensure all the provisions and measures included therein are correct. Senior civil servants and representatives of groups with a particular interest in this area are working together to draw up those measures. This process will be given the utmost attention.

On the question of a charter of rights for victims, my understanding is that such a charter exists but is non-statutory. That charter is currently being revised.

Senator Alex White: I do not want to add to the Minister of State's discomfiture in respect of this discussion, but it is lamentable that he has not properly addressed the issue put to him by Members on both sides of the House in terms of what is right and what ought to be done in regard to the provision to be made to protect victims. On enabling provisions in legislation, I stated on Second Stage what has always been my view, namely, that there is sometimes an over-reliance on such provisions when it would be more proper to include the detail of the provision in the legislation itself. However, this is not an argument that one should not make these provisions at all. If the Minister of State wants to go further than what we are proposing, which is an enabling provision, I will certainly be prepared to support an amendment he might bring forward to co-perfasten what we are suggesting within the legislation itself. What we propose, and what the organisations the Minister of State is correctly so quick to praise seek, is for the question of victims' rights to be addressed in the legislation.

I am disappointed at the Minister of State's response. I did not hear anybody question his sincerity. We can disagree with people while still

accepting their sincerity. I assumed it was a given in this business that we all understood and respected each other's sincerity without having to say so explicitly on each occasion. I do not doubt the sincerity of the Minister of State or that of any Member on either side of the House, but that does not stop me from disagreeing with some of them. The Minister of State has got it wrong on this issue.

Deputy Brendan Smith: I fully accept Senator Alex White's assurance that he does not doubt our sincerity. However, I emphasise that the Government wishes to ensure that we get this legislation right so we can deal with the issues that every Member of the Oireachtas and society in general wants to see addressed. It is often a feature of our parliamentary procedures that legislation is enacted but the relevant regulations do not come into place for many years. As a result, the consequential establishment of boards or services to achieve the desired outcome do not follow on as quickly as they should.

In dealing with this reality, we are taking the holistic approach advocated by Senator Alex White. We have established an executive office within the Department of Justice, Equality and Law Reform and a senior civil servant has been appointed as director. The work of that office is under way. Work is ongoing on the national action plan under a high level working group which can draft in expertise, seek views and work together with statutory agencies, non-governmental organisations and others. That is extremely important.

We are obliged to take on board the advice of the Chief Parliamentary Counsel and the Office of the Attorney General. That advice is that the measures we are putting before the House represent the best possible and most robust means to eliminate the evil that is this particular trade from our society and, consequentially, to protect the victims to the greatest extent possible. We are determined to ensure all the elements are in place, that alongside the legislation the other necessary measures are also implemented. We will ensure that our corpus of legislation and the associated administrative framework will meet the laudable objectives of the international conventions.

Senator Rónán Mullen: Perhaps I should not have interrupted the Minister of State when he was raising the question of sincerity. I should have waited for an opportunity to comment on it myself. I will do so now, with apologies. I want to make it clear that I was not impugning the Minister of State's sincerity or that of any individual member of the Government. The Minister of State is wrong if he imagines that I was doing so just because I did not name everyone individually. The contributions of the Seanad representatives of the Government parties have been, for the most part, in support of the amendments pro-

posed by Senator Alex White and me on this matter. I was not doubting the sincerity of those contributions. The Minister of State has not made a cogent argument in support of his refusal to accept those amendments. He does not appear to have the support of his party in so doing. I mentioned the curse of the party whip system in that context.

Senator Alex White: Will the Minister of State indicate whether he is prepared to address these issues in advance of Report Stage, which his colleagues on the Government side have asked him to do? I reiterate what they said. While the advice given by the Office of the Parliamentary Counsel is vitally important in any legislation, it is a technical matter. The Minister of State is in charge of policy. This is a policy question. It is not purely a drafting or technical issue. My submission should be considered before the Report Stage debate takes place. I ask the Minister of State to do so.

An Cathaoirleach: Is amendment No. 2 being pressed?

Senator Rónán Mullen: While I am inclined to press it, I realise that if I press every amendment unsuccessfully, we will be here all night. Can the Minister of State give us any commitment that this matter will be reconsidered in advance of Report Stage?

Deputy Brendan Smith: I cannot. It is obvious that amendments proposed by Senators from all parties on Report Stage will naturally be dealt with at that time. We will not pre-empt the Report Stage debate.

An Cathaoirleach: Is the amendment being pressed?

Senator Rónán Mullen: I will not press the amendment. I will introduce a further proposal on Report Stage.

Senator Alex White: I also intend to raise this matter again on Report Stage.

Amendment, by leave, withdrawn.

Amendments Nos. 3 and 4 not moved.

Section 3 agreed to.

Section 4 agreed to.

SECTION 5.

Government amendment No. 5:

In page 7, subsection (1), line 8, to delete “section” and substitute “Act”.

Amendment agreed to.

Amendments Nos. 6 and 7 not moved.

Section 5, as amended, agreed to.

NEW SECTIONS.

Government amendment No. 8:

In page 8, before section 6, to insert the following new section:

“6.—(1) Where, for the purposes of the prostitution of a trafficked person, a person (other than that trafficked person) solicits or importunes another person, including that trafficked person, in any place, he or she shall be guilty of an offence.

(2) A person (other than the trafficked person in respect of whom the offence under *subsection (1)* is committed) who accepts, or agrees to accept a payment, right, interest or other benefit from a person for a purpose mentioned in subsection (1) shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine or a term of imprisonment not exceeding 5 years, or both.

(4) In proceedings for an offence under this section it shall be a defence for the defendant to prove that he or she did not know and had no reasonable grounds for believing, that the person in respect of whom the offence was committed was a trafficked person.

(5) This section is in addition to, and not in substitution for, section 7 of the Act of 1993 in so far as an offence under that section is committed by, or in respect of, a trafficked person.

(6) In this section—

“Act of 1993” means the Criminal Law (Sexual Offences) Act 1993;

“solicits or importunes” has the same meaning as it has in the Act of 1993;

“trafficked person” includes a child who has been trafficked for the purpose of his or her exploitation.”.

Amendment agreed to.

Senator Rónán Mullen: I move amendment No. 9:

In page 8, before section 6, to insert the following new section:

“6.—A person who—

(a) sexually exploits a trafficked person, or

(b) takes, detains, or restricts the personal liberty of a trafficked person for the purpose of his or her sexual exploitation,

[Senator Rónán Mullen.]

shall be guilty of an offence and shall be liable upon conviction on indictment—

- (i) to imprisonment for life or a lesser term, or
- (ii) at the discretion of the court, to a fine.”.

This proposed new section provides that a person who sexually exploits a trafficked person, or takes, detains or restricts the personal liberty of such a person for the purpose of his or her sexual exploitation, will be guilty of an offence. This proposal goes further than the Government’s proposal. In effect, it avails of the broad definition of “sexual exploitation” provided for in the legislation. It is desirable to provide that any person who uses a trafficked person will have committed an offence. Under the terms of this amendment, if someone who is making a pornographic movie engages the services of a victim of trafficking for that purpose, he or she will have committed an offence. The amendment does not relate solely to prostitution. It avails of the considerably wide definition of “sexual exploitation” set out in section 2.

Deputy Brendan Smith: It appears, from the use in this amendment of the term “trafficked person”, that the amendment relates only to adults. The first part of the amendment would make it an offence to sexually exploit a trafficked person. No provision is made for the defence of not knowing, or having reasonable grounds to believe, that the person was trafficked. It is an offence, under section 5, to engage in the trafficking of an adult for the purpose of “sexual exploitation”. The terms “sexual exploitation” and “trafficks” are defined in section 2. The definition of “trafficks” includes taking custody of a trafficked person or taking a trafficked person into one’s care or charge or under one’s control. It also includes providing the trafficked person with accommodation or employment. Given the nature of trafficking, any person who sexually exploits a trafficked person is almost certainly guilty of the offence of trafficking. If an adult is to be deemed to have been trafficked for the purposes of sexual exploitation, there must have been coercion or deceit, or the person must have been threatened or abducted, or had force used against them. It is unlikely, in such circumstances, that the person is consenting to the sexual activity he or she is expected to indulge in as a result of being trafficked.

This amendment is unnecessary for the reasons I have outlined. Some of the sexual activity mentioned in the definition of “sexual exploitation” is already an offence. I refer, for example, to the commission of an offence listed in the Schedule to the Sex Offenders Act 2001 or to the controlling of the activities of a prostitute.

The second part of amendment No. 9 repeats a provision in the Child Trafficking and Pornogra-

phy Act 1998, which relates to children. This provision is not a trafficking provision. It emerged from section 17 of the Non-Fatal Offences against the Person Act 1997, which created an offence of taking or detaining a child “so as to remove the child from the lawful control of any person having lawful control of the child”. The maximum penalty on conviction set for that offence was seven years of imprisonment. A higher penalty was provided for when the taking or detaining of the child was done for the purposes of sexual exploitation. Accordingly, it was a child-centred provision, aimed at protecting children against sexual exploitation. It was not concerned with trafficking. Section 15 of the 1997 Act fully protects people against the activity which this amendment seeks to address. It provides that when a person takes or detains a person, causes a person to be taken or detained, or otherwise restricts the personal liberty of a person for any reason without that person’s consent, the person commits an offence and is liable on conviction on indictment to imprisonment for life. The amendment would restrict the operation of that section by obliging the prosecution to prove that the person was taken or detained for the purpose of sexual exploitation. Apart from that comprehensive provision in the 1997 Act, the definition of “trafficks” in this legislation includes taking custody of a person or taking a person into one’s care or charge or under one’s control or providing accommodation for that purpose. For the reasons stated, the amendment would add nothing to the legislation in regard to the aspirations outlined by the Senator and I do not propose to accept it.

Senator Joe O’Toole: The Minister of State’s reply is reasonable but I have two questions. He stated if the word “trafficked” is omitted, the offence is covered under the offences against the person legislation. Does Senator Mullen’s amendment not propose a heavier sentence on conviction? The phrase “takes, detains or restricts a trafficked person” would not add significantly to the work of the prosecution in that the prosecution will decide at the outset whether to take the case under this legislation or the offences against the person legislation. In other words, the case could be taken under the offences against the person legislation if it was felt there would be a difficulty proving the trafficking and the prosecution would not do that if it felt it was certain of proving that and a heavier sentence was available. If, on the other hand, there was a doubt about the person being trafficked or there was a difficulty in proving that, the prosecution would take the case under the offences against the person legislation. I do not see in those circumstances how Senator Mullen’s amendment makes this more difficult. It surely gives another option to the prosecution.

Senator Denis O’Donovan: I am a little unclear about the amendment in that the purpose of the

Bill is to deal with those who trafficks and exploit people, primarily women. It is agreed that between 90% and 95% of those who are trafficked for sexual exploitation are women. The thrust of the legislation is to deal with traffickers who are the principal culprits. The women, unfortunately, are victims and they deserve sympathy and support and the best legislation we can provide. Perhaps I am reading the legislation incorrectly or I do not fully understand the thrust of Senator Mullen's amendment but I seek clarification from the Minister of State. Is the amendment covered by the legislation? If so, how? If not, will the Minister of State explain how the amendment is lacking in merit because I am a little confused?

I refer to the remarks made on the previous section. My track record, particularly on issues close to my heart such as the Fisheries Bill, is to take Ministers to task and to support Opposition amendments, while sometimes pressing amendments myself, but because I support the thrust of many of the issues raised by the Opposition that does not mean I am anti-Government. The purpose of debate is to tease out these issues. It is important that three or four Government Members are present to enhance the debate and, in that regard, it is important that we are present to lend our weight. At the end of the day because of the threat of the whip, we must row in behind the Government but a number of the issues raised deserve serious consideration. While it is unlikely the Minister of State, as he said, will not have a change of heart before Report Stage, as spokesperson on justice issues, I urge him to stand back for a week or two to reflect on the issues raised in order that we get the legislation right. It is important that all of us contribute. However, I am a little confused, although I may misunderstand the amendment, because the purpose of the Bill sits around what the Senator proposes in it. Will the Minister of State clear up the fog in my head on the issue?

Deputy Brendan Smith: I thank the Senators who contributed on this amendment. Under section 5, it is an offence to traffick an adult for the purpose of sexual exploitation. Both "sexual exploitation" and "trafficks" are defined in section 2. The definition of "trafficks" includes taking custody of a trafficked person or taking a trafficked person into one's care or charge or under one's control. It also includes providing accommodation or employment for the trafficked person and, therefore, given the nature of trafficking, any person who sexually exploits a trafficked person is almost certainly guilty of the offence of trafficking. For an adult to be trafficked for sexual exploitation, there must have been coercion or deceit or the person must have been threatened or abducted or had force used against him or her.

Senator O'Donovan queried whether the amendment would duplicate existing legislation.

In practice, the provisions are in place. I reiterate the definition of "trafficks" is very broad and it rightly criminalises a wide range of activity.

Senator O'Toole asked whether I could accept more severe penalties to enhance the legislation. Senator Mullen's amendment provides for a maximum sentence of life imprisonment but section 15 of the 1997 Act also provides for this sentence. The provisions in his amendment are, therefore, covered. That meets the aspirations to which the Senators referred in their contributions.

Senator Rónán Mullen: I take it from the Minister of State's comments that because the definition of "trafficking" includes the provision of the person with accommodation or employment and the end user in the example I gave who engages in the making of pornography, which would come under the definition of "sexual exploitation" in the legislation, would be criminalised if he or she were using the services of a trafficked person, whether he or she knew that or not. Is the Minister of State saying that without my amendment, such a person would have committed a crime?

Deputy Brendan Smith: Yes, in general, because control would be involved but I will refer to that on Report Stage.

Senator Rónán Mullen: I am concerned that the Minister of State has mentioned the issue of control because I do not see where control comes into it. My amendment tries to criminalise the end user. I am not referring to prostitution *per se* but to the possibility that a person working in the sex industry in Ireland could purchase the services of a trafficked person in the making of pornography. If the Minister of State is unsure whether such a person would be guilty of a criminal offence as the matter stands, why not accept my amendment?

Deputy Brendan Smith: Based on the brief I have been given, I am not certain that the issue in question is covered from the perspective of Senator Mullen's amendment. If a gap is identified, I will have it investigated before Report Stage. I am not clear at this point whether the Senator's amendment addresses the issue he raised but I will ensure it is adequately addressed if it is not already provided for.

Amendment, by leave, withdrawn.

Section 6 agreed to.

Sections 7 to 10, inclusive, agreed to.

NEW SECTION.

Senator Rónán Mullen: I move amendment No. 10:

[Senator Rónán Mullen.]

In page 9, before section 11, to insert the following new section:

11.—(1) Subject to the subsequent provisions of this section, a person who is an alleged victim of trafficking, or section 3 (other than subsections (2A) and (2B)) of the Act of 1998, shall be given leave to remain in the State by the immigration officer concerned.

(2) Subject to the subsequent provisions of this section, a person to whom leave to remain in the State is given under *subsection (1)* shall be entitled to remain in the State for a period of 6 months which may be renewed.

(3) The Minister shall give or cause to be given to a person referred to in *subsection (2)* a temporary residence certificate stating the name and containing a photograph of the person concerned, stating that, without prejudice to any other permission or leave granted to the person concerned to remain in the State, the person referred to in the temporary residence certificate shall not be removed from the State before the 6 month period has elapsed.

(4) The person referred to in *subsection (2)* shall not leave or attempt to leave the State without the consent of the Minister.

(5) An immigration officer may, by notice in writing, require the person referred to in *subsection (2)*—

(a) to reside or remain in particular districts or places in the State, or

(b) to report at specified intervals to an immigration officer or member of the Garda Síochána specified in the notice, and the person concerned shall comply with the requirement.

(6) A person who contravenes *subsection (4)* or (5) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500 or to imprisonment for a term not exceeding 1 month or to both.

(7) Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that the person referred to in *subsection (2)*—

(a) poses a threat to national security or public order in the State,

(b) has committed a serious non-political crime outside the State,

(c) has not made reasonable efforts to establish his or her true identity,

(d) intends to leave the State and enter another state without lawful authority, or

(e) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents, he or she may detain the person in a pre-

scribed place (referred to in the Refugee Act 1996 as “a place of detention”).

(8) The Minister shall make regulations providing for the treatment of persons detained pursuant to this section.”.

I am not pressing my amendment at this stage because I hope to reword it and move it again on Report Stage. However, the intention of protecting victims of trafficking from deportation ought to be included in the Bill.

Senator Denis O'Donovan: I raised this issue when I spoke on Second Stage of the Bill. We should learn from international law, including developments in Europe, Great Britain, Canada and Australia, not to take the easy option. This problem does not arise in respect of the enlarged EU, despite what Senator Mullen said about difficulties for Bulgarians and Romanians, because EU citizens have rights. However, trafficked persons may also come from Africa or Asia. I advise the Minister of State in advance of Report Stage that we must not copy the failed approach taken in Canada which took the easy option of deporting non-Canadians. By doing so, it sends unfortunate women back to their former lives. If they wish to be repatriated, that is fine, but if they are coming from a war-torn country or have been abused in their place of origin, we must consider them afresh.

If we are to achieve anything with this Bill, it should be to ensure the mistakes made in other jurisdictions are not repeated. I implore the Minister of State to consider the issue seriously. By ignoring the advice of Ruhama and other non-governmental organisations interested in this area and failing to address this issue, we will create a lacuna the Bill. We must not walk away from the arguments made by Senator Mullen. The easy option is to copy the mistakes made by our Canadian counterparts.

Amendment, by leave, withdrawn.

Section 11 agreed to.

NEW SECTIONS.

An Cathaoirleach: Amendments Nos. 11 and 13 are related and can be taken together.

Senator Rónán Mullen: I move amendment No. 11:

In page 10, before section 12, to insert the following new section:

“12.—A person who is a victim of an offence under this Act shall not be prosecuted for entry into, or presence in the State for carrying out labour or sexual acts where those sexual acts were a consequence of the trafficking of that person.”.

Again, I wish to withdraw this amendment with the intent of rewording it for Report Stage.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 12, in the name of Senator Mullen, is out of order because it makes a charge on the Exchequer.

Amendment No. 12 not moved.

Senator Alex White: I move amendment No. 13:

In page 10, before section 12, to insert the following new section:

12.—A victim of an offence under this Act shall not be prosecuted for entry into or presence in the State or for carrying out the labour or sexual acts, insofar as such entry, presence or carrying out labour or sexual acts were a consequence of the trafficking of that person.”.

This amendment was only discussed in the sense that Senator Mullen indicated his intention to withdraw amendment No. 11 and revisit it on Report Stage. In view of his decision, it would be appropriate for me to do the same.

Senator Rónán Mullen: I compliment Senator Alex White on his amendment. I will delay further comment until he brings it forward again on Report Stage.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Section 13 agreed to.

NEW SECTION.

Senator Rónán Mullen: I move amendment No. 14:

In page 12, before section 14, to insert the following new section:

14.—The Criminal Law (Sexual Offences) Act, 1993 is amended by the insertion of the following section:

“14.—A person who avails of the services of a prostitute shall be guilty of an offence and shall be liable upon conviction on indictment—

(i) to imprisonment for life or a lesser term, or

(ii) at the discretion of the court, to a fine.”.

When this Bill was discussed in the Dáil, the Minister for Justice, Equality and Law Reform heard various proposals to the effect that it would be desirable to criminalise users of sexual services of trafficked persons. The objections he outlined were not completely convincing but he was cor-

rect when he stated: “In terms of legal policy, if one wants to provide for what is being suggested, one must criminalise the purchase of sex generally.” If difficulties arise in respect of bringing prosecutions against those who avail of the sexual services of trafficked persons, one way to be sure of prosecuting is by criminalising the purchase of sex generally. In a sense, the Minister averted his eyes from an elephant in the room given that the use of persons in prostitution is an unconscionable affront to the dignity of the human person and the rights of women in particular because they represent the majority of the victims.

I sometimes detect a certain fatalism among policy makers on the issue of prostitution. It is referred to as the oldest profession and we are told people practise it as a matter of choice. When one considers the economic circumstances in which many persons in prostitution find themselves, it is hard to imagine they are in the business as a matter of free choice properly understood.

During the debate in the Dáil, the argument was also made that criminalising the purchase of sex generally would drive the prostitution industry further underground. We were told about a Norwegian study which found that Swedish legislation passed in 1999 to criminalise the purchase of sex, and not yet abolished, could lead to the unintended consequence of driving the prostitution industry underground. However, this seems very unlikely. In fact, that Norwegian study also found that the Dutch, who went the opposite route and created structures which legitimised prostitution, still experienced a major underground problem that involved violence against women, the exploitation and abuse of children and so on. If it is the case that the Dutch experience of liberalisation saw underground activity of a very disturbing nature, it seems hardly likely that if we were to go the route of criminalising the purchase of sex generally, we would somehow bring about a greater level of seedy, violent and dangerous underground activity and prostitution. Undoubtedly, if it was the case that by criminalising the purchase of sex generally, we would put a certain number of people, women in particular, in danger, then we should be very slow to go that route.

I note, however, that Ruhamá — we are back to sincerity again — the organisation which perhaps can best claim to be sincere in its outreach to women in prostitution, has urged Members of both Houses to go the route of criminalising the purchase of sex. It seems fair to say that if one criminalises the purchase of sex, not only will one hinder the practice of prostitution, one will hinder the trafficking of persons for exploitation in prostitution because one is attacking the demand side of the market. I know one must attack the supply side as well. By attacking the demand side and by establishing it is a criminal offence to purchase the sexual services of another person, one is not doing anything to make the emergence of

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an underground type of prostitution more likely because all one is doing is creating a disincentive for the user.

We must bear in mind that at this time a great deal of prostitution is going on in a way which is very hard to police. People are able to access the services of persons for prostitution over the Internet, using mobile telephone technology and so on. While it can be difficult to detect and prosecute this offence, it is not impossible.

Again, I stress the educative power of the law. We operate at a time when it is a criminal offence to smoke in a pub because of the damage it does to other people. It is also a criminal offence to litter because of the disservice that does to the community. What does it say about our society that we would establish such relatively trivial things as criminal offences but that the exploitation of another person's body should not be a criminal offence? What kind of bizarre form of political correctness has taken hold of our society when we cannot see the wood from the trees on this issue and recognise that a grave offence is perpetrated against a person when another person exploits his or her body? This is not a gender specific issue, although it so happens that women are the primary victims. The same principle applies whether one is talking about a man or a woman.

There are many precedents for importing provisions dealing with one issue into legislation which deals with another. Undoubtedly, this legislation is primarily about trafficking but the issue of prostitution is tied up with it. I go back to the Swedish example. When they criminalised the purchase of sex in 1999, they reported considerable success in removing women from the streets in terms of street prostitution. They also believed they had greatly reduced the amount of trafficking into their country because they had attacked the demand side of the equation. They reported that merely hundreds of persons were trafficked for work in underground prostitution compared with thousands in neighbouring Finland, for example.

There is, therefore, a connection. This is not to import an extraneous piece of criminal legislation into a Bill about trafficking. It is to bring in an issue which is fite fuaite in the sense that by attacking the demand side when we criminalise prostitution, that is, the purchase of sex generally, we also make quite clear our revulsion of this, tackle those who would use and exploit other persons, including persons who happen to be trafficked, limit the potential market available for trafficked persons and thereby attack the evil activity of trafficking.

I repeat that we must not ignore the educative power of the law and its power to send an important message. I am not suggesting convictions will be impossible in this area — far from it. It appears to be relatively simple to secure a conviction in an area such as this. I suggest it is time for a change of heart in our society and at

the level of policy making. We need to recognise this is a human rights issue which unites people who may be philosophically traditional in their opposition to this type of exploitation of persons. Surely it is a very modern concern as well.

In all our valuable and legitimate discourse about women's rights, how can we ignore the fact that when we fail to criminalise the purchase of sex, we send a very negative message about the dignity and worth of more than 50% of our population and the relationships between men and women? We undermine family life by failing to express our social abhorrence of behaviour which undermines family life and proper relationships between men and women. We corrupt younger people in their understanding of human sexuality and the importance of the dignity of the person in our society. On that basis, I will press this amendment because it is time we took a responsible stand on this issue.

Senator Lisa McDonald: There is much merit in what Senator Mullen said. I am not sure it is a matter for this Bill but if we do not criminalise the purchase of sexual services, we do a huge disservice to women. I do not want to hear what was said on Second Stage that prostitution is the oldest profession in the world and that one cannot stop people from using prostitutes. I find that abhorrent. I would say fewer than 2% of women involved in prostitution want to be prostitutes.

Senator Joe O'Toole: Hear, hear.

Senator Lisa McDonald: It is not a career choice. It is driven by drugs and cash-rich pimps. We saw an example of that during the week with the successful conviction of Martin Morgan. I look forward to his sentencing on Friday. A life sentence would not be long enough for the man who was involved in vile and disgusting activity.

We need to look at the laws on brothel keeping, advertising and websites. I could name nearly four or five websites with names such as escort-girls.com and I do not even read them. Most people know where to go to purchase sexual services. If we are genuine about stopping the trafficking of persons, including women and children, we must take on board the tenet of what Senator Mullen suggested and include it in legislation. I do not understand why that cannot be done.

Earlier I heard the Minister of State refer to a law dating back to 1885. I am completely confused because as a practitioner, I did not realise it was a crime to purchase sexual services. In general, it is accepted that such behaviour is not a crime. I would welcome it if the Minister of State could clarify the position in that regard. If we are serious about the legislation, this matter must be examined.

Senator Denis O'Donovan: The Minister of State earlier outlined the position in respect of

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amendment No. 8 which everyone welcomed as a step in the right direction. The new section 6 proposed in the amendment relates to “Soliciting or importuning for purposes of prostitution of trafficked person.” Perhaps the Minister of State might bring clarity to the situation, if not now then on Report Stage.

As I understand it, the purchasing of sex is an offence. If so, which legislation applies in that regard? The Minister of State referred to a particular Act dating from the Victorian era. The Bill deals with the trafficking of human beings, 90% to 95% of whom are women. Surely there must be a strong legal framework in place to deal with this matter. I understand such a framework exists in our domestic legislation. One cannot make availing of the services of trafficked women, primarily by way of prostitution, an offence and not make the availing of the services of prostitutes in general — who make up the majority of those in the profession and most of whom are not trafficked — an offence. I ask that the Minister of State clarify the position in that regard.

Amendment No. 14 in the name of Senator Mullen provides that a person convicted on indictment could be sent to prison for life or a lesser term. Life imprisonment is a major penalty and in some instances perhaps it is deserved. Everyone seems to agree that the abuse and sexual exploitation, in one form or another, of trafficked persons, particularly those who are women, should be prevented.

Senator McDonald referred earlier to the 1885 legislation mentioned by the Minister of State. That legislation criminalises clients who use, for example, prostitutes. From 30 years of practising law, I am aware that said law is more ignored than observed. I am not aware of too many instances in which this Act was invoked and prosecutions under it are almost as scarce as teeth in a duck. There appears to be a tendency to accept that prostitution has been in existence for thousands of years and that we should turn a blind eye to it. I do not advocate this view.

There is a view abroad that if we accept prostitution — I do not advocate that we should do so — we should deal with it as it is handled in other countries, namely, that it should be brought out into the open, regulated, etc. I have heard people suggest that we should do as they do in Amsterdam and other European cities where prostitution is quite open and above board but where regulation and medical controls are in place. The prostitutes in these locations are not being trafficked and are, perhaps, being exploited to a lesser extent. I am not stating that the latter is any more acceptable than what occurs here.

If the Minister of State cannot assure me that either this Bill or existing legislation will lead to those individuals, primarily males, who exploit women being brought before the courts, I will be obliged to support Senator Mullen. I also wish to indicate my support for the forceful argument put forward by Senator McDonald.

Senator Paschal Donohoe: I support the amendment. The constituency in which I live is predominantly located in the inner city. Too many parts of it continue to have severe problems with the practise of prostitution. I have never seen such misery as that experienced by those, mostly comprising women, who are involved in that trade.

There is an ambivalence in our law and society regarding the types of behaviour we believe to be acceptable. Senator Mullen referred to the law as playing an educational role. It also plays, as the Senator will agree, a much stronger role. The law sends out a signal regarding the types of behaviour society believes to be acceptable and not to be. It also indicates our willingness to prosecute in respect of those types of behaviour we are not prepared to allow. There is an ambivalence in existing law in that regard.

I attended a meeting of a community policing forum in the constituency in which I live last week. A number of gardaí present referred to the difficulty they experience in successfully prosecuting people who have procured the services of prostitutes. For too long a glamour has attached to the trade of prostitution. There are people who presume that those who enter this trade do so with some degree of choice. Nothing could be further from the truth.

We must support the amendment and send out a clear signal regarding two matters. First, the existing legislation is inadequate and an amendment of this nature is required to fix it. Second, we must make it clear that those who procure the services of prostitutes have no place in our society and the law should reflect this. I support the comments made by other Senators in respect of this matter.

Senator Joe O'Toole: If the Minister of State did nothing during his time in office other than accept or rewrite this amendment to make it clear that those who use prostitutes are breaking the law and should be prosecuted, it would be a fine memorial to him. There can be no argument against the points raised by Senators McDonald and Mullen.

I am familiar with a number of quite logical arguments regarding the legalisation of prostitution. I can accept that there is a case for and against legalisation and that it is a matter people can discuss rationally. However, I have never heard any argument in support of the situation that currently exists in Ireland. Of the three people involved in the eternal triangle of pimp, prostitute and user, only the first two are regularly convicted. However, the user — the person who creates the demand — is never prosecuted. It was stated that legislation exists in this regard but I have never heard of a person being prosecuted for using the services of a prostitute. Perhaps the Minister of State will indicate when that legislation was last invoked because, during the past 20 years or more, I have not seen reports in

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respect of prosecutions under its provisions in any of the newspapers I read.

The case in Ipswich was concluded in the past week which concerned the killing of five prostitutes. We have all read about that case but I am unsure if people have read about the fallout from it, which is quite interesting. I have listened to and read the words of various people in social services and counselling from the Ipswich area who have explained what they have been doing for the year and half since the culprit was arrested. They have managed, through counselling and support with a very small amount of money, to take a significant amount of women out of prostitution.

As Senator McDonald quite rightly stated, the number of prostitutes in the business by choice is minimal. The idea that the trade being referred to as the oldest profession gives it an attractiveness because of polite language is utterly unacceptable. Anything I have read about prostitution indicates and convinces me that 99% of prostitutes are in prostitution because of drugs, other addictions, poverty or because they are simply under the control of unscrupulous people. That is the reality.

It seems the case is unanswerable but that trafficking and prostitution are inextricably and intrinsically linked. People are not being trafficked to work as au pairs in south Dublin or to earn decent wages and pay taxes. People are trafficked for the simple reason of being further forcibly and involuntarily involved in crime in the country to which they are being trafficked. It is clear the majority are crimes based on sexual exploitation.

This leads us to the user. In this morning's newspapers we read of somebody being prosecuted for looking at a form of pornography on the web, which is a pretty passive experience. When that piece of legislation went through the Houses, many people were a little worried that this act was a long way removed from the crime and the child who was being abused or the exploitation by pimps, etc. The more it was discussed and people thought about it, the more certain we were that these people were creating the market. The people looking at child pornography were creating the demand and for that reason we had to take the steps to get rid of the problem.

With regard to Senator Mullen's proposed amendment, we are considering demand. If it becomes a prosecutable crime to use the services of a prostitute, a crime for which somebody generally will appear in court, it will change the whole ball game. The man in Ipswich apparently used to drive around the block four or five times, looking these women up and down before finally making a choice. Everyone knew about it and he was on CCTV etc. Those five women would be alive today under a different set of circumstances.

Some 99% of trafficking is for the purpose of creating a market in prostitution so there is an inextricable link. Any argument that it is some

way out of place in this proposed legislation is not correct and does not hold water. What we are trying to do here is focus on the demand area rather than the supply, which is always the most effective way to deal with such issues, whether they involve drugs, prostitution or trafficking. This proposed amendment deals with that point.

No person of decency, correctness or logic could argue against the amendment. Unless there is a convincing and compelling argument as to why this should not be passed — or an amendment very like it — we will have done a very bad day's work in not doing our utmost to push this to its limit.

Deputy Brendan Smith: One of Senator Joe O'Toole's final points asked if there is an offence with regard to the client. The Criminal Law (Sexual Offences) Act 1993 makes it an offence to solicit in public for the purposes of sex. The prostitute, client, pimp or other third party can commit the offence. If Senators have an opportunity to refer to the Criminal Law (Sexual Offences) Act 1993, there are a number of provisions in that Bill regarding issues that have been raised by all Senators who have contributed to the debate on this amendment from Senator Mullen.

The sections refer to soliciting or importuning for purposes of prostitution, loitering for purposes of prostitution, organisation of prostitution, living on earnings of prostitution and brothel keeping.

Senator Joe O'Toole: The Minister of State did not mention using a prostitute.

Deputy Brendan Smith: I did, I mentioned a client.

Senator Joe O'Toole: I apologise.

Deputy Brendan Smith: To clarify for Senator O'Toole, the Criminal Law (Sexual Offences) Act 1993 makes it an offence to solicit in public for purposes of sex. The prostitute, client, pimp or other third party can commit the offence.

Senator Rónán Mullen: The phrase "to solicit in public" does not cover everything.

Deputy Brendan Smith: I understand that. I emphasised the provision was in public. That is the provision of the 1993 Act. Senator O'Toole asked if there was a provision for the client to commit an offence. That provision exists in the 1993 Act.

Senator Joe O'Toole: Not if the act happens in a brothel.

An Cathaoirleach: The Minister of State shall reply. The Senator can come back in with a question.

Senator Joe O'Toole: A brothel is not a public place.

Deputy Brendan Smith: I said "in public". That provision exists.

Different sections of the 1993 Act refer to soliciting or importuning for purposes of prostitution, loitering for purposes of prostitution, organisation of prostitution, living on earnings of prostitution and brothel keeping. There are other aspects as well but they were the first few I could point out that are relevant to some of the issues that have been raised here.

With regard to Senator Mullen's amendment, we have already discussed the question of availing of the sexual services of a trafficked person. My amendment creates a new offence of soliciting or importuning of such a person, as was discussed earlier. This amendment goes beyond the parameters of trafficked persons and seeks to criminalise, I assume, the purchase of sex from a prostitute. In other words, it is a prostitution measure rather than a trafficking measure. As such it should be considered as part of a public debate on prostitution and any changes to the law that would result from the debate could be accommodated in appropriate legislation. That does not take away from the obvious necessity to deal with this issue, a major concern to people.

The Department of Justice, Equality and Law Reform keeps under continuing review the laws on prostitution, as well as the laws in other countries. It approaches the laws of prostitution from several angles, including the nuisance caused by public soliciting, the safety of prostitutes, ensuring the laws on controlling organised prostitutes are working satisfactorily and the advertising of prostitution. Those issues were referred to by Senator Donohue as well.

The law does not take a moral stand on consensual activity between adults in private. In recent years calls have been made to criminalise the purchase of sex, which this amendment purports to do, and decriminalise the sale of sex. The stated purpose of this policy is to reduce the instance of prostitution by criminalising demand.

We must ask ourselves if such a policy works where it has been tried. There are conflicting statistics and opinions on the effectiveness of criminalising demand but one thing is clear. Demand does not disappear but is displaced. It goes from the streets to the Internet, to mobile telephones, to hotel rooms and apartments. It is displaced to neighbouring countries and likely to other countries as well.

In his introductory remarks, Senator Mullen referred to technology such as the Internet and mobile telephones, along with hotel rooms. I will refer later to Sweden, as Senator O'Donovan mentioned it earlier. It is easy to quote figures showing the success of criminalising the purchase of sex. It is just as easy to produce figures showing that it is premature to come to any conclusions. It has been claimed that the number of street prostitutes in Sweden has halved since the law

was changed. The Swedish Government has estimated that the number of prostitutes in Sweden has dropped from 2,500 to 1,500 since 1999. Many have disputed those figures, including a social anthropologist who has studied Swedish prostitutes over the past ten years.

Senator Rónán Mullen: Will the Minister of State name the anthropologist?

Deputy Brendan Smith: I will refer to it in a moment. She states that no one knows if there are fewer prostitutes. That is not surprising as the law could only serve to drive prostitution underground. It has been said that some of the neighbouring countries complain about an increase in the demand for prostitutes in there. The question is extremely complex. One former prostitute is quoted as saying that underground profiteers, pimps, and traffickers flourish under the new laws and that prostitutes would naturally prefer to avoid such people.

The authorities in Sweden admit that traffic has increased a little since 1999 but that it is lower than in neighbouring countries. Sweden's national rapporteur on trafficking has estimated that the number of prostitutes has more than doubled. It seems that prostitutes in Sweden must operate more secretly and therefore feel more vulnerable. The purpose behind the Swedish law is to treat prostitutes as victims and it is ironic that the very people the law seeks to protect may not necessarily benefit from that law.

People have criticised our laws governing prostitution but few have suggested practical or thoroughly thought-out alternatives. The laws criminalise public soliciting which should reduce the number of prostitutes working on the streets where they are most vulnerable and which is one of the purposes of criminalising demand. The prostitute, the client, or a third party can solicit in public and from a motor vehicle. Public place is given a wide meaning in the legislation. Running or managing a brothel is also an offence, for which there have been several recent prosecutions. The law protects prostitutes from persons living off their earnings or organising or controlling prostitution and advertising of the services of prostitutes and brothels is banned.

The Department of Justice, Equality and Law Reform is monitoring legislation here and in other countries. If it can find changes in the law that would reduce the level of prostitution, would not drive it underground where prostitutes would be more vulnerable, and would not make it more difficult to apprehend persons who profit from the prostitution of others, it will bring forward proposals for such changes for public discussion. The Department is not dismissing out of hand the Swedish law or questioning any statistics or comments. On the contrary, it is monitoring its effectiveness as part of the overall continuing review of the laws governing prostitution. I hope that outline of a complex area can give some idea of the conflicting views on, and the difficulty of deal-

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ing with, this issue. The Department is considering the adequacy of other legislation and whether we can draw up plans that will achieve the outcomes we all desire. This requires a great deal of public discussion and debate.

I cannot accept the amendment as Senator Mullen outlines it.

Senator Joe O'Toole: I have the 1993 Act in front of me. I read it three times while the Minister of State was speaking. It is not a very long Act. It does not cover the situation dealt with in Senator Mullen's amendment except in perhaps 10% of cases. I do not see any reference to the user of prostitutes in a way that covers this as Senator Mullen's amendment does. The Act refers to the organisation of prostitution, living off immoral earnings, the managing or assisting in the management of a brothel etc. It states that, "A person who in a street or public place solicits or importunes another person or other persons . . . shall be guilty" etc., but it does not in any way deal with the case before Senator Mullen. We will check the Official Report but if the Minister of State is saying this matter is already covered in legislation, I cannot see it. Before Report Stage, I will also read the Official Report of the debate on this legislation when it went through the Houses in 1993, and I am pretty sure I will be shown to be right on that point too.

Deputy Brendan Smith: I referred the Senator to the 1993 Act from which he has quoted in answer to the question he raised, that a client could not be convicted. The Act refers clearly to the fact that a client soliciting in public can be convicted and the Senator has read out the section dealing with that. I did not say this Act dealt with all the issues that Senator Mullen raised. I quoted the lines Senator O'Toole quoted, "A person who in a street or public place solicits or importunes another person or other persons for the purposes of prostitution shall be guilty of an offence" in answer to his question, when I commenced my final contribution.

Senator Joe O'Toole: Maybe I am misunderstanding the point because the Act does not define the words "solicits or importunes" although it does explain their use. Is the Minister of State suggesting that the client is the person who is soliciting or importuning because I thought that was either the pimp or the prostitute? I am not an expert in this area.

Deputy Brendan Smith: It can be any of the three, the client—

Senator Joe O'Toole: I do not think so.

Deputy Brendan Smith: —the prostitute, the pimp or a third party. That is contained in the provisions in the Bill which the Senator will see if he has an opportunity to go through them again.

Senator Joe O'Toole: How does a client solicit? Someone who solicits is selling his or her services. The client is a buyer.

Deputy Brendan Smith: No it can mean the person seeking to purchase as well.

Senator Lisa McDonald: I do not mean to be difficult but I also do not wish to be a "yes" person. The Minister of State said he would welcome a public debate on prostitution. We will not get the legislation right to stop trafficking of persons, be they non-national or national, and the abuse that surrounds prostitution unless we address the issue. The debate needs to follow immediately after this discussion in some form.

Prostitution is underground. Since 1993 there has been an explosive increase in the number of hotels and apartments used for this purpose. The world is different, the Internet is easily accessible and mobile telephones are used. The 1993 Act does not reflect today's reality. It would be easy for me to find five or six women to support me.

Who are we protecting? Women comprise 13% of the membership of the Oireachtas. Were 87% of Members female and 13% male, the criminalisation of sexual services would be on the Statute Book.

Senator Frances Fitzgerald: I have been highly impressed by the manner in which Senator McDonald has spoken on this very good debate and I congratulate Senator Mullen on tabling this amendment. It brings to mind the role of the law in changing behaviour. In the area of equality for example, many changes to legislation were required before actual changes in behaviour were observed. Although I do not know whether Senator Mullen is prepared to support this, I ask the Minister of State to take on board the statements made in the House today and to return on Report Stage with a fresh view from the Government on this topic.

The trafficking field is changing dramatically. Some years ago, I asked the then Minister for Justice, Deputy John O'Donoghue, what were the numbers of children who were being trafficked or were coming into Ireland unaccompanied. I subsequently attended an international conference on the topic and quoted the reply I had received, which was that the number was very small. However, it was not accurate and in general, Irish figures on this issue are inaccurate. There is enormous under-reporting of what is happening.

During the Second Stage on this Bill, I stated, "human trafficking is recognised as the third most lucrative international crime after drugs and arms trafficking", which is extraordinary. As for the debate on whether the criminalisation of the buying of sex in this fashion will drive everything underground, a great deal of such activity is underground anyway. A further point is that we take very strong action against those who try to sell drugs. Although the introduction of more

laws to deal with the supply and marketing of drugs drives the trade further underground, we continue to develop our laws to ensure we can deal with it. This is not necessarily an excuse, although I realise there is concern in Sweden that a certain amount of the sex trade has moved to Finland or to other countries and to a degree, the jury is still out in respect of the exact impact of the measure. Nevertheless, the point remains that one should move in the direction of criminalisation and should not be ambivalent.

This entire area has been characterised by an ambivalent approach over generations. Increasingly however, one can see the connections to crime, trafficking and drugs, as well as the sheer scale of the business, which also obviously is linked to pornography. I support those Members who raised the question of free will and prostitution. Although it is glamorised frequently, as Senator Donohoe stated, it is a far from glamorous world. It is a highly seedy world that devalues and diminishes women. Research on women in prostitution frequently shows they have had deeply unhappy early childhoods, have been the victims of abuse and have had little choice in the career paths they wished to follow.

I ask the Minister of State to examine the amendment and to return on Report Stage, having considered whether a Government re-think would be possible in this respect. It does not appear to make sense to me. I note that in the Dáil, the Minister for Justice, Equality and Law Reform either accepted an amendment or stated he would consider the amendment proposing criminalisation of sex with trafficked women. Am I correct in this regard?

Senator Mary M. White: That is a different matter on which Members have spoken already.

Deputy Brendan Smith: It was dealt with earlier.

An Cathaoirleach: Senator Fitzgerald, without interruption.

Senator Frances Fitzgerald: It does not appear to be consistent to criminalise in respect of women who have been trafficked but not in respect of other women.

Senator Rónán Mullen: While I understand the Minister of State's dilemma, as he is obliged to represent the Government's position, the arguments do not hold up. I was thinking of the phrase, "smoke and daggers" as I listened to some of the arguments, in that some of them throw smoke around the issue but do not offer any compelling reason not to criminalise generally the purchase of sex. The Minister of State let the cat out of the bag somewhat when he stated the law does not take a moral stance on consensual activity between adults in private. Members know this and it is fine when one is speaking of private consensual activity and is not speaking of

the purchase of sex. However, this implies something of the Government's thinking in this regard, which is that the issue of the purchase of sex generally is to be seen as a form of consensual transaction between adults.

This is the problem because there is a failure of the imagination in this regard. There is a failure to see that one cannot simply consider the prostitution contract as a kind of ordinary, respectable contract or private matter between the parties so consenting. At issue is the exploitation of vulnerable people and whether those vulnerable people are of a mind to state they choose to be in the prostitution industry is immaterial. When one considers the circumstances that lead people to choose to enter prostitution, it makes no sense to talk about free choice. There may be some rather zany or perverse people who, armed with many other choices in life, choose to go into prostitution but those people should not guide Members in respect of public policy in this area.

I acknowledge Senator O'Donovan's point when, while commenting on the penalties proposed in my amendment, he suggested that a potential life sentence might be somewhat extreme. I do not quite recall the words he used. While I accept his point, I am content to press this amendment, subject to the Minister of State's response, on the basis that the amendment allows discretion in this regard because it states, "to imprisonment for life or a lesser term". Consequently, this will not import an overly-draconian measure into the law.

I refer to the Minister's comments about the law already providing, at least to some extent, for the criminalisation of those who solicit and that this might include the client in certain circumstances. This is a red herring because it would not cover the generality of situations in which clients avail of the services of persons in prostitution. Within the past week, Members have learned of Chinese-run massage parlours in Dublin, in which a person is offered prostitution services in the context of attending or entering a massage parlour. Members are dealing with a seedy and murky world in which a person is not obliged to solicit in public to avail of the services of a person in prostitution.

One should consider some of the arguments that are made behind the scenes. While I will not name names in the House, policymakers have been known to tell people concerned about this subject that if one were to criminalise prostitution, certain rogue elements within the Garda Síochána, for example, would try to blackmail potential users. That such an argument would be even made informally reveals an entire mindset that one should deplore because one could make that point about any law. A person might seek to use any criminal law to blackmail a potential user. It also manages to imply that the potential user is doing nothing very harmful. One also hears the suggestion that those who avail of the services of people in prostitution are somehow sad figures

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who should not be criminalised. Again however, this is a matter of enforcement. Decisions will be made about when to seek to prosecute and when not to so do. One hears the unhelpful argument that prostitution is a form of vent in our society for the outlet of certain sexual urges that cannot be controlled. This however, is to turn the persons in prostitution into guinea pigs for, or victims of, some aspects of the sickness within our society.

Senator O'Toole made an excellent point when he pointed to the incongruity of the user being the only person who does not face criminal sanction. I also wish to revisit the Minister of State's comments about Sweden and the statistics in that regard. I found this argument bizarre. It was not apparent to me that the Minister of State had any great confidence in the statistics. Rather, his approach appears to be if in doubt, do nothing. However, our approach should be if in doubt, do something. I note that Sweden has not repented for its 1999 legislation to criminalise the purchasers of sex generally. Criminalising the purchase of sex generally does not solve the problem, even of trafficking, but displaces it. That is the important point. If Sweden's law has brought about a position where people are trafficked not to Sweden but to other countries, is that not evidence of its success? Is it not the responsibility of those other countries to amend their laws accordingly?

I remind the Minister of State that we are an island nation, therefore, displacement in this regard will not be easy. No doubt the British have a long established constitutional and parliamentary system and they will be able to take appropriate measures, if as a result of our criminalising the purchase of sex, there is an increase in the number of people being trafficked to Britain instead of to Ireland. The displacement argument makes no sense. I reiterate that what the Swedes report is that there has been a small increase in the number of persons trafficked because this is a problem that has been on the increase everywhere, but what is remarkable is that Sweden has had less of an increase in that regard than other countries. At a time when the incidence of trafficking has been on the increase in other countries, it is remarkable that the Swedes have managed to more or less control the problem. This is an example of a smoke and daggers argument. It is no argument to say Sweden has seen a slight increase in trafficking, if the rest of the world or its adjoining countries have seen a massive increase in the problem.

We need to revisit the point about what happens when we criminalise the purchasers of sex generally. How do we risk driving the problem further underground? All we will do is create a disincentive for the potential user, be that a person who wants to ring a number on a mobile telephone, walk into a brothel or surf the Internet. There is no counterstep the potential trafficker can make to undo the effect of criminalising the

user or the purchaser. Therefore, the argument put forward is a smoke and mirrors or a smoke and daggers one.

On that basis, I ask the Minister of State to have a change of heart in the interests of human rights, human dignity, solidarity between the sexes in our society and of recognising that those who purchase the services of other persons in prostitution engage in a grave attack on human dignity. It is time for a courageous stance to be taken. I ask the Minister of State, at the very least, to undertake to bring forward a suitable amendment on Report Stage. I will await his response on that before committing myself one way or the other on the amendment.

Senator Mary M. White: I draw to the attention of the Senator that we are dealing with the enactment of this Bill. I said earlier this evening, and on Second Stage, that those found guilty of abusing the services of trafficked people should be treated as having committed a crime.

I am disappointed in the way the Senator is pursuing his amendment. His contribution to the debate this evening has been laudable but now he has diluted that. The Criminal Law (Sexual Offences) Act 1993 is a different matter. We must first sort out this Bill and we can then revisit the 1993 Act. Let us first ensure this Bill is done and dusted and enacted.

Deputy Brendan Smith: In response to Senator Mullen's comments on my introducing the Criminal Law (Sexual Offences) Act 1993 as a red herring, I referred to that Act in response to the question raised by Senator O'Toole. It was not introduced as a red herring but merely referred to in answering the Senator's question.

I outlined the experience in this regard in Sweden. Senator Mullen doubts the existence of the social anthropologist to whom I referred.

Senator Rónán Mullen: I do not doubt that, I only asked her name.

Deputy Brendan Smith: Her name, and I hope I pronounce it correctly in my best Cavan accent, is Petra Östergren. She is quoted as having said that, "no one knows if there are fewer prostitutes". A former prostitute, whom I will not name, is quoted as having said, "underground profiteers, pimps and traffickers flourish and we would rather avoid them". That relates to the Swedish experience.

To my knowledge — I have not had time to check this and I am open to correction on it — no other country in Europe has followed the Swedish example.

Senator Rónán Mullen: It was proposed in Finland?

Deputy Brendan Smith: I do not know if it was implemented.

Senator Rónán Mullen: No, it was not, but it was proposed.

Deputy Brendan Smith: One of the British Home Office Ministers visited Sweden some time ago to study the impact of sex laws it had introduced. That trip was part of a six month review of British policy on prostitution. We all share a desire to deal with this evil issue. However, it is not an issue with which we will deal in this Bill, rather it is one on which widespread consultation is required.

Senator Mary M. White: Hear, hear.

Deputy Brendan Smith: We need to get such legislation right. I referred to the British example, as Senator Mullen referred to Britain as being our near neighbour. Britain is involved in a consultation process. I am speaking in a personal capacity in stating that the issue of prostitution in the context of widening and improving our laws has not been discussed in government since I took office. We want to implement this Bill as quickly as possible. The issue of prostitution referred to is wider than the scope of this Bill. It is an issue on which widespread consultation and deliberation would be required. We need to get such legislation right to ensure we do not implement legislation that would make the position worse. We want to avoid that. Whenever legislation is introduced, we want to ensure it deals with the issues we want to address. Even if we wanted to widen this measure, as outlined in Senator Mullen's amendment, such a change would have to be referred back to Government. Of necessity, such a measure would require widespread consultation, not an ever-ending consultative process but one that would ensure we got the desired result.

I responded earlier that I would not be accepting the amendment.

Senator Joe O'Toole: I still have not heard the answer to the question I raised. What percentage of trafficked people would the Minister of State guesstimate are not trafficked for the purposes of prostitution? That is a crucial issue. That is the relevant aspect of the issue and that figure would answer Senator Mary White's point as to why the issue of prostitution is central to this issue. The words I used were "inextricably linked". All the cases about which we read are of people trafficked for the purposes of prostitution.

Section 7 of the 1993 Act, to which the Minister of State referred, states, "A person who in a street or public place solicits or importunes another person ...". I am not clear as to what the words "solicits or importunes" mean in that context and I accept that, but I could establish that quickly in an hour. However, I am certain that a public place, even in the way it is defined in that Act as a place to which the public have access, does not cover the places in which prostitution takes place off the street.

Two issues have arisen. As the Minister of State said, he referred to the 1993 Act in responding to the issue I raised. Perhaps that is the way to deal with it. I raise the question of what percentage of people trafficked are not trafficked for the purposes of prostitution. Is it not simple to change beyond reasonable doubt what is intended by section 7 of the Criminal Law (Sexual Offences) Act 1993? If, as the Minister of State said, it was intended to mean the user of prostitutes, then we should make that clear. There would then be nothing new to worry Senator White or anybody else, as it would be already included in legislation. I ask the Minister of State to answer me this one conundrum. Senator Mullen's amendment proposes to make the user of prostitutes guilty of an offence. There is no argument on this point. In the Minister of State's response to this proposal he made two points. He said this is covered under section 7 of the 1993 Act and he also stated that to do what Senator Mullen proposes would require widespread consultation. I ask him to riddle me those two things. Why is widespread consultation required to criminalise something which the Minister of State informs us is already a criminal offence? This does not make sense. We either deal with this here and now or introduce something similar afterwards, but we cannot have it both ways. It is either an offence or it is not. If it is an offence then widespread consultation is hardly necessary on something which, as Senator Lisa McDonald said, if asked, 90% of the women of Ireland would be in agreement with us.

Senator Rónán Mullen: I welcome Senator O'Toole's argument. I have taken the view that what the Minister of State is saying is that, at most, in certain circumstances it might be a crime to be a client, so to speak. My position has been that even if that were the case — it does not appear to be clear it is — it would not cover the generality of situations.

I thank the Minister of State for naming the anthropologist. He did as well at giving the name in his Cavan accent as I would in my Galway accent. However, I did not hear the Minister of State quote the Swedish Government. I did not hear any analysis on the reason the Swedish Government does not appear to regret its position——

Senator Mary M. White: That is for another day.

Senator Rónán Mullen: No, I am talking about the Minister of State's commentary on the Swedish Government. If one quotes an individual, a social anthropologist, it would seem appropriate to have one's homework done and to have consulted with the government of the country which appears to have a very successful piece of legislation generally criminalising the purchasers of sex.

Senator Mary M. White: The Senator is showing his true colours now.

Senator Rónán Mullen: My true colours?

Senator Paudie Coffey: Allow Senator Mullen to speak

An Cathaoirleach: Senator Mullen, without interruption, please.

Senator Rónán Mullen: I do not know the meaning of the reference to true colours but I will address what Senator Mary White said. She was eloquent on Second Stage when she gave the job specification of a person in prostitution—

Senator Mary M. White: I said she was being trafficked.

An Cathaoirleach: We are dealing with an amendment to the Bill.

Senator Rónán Mullen: My point is that the Senator was eloquent on Second Stage when she gave the job specification of a person in prostitution. I would have thought that would mean she would understand why now is the time. There are plenty of instances where in legislation dealing with one issue, provisions can be included which touch on a connected issue. As Senator O'Toole said, there is no doubt that the question of criminalising the users of persons in prostitution is connected to the issue of trafficking.

I will press the amendment as I do not think this is an issue that requires wider consultation. It would be as inappropriate to suggest this requires wider consultation as it would be to suggest the issue of the radical equality between people of different racial origin requires wider consultation. The mere notion that there are certain things about which one needs to consult does a disservice to the persons who are the victims of this vile area of human experience. I would be doing a disservice to the people doing great work, such as those in Ruhama, and I make no apologies for saying they are the people with the most sincere interest in the welfare of persons in prostitution. They accompany them every day. I sincerely doubt they would seek a measure which would endanger women in prostitution by driving the issue further underground, as has been suggested. To honour their great contribution to human dignity, I can do no less than press this amendment.

Senator Denis O'Donovan: I concur with Senator Mullen's praise for Ruhama's great work and this side of the House has no issue with it.

This Bill deals with human trafficking. I obtained information from research undertaken by Ruhama that the number of people, primarily but not exclusively women, who have been trafficked into Ireland, is less than 90. I referred to these figures on Second Stage last week. In my view the majority of those people are being sexually exploited. We must endeavour to see the

wood from the trees. We do not have as serious a problem as other countries but it is becoming a bigger problem and it should be nipped in the bud. I am inclined to agree that the wider issue of prostitution cannot be dealt with in this Bill and may require another forum. Even one person trafficked is one too many.

Senator O'Toole raised a valid point when he referred to the 1993 Act, which refers to prostitution on a street corner or in a park where a girl may be solicited. However, as Senator O'Toole said, that Act does not provide for prostitution indoors in a brothel or in an apartment rented furtively by pimps who move frequently from place to place, folding their tents and moving on when caught. I ask for clarification on whether there is sufficient legislation to cover the use of a hotel room, a brothel that moves from one part of the city or country to another part. The 1993 Act does not sufficiently legislate for such situations. I ask the Minister of State to reflect on some of the interesting points made on Committee Stage

Senator Mary M. White: I repeat that we are talking about human trafficking. I am sitting here because of having met the different groups over the past three or four years. I refer to the religious orders in particular who have been involved in trying to protect women, men and children from human trafficking. The former Senator Mary O'Rourke told the Ruhama group that she would ensure this law was enacted. I want to put this legislation in place and to make it a criminal offence for anybody to be a client of a trafficked person.

Earlier I commended Senator Mullen. However, this latter amendment is impulsive under the circumstances. We need a wider debate on the matter. We have dealt with the 1993 Act. We know about public soliciting by people on the street.

Senator Rónán Mullen: The organisations Senator Mary White supports would support this amendment.

An Cathaoirleach: We have given this matter considerable debate. Allow Senator Mary White to speak without interruption.

Senator Mary M. White: That is not the point. We need to have the entire debate. If we adopted Senator Mullen's amendment without debate and considering the repercussions, what would be the consequences? It is important to discuss it, consider international models and understand what has happened before we impulsively insert this provision. It is sad that the Senator is doing this under this Bill.

Senator Rónán Mullen: We want to discuss the matter.

Senator Paudie Coffey: This is an excellent debate.

An Cathaoirleach: I call the Minister of State to reply.

Senator Paudie Coffey: Senator Mary White should give Senator Mullen some credit. This is ridiculous.

Senator Mary M. White: Senators Coffey and Donohoe were not here.

Senator Paudie Coffey: We were listening and we are entitled to comment.

Senator Mary M. White: Excuse me, do not shout at me so rudely.

An Cathaoirleach: Allow Senator Mary White to speak without interruption.

Senator Paudie Coffey: Give a bit of respect.

An Cathaoirleach: I ask those making any contribution to speak through the Chair.

Senator Mary M. White: I have spoken in a very respectful manner to Senator Mullen and I am sure the Senators who were not here when I was speaking did not hear how I complimented him on what he said earlier. I am entitled to say I do not agree with him introducing this amendment at this stage. We should go back to the Criminal Law (Sexual Offences) Act 1993 and open up that whole debate. Let us have a national

debate and a debate in both Houses of the Oireachtas, which is the right way to deal with this legislation.

Deputy Brendan Smith: Senator O'Toole asked about public places, which is defined in the introduction to the Criminal Law (Sexual Offences) Act 1993.

Senator Mullen thought I did not refer to the Swedish Government. I did of course. I referred to the Swedish Government before I referred to the commentary of the anthropologist. The Swedish Government estimates that the number of prostitutes in Sweden has dropped from 2,500 to 1,500 since 1999. I then referred to the comments of the social anthropologist who has studied Swedish prostitutes over a ten-year period. Comments were attributed to a former prostitute and the person who is Sweden's national *rapporteur* on trafficking.

I emphasised that the 1993 Act makes it an offence to solicit in public for the purpose of sex. That refers to the client, pimp or prostitute. This issue has necessitated a considerable debate on the area of prostitution. To make a major amendment to the Criminal Law (Sexual Offences) Act 1993 through the Criminal Law (Human Trafficking) Bill would involve a considerable consultation process and the Bill would need to go back to Government. We are anxious, as I am sure are both Houses, to have the Criminal Law (Human Trafficking) Bill implemented as soon as possible. Therefore I cannot accept the amendment.

Amendment put.

The Seanad divided: Tá, 10; Níl, 29.

Tá

Buttimer, Jerry.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.

Fitzgerald, Frances.
Healy Eames, Fidelma.
McFadden, Nicky.
Mullen, Rónán.
O'Toole, Joe.

Níl

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callely, Ivor.
Cannon, Ciaran.
Carty, John.
Corrigan, Maria.
Daly, Mark.
de Búrca, Déirdre.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Leyden, Terry.
MacSharry, Marc.

McDonald, Lisa.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Prendergast, Phil.
Ryan, Brendan.
Walsh, Jim.
White, Alex.
White, Mary M.
Wilson, Diarmuid.

Tellers: Tá, Senators Rónán Mullen and Joe O'Toole; Níl, Senators Déirdre de Burca and Diarmuid Wilson.

Amendment declared lost.

Government amendment No. 15:

In page 12, after line 13, to insert the following new section:

15.—(1) This Act may be cited as the Criminal Law (Human Trafficking) Act 2008.

(2) This Act shall come into operation one month after its passing.

Deputy Brendan Smith: This is simply a drafting amendment. In the present draft the Short Title and commencement section is at the beginning of the Bill. Apparently, it is more usual to put such a section at the end, as the last section, and that is achieved in this amendment.

Amendment agreed to.

Section 14, as amended, agreed to.

Title agreed to.

Bill reported with amendments.

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

Senator Denis O'Donovan: On Tuesday, 11 March 2008.

Report Stage ordered for Tuesday, 11 March 2008.

An Cathaoirleach: When is it proposed to sit again?

Senator Denis O'Donovan: At 10.30 a.m. tomorrow morning.

Adjournment Matters.

Schools Building Projects.

Senator Paschal Donohoe: I thank the Minister of State at the Department of Education and Science, Deputy Haughey, for taking this Adjournment matter. Although Gaelscoil Bharra has provided a fantastic education to its pupils for many years, it is still operating out of temporary facilities. Students have been accommodated in prefabricated cabins on the grounds of a GAA club since the school's establishment. It is a difficult environment in which to be taught in any type of weather and these conditions are unacceptable.

The incident that brought home to me the urgent need to act on behalf of the school, and which I have mentioned before in the House, was when the principal brought me into the area in

which tuition is provided for pupils with special needs. This is the same small room used to house cleaning materials and maintenance equipment. Significant support is required from the Government to provide this school with suitable facilities. I understand that process is in motion but that it will take a long time for it to be implemented. In the interim, the grounds on which the school is located are in need of urgent work to prevent flooding and ensure a safe environment for pupils and teachers.

We are often reminded of the importance of education in terms of economic competitiveness and social development. Those views are all well and good until one gets down to the particular. In this case, a school that is doing a great job in awful circumstances seeks support from the Minister for Education and Science for work that will ensure it is as safe as possible for those who work and learn there. I will be grateful for any action the Minister of State can take on this.

Minister of State at the Department of Education and Science (Deputy Seán Haughey): I thank the Senator for raising this matter as it provides me with the opportunity to outline the Government's strategy for capital investment in education projects and the current position in regard to the future plans for Gaelscoil Bharra in Cabra. Modernising facilities in our 3,300 primary and 731 post-primary schools is not an easy task given the legacy of decades of under-investment in this area as well as the need to respond to emerging needs in areas of rapid population growth. Nonetheless, since taking office, the Government has shown a consistent determination to improve the condition of school buildings and to ensure the appropriate facilities are in place to enable the implementation of a broad and balanced curriculum.

The Government has dramatically increased investment in the schools building programme to almost €600 million this year. During the lifetime of the national development plan, almost €4.5 billion will be invested in schools. This is an unprecedented level of capital investment which reflects the commitment of the Government to continue its programme of sustained investment in primary and post-primary schools. It will underpin a particular emphasis on the delivery of additional school places in rapidly developing areas while continuing to deliver on the Government's commitment to delivering improvements in the quality of existing primary and post-primary accommodation throughout the State. It will also enable the purchase of sites to facilitate the smooth delivery of the schools building programme, with the focus again on site requirements in rapidly developing areas.

Turning to the specific matter in hand, the Office of Public Works, OPW, which acts on behalf of the Department of Education and Science in regard to site acquisitions generally was requested to source a greenfield site for this

school. On foot of advertising, no proposals were received for a greenfield site in the Cabra area. Further to this, the OPW was requested by the Department to look into building a permanent school on the existing site. Several issues have arisen in regard to this proposal for which, I understand, clarification is being sought. The school authorities will be notified immediately when progress is made.

I take on board the Senator's points in regard to the emergency nature of some of these works and I will bring that to the attention of the schools building section.

Senator Paschal Donohoe: I thank the Minister of State for a comprehensive response that outlines the long-term prospects for the school. I emphasise the mid-term need in terms of the quality of the prefabricated buildings. Anybody who sees them will acknowledge that something must be done to provide alternative accommodation. I would be grateful if the Minister of State would raise this with the relevant unit in his Department.

State Property.

Senator Paul Coughlan: I thank the Minister of State at the Department of the Environment, Heritage and Local Government, Deputy Batt O'Keeffe, for taking this matter on the Adjournment. He will understand the issue because he spent many years in Killarney. That is why he has advanced to where he is.

Killarney House is a State owned property of major historical interest and national importance. The historic contents of Killarney House, including antique furniture dating back to the 18th and 19th centuries as well as valuable art work, ceramics, silverware and so on, were purchased by the State and are currently in storage at a cost of some €70,000 per year. In the current year, the capital budget allocated to the national parks and wildlife service, which has commitments in respect of other national parks, reserves and so on throughout the State, does not include any funding for future works at Killarney House.

Under the current national development plan, however, Fáilte Ireland has been allocated some €137 million to fund cultural projects. A proposal for a preservation, conservation and restoration of Killarney House was submitted by Killarney interests and was deemed by Fáilte Ireland to be worthy of merit. However, that proposal has not progressed beyond the expression of interest stage because the national parks and wildlife service communicated to Fáilte Ireland its view that it alone could prepare and submit a proposal in respect of Killarney House.

The citizenry of Killarney and County Kerry along with other interested stakeholders are concerned that potential funding for Killarney House via Fáilte Ireland's national development plan allocation will be lost simply because of the

apparent proprietary control of the property being exercised by national parks and wildlife service officials. I cannot understand this difficulty; we are all State servants. If the funding is available, it should be forthcoming. It is a fright to see this property lie idle and continue to deteriorate and crumble as it has done for some years.

I accept the good intentions of the Minister for the Environment, Heritage and Local Government. I wished him well when he came to Killarney and spoke about these difficulties. There is a bright future for Killarney House and I hope the Minister of State, Deputy Batt O'Keeffe, will tell me presently that there has been some progress. On the Order of Business this morning, I welcomed Deputy Healy-Rae's announcement last Friday on Radio Kerry in regard to funding. I look forward to learning the nature and extent of that funding.

Killarney House was the property of the earls of Kenmare who lived there from the time of the burning of their mansion at Knockreer in 1913 until the death of Lord Castlerosse in the 1950s. For 40 years thereafter, John McShain, who built both the Pentagon and the entire interior of the White House, lived there with his wife. It has been in the State's hands for ten or 11 years. The plans for Killarney House are wonderful, incorporating a chapel in which will be displayed something of our early Christian heritage. It could become a major interpretative centre. The property is in the town of Killarney as well as being in a national park. I look forward to the Minister of State's positive response.

Minister of State at the Department of the Environment, Heritage and Local Government (Deputy Batt O'Keeffe): I thank Senator Coughlan for giving me an opportunity to discuss this important matter on behalf of the Minister for the Environment, Heritage and Local Government, Deputy Gormley.

Killarney House and the greater part of the accompanying estate was sold to the State in 1978 by the then owner, Mr. John McShain, for a sum below market value on the assurance that the house and the estate would be incorporated into Killarney National Park. As part of the sale agreement, the McShains had the use of the house and the surrounding 52 acres for their lifetimes. Mr. McShain died in 1989 and Mrs. McShain lived in the house until her death in 1998, when the use of the house reverted to the State — some 20 years after the sale. The house is now the responsibility of the National Parks and Wildlife Service of the Department of the Environment, Heritage and Local Government, which manages Killarney National Park. In the 2005-09 management plan for the park, the stated intention for Killarney House is to retain and preserve its integrity and character both internally and externally and to provide for visitor access to certain parts as appropriate, in particular the three

[Deputy Batt O'Keeffe.]

main furnished reception rooms. Detailed specialist surveys have been commissioned by the Office of Public Works. The surveys made it clear that major infrastructural works, such as adequate plumbing, heating and electrical systems, are needed before the house can be opened to the public. While Killarney House is in need of repair before it can be opened as a fully functioning building to the general public, I should make it clear that it is in a stable condition. It has been used for meetings of the national park liaison committee and for meetings between the Department and the trustees of Muckross House.

I assure the House that the Minister is committed to the development of Killarney House and the wider Killarney National Park, of which the house is an integral part. In the past five years, more than €5.5 million has been invested in the park, some €2.5 million of which was spent last year. A further €2 million will be invested this year. In addition, more than €1.4 million was spent in the past few years by the OPW on the provision of universal access at Muckross House which, for the first time, gives those with a mobility impairment full and equal access to the house. Killarney House has also benefited from this investment. Following consultations with the OPW, essential works to avoid any deterioration to the fabric of the building have been funded by my Department. These works include the removal of plaster on the walls to prevent dampness, the provision of dehumidifiers in all the main rooms on the ground floor and other important trench and draining works. The golden gates and railings of the house have been restored, a security system has been installed and heating pipes and radiators have been upgraded. In 2007, the gate lodge at Killarney House was renovated for use as an assembly and information point for walking tours, at a cost of more than €250,000. The lawns and flowerbeds at the house are regularly maintained. Staff are employed to cut the lawns, trim hedges, plant and maintain flowerbeds, collect litter and carry out small maintenance jobs. I emphasise that contrary to recent media reports, there are no squatters at Killarney House.

While Killarney House has been the subject of some investment in recent years, there is a bigger job to do. I assure Senators that the Minister is committed to ensuring the house fulfils its potential. To that end, he has asked the Department to work closely with all the appropriate State agencies to explore funding options. It will liaise with the Office of Public Works, in particular, to decide on a phased work programme for the house. We will keep Senator Coghlan updated on all of these matters.

Senator Paul Coghlan: I am grateful to the Minister of State for his reply. Perhaps I read too much into last Friday's announcement. The Minister of State's response did not mention when the house will be opened, when all its rooms will be open to the public, when the various displays will be fully restored and when the interpretative centre for the national park will be up and running. No timescale has been outlined. Perhaps the Minister of State will entertain a deputation from the various interests at an early stage. I am sure the Minister of State agrees that the importance of this project needs to be stressed in any such consultation.

Deputy Batt O'Keeffe: The Senator knows of my abiding interest in Killarney and the national park.

Senator Paul Coghlan: Of course.

Deputy Batt O'Keeffe: The difficulty for me is that this is not my area of responsibility. Any deputation that might seek a meeting on this matter should contact the Minister, Deputy Gormley. I will make him aware of Senator Coghlan's thoughts on this issue. The Minister visited Killarney recently. He has given a commitment in this regard. I thought we made great progress tonight when it was clearly indicated that the Minister is in discussions with relevant State agencies about ensuring that Killarney House will be opened at the earliest possible date. He is putting in place funding infrastructure to ensure that happens.

Senator Paul Coghlan: I accept the Minister of State's remarks.

The Seanad adjourned at 7.35 p.m. until 10.30 a.m. on Wednesday, 27 February 2008.