



# SEANAD ÉIREANN

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*Dé Céadaoin, 9 Aibreán 2008.*  
*Wednesday, 9 April 2008.*

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Paidir.*  
*Prayer.*

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## **Business of Seanad.**

**An Cathaoirleach:** I have notice from Senator John Paul Phelan that, on the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for Education and Science to give an update on the provision of funding for a new building for Coláiste Pobail Osraí, Cill Chainnigh, and when it is anticipated that engineers will visit the site proposed by the board of management.

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

The need for the Minister for Education and Science to implement the programme for Government in regard to class sizes in both primary and secondary schools, reducing pupil-teacher ratio to the appropriate level of 24 pupils per teacher.

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

The need for the Minister for Foreign Affairs to clarify the efforts that are being made to overcome bigotry and sectarianism in an all-Ireland context given the recent television documentaries which outline the intensification of these activities post the Good Friday Agreement.

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, Civil Law (Miscellaneous Provisions) Bill 2006 [*Dáil*] — Second Stage, to be taken at the conclusion of the Order of Business and to adjourn not later than 2 p.m., if not previously concluded, with the contributions of spokespersons not to exceed 15 minutes and those of all Senators not to exceed ten minutes and Senators may share time; No. 2, Voluntary Health Insurance (Amendment) Bill 2007 [*Seanad Bill amended by the Dáil*] — Report Stage; and No. 17, Private Members' motion No. 35 re education for persons with special educational needs, to be taken not earlier than 5 p.m. and to conclude at 7 p.m. Business will be interrupted between 2 p.m. and 3.30 p.m.

**Senator Frances Fitzgerald:** On the day Fianna Fáil met to elect its new leader, I offer my congratulations to Deputy Brian Cowen. Many challenging tasks lie ahead and the country is

[Senator Frances Fitzgerald.]

in need of serious, consistent and focused leadership to deal with the serious problems with which we are confronted. It is, however, very disquieting that on the day of his election, the HSE is meeting to consider cutbacks to the health service. This week 30 beds were closed in Tallaght hospital and operations will be cancelled in the coming week. It is disquieting that is the scenario we face in our health service.

Many Senators will be aware of the serious limitations on stroke services throughout the country. A recent audit of hospitals dealing with stroke victims highlighted that only one hospital had a specialist unit to deal with stroke victims, despite a recommendation to the Government eight years ago in this regard. This raises questions again about the role of the HSE and the management of our health services. We have called for a debate on the role of the executive and the changes necessary for it to provide effective leadership. One cannot say there has been effective leadership in 11 years of Fianna Fáil Government in the health services if the HSE is meeting today to discuss cutbacks, close beds in a Dublin hospital and cancel surgery and it is absolutely failing to need to meet the needs of stroke victims throughout the State. Thousands of families are affected daily because they are not in receipt of adequate services. A total of 400 families lose a member every year because of the lack of a dedicated stroke unit in acute hospitals. The Opposition has called for a debate and I condemn the Government for its failure to deal effectively with the health crisis.

I propose an amendment to the Order of Business because it is imperative that we have a discussion on the Fitzgerald, Doherty and O'Malley reports and on the serious inadequacies of the HSE. Senators on all sides have called for such a debate and it must be taken in the coming days.

**Senator Joe O'Toole:** I wish the new leader of Fianna Fáil well and I congratulate party members on making their decision so promptly. I hope it all works out well for them. I heard one cautionary tale about Deputy Cowen earlier, which would make me very afraid if I was facing him on the other side of the House. When he was a minor playing hurling for Clara in a match against Lusmagh, his team was behind and he went up the field and lost two teeth in achieving victory.

**An Cathaoirleach:** I know who refereed it.

**Senator Fidelma Healy Eames:** I was right yesterday.

**Senator Joe O'Toole:** I recommend to people in Fianna Fáil and in the Opposition who never heard of Lusmagh that it is worth visiting and reading about the Lusmagh revolution and agrarian revolt and reform in the late 1950s and early 1960s. A lot would be understood about the nature of people from that part of world, including our Cathaoirleach.

Inné fuarthas an tuarascáil bhliantiúil ón Coimisinéir Teanga. Ba bhreá an rud é dá mbeadh díospóireacht sa Teach ar an méid atá ráite aige. Tá go leor molta agus ráite aige agus tá cur síos déanta aige ar na gearáin ar fad a fuair sé le linn na bliana. Bhí níos mó ná 600 gearán faighte aige. Tá sé thar a bheith tábhachtach go mbeadh muidne sásta an tuarascáil a phlé. Deir an Coimisinéir nach bhfuil sé i bhfábhar éigeantas.

In other words, he is not in favour of returning to the days of compulsion in Irish in terms of appointing people agus rudaí mar sin. On the other side, ba mhaith an rud é go mbeadh traenáil ann do stát sheirbhísigh agus daoine eile. Déarfainn féin gur ceart traenáil a bheith ann do Bhaill na Dála agus an tSeanaid agus gur cóir go mbeadh seans acu freastal ar na Gaeltachtaí chun Gaeilge a fhoghlaim agus am a chaitheamh le muintir na Gaeltachtaí agus chun go mbeadh teangmháil acu le cultúr na Gaeltachta.

I would like a full debate on this. For years I have stated that Members of the Dáil and Seanad should have the opportunity to spend time in the Gaeltachtaí. In the 1920s when this country first introduced the Irish language to schools, the most effective thing done was to bring teachers to the Gaeltachtaí for three months at a time. It infused them with a love of Irish. Civil servants should also have the opportunity to spend time in the Gaeltachtaí. This was done 80 years ago. We could do it again and it would be sensible.

I will give a small example. Sampla amháin, i rith na bliana seo caite agus an bhliain roimhe sin, bhí a lán le rá agam mar gheall ar Dingle-Daingean Uí Chúis agus ainm na háite sin. An fhad agus a bhí an méid sin á phlé againn, bhí an-argóint ar siúl mar gheall ar dearcadh i dtreo na teangan ag, mar shampla, muintir Daingin. It is interesting to note that in a recent referendum on the teaching of Irish in their school, 90% of the people of Dingle, many of whom argued with me that they were anti-Irish, want education through Irish to be available. I defended these people during recent years. We have land here to be furrowed and we need to discuss it in a practical and real way.

I have been very slow to criticise Professor Drumm but his response to the Rebecca O'Malley report left me extremely sad. It was extremely flawed and he needs to do a great deal more in this area. The thought of people dying because of a lack of stroke support facilities is unacceptable. This is a real issue. It is not like building hospitals, it is a straight issue of treatment.

**Senator Alex White:** On behalf of the Labour Party in this House, I extend our congratulations to Deputy Brian Cowen on his elevation today to the leadership of the Fianna Fáil party. Without wishing to draw the Cathaoirleach into the fray, as he almost was yesterday, he is entitled to a certain amount of vicarious satisfaction from what happened this morning. We wish the Minister well in his new position. He will need more than the sporting prowess suggested by my colleagues with regard to the issues which face the country.

We have not yet begun to get our heads around what is happening in terms of the economic situation. Last week, the greatest increase in unemployment since records began was reported. We have a veritable collapse in the domestic property market in this city according to anecdotal evidence and what has been written. This morning, I saw a "sale agreed" sign on the southside of Dublin. It was a bit like the first cuckoo of spring but I am not sure whether it will be followed by many more cuckoos. The construction industry will be seriously impacted by this.

According to comments made today by one commentator, David McWilliams, who is hardly a socialist firebrand, we have invested so much in property in recent years that we have exhausted the capital base in the country. We have a serious situation facing us. It is not an exaggeration to describe it as a crisis.

Again and again in this House I have heard the Leader and others reeling off the achievements of the Government. The Government has had achievements but if it is correct to state, as I anticipate the Leader and others might, that the economic downturn is largely the result of international forces, it is incorrect to state the Government was responsible for the boom. As I pointed out before, one cannot have it both ways. One cannot state the Government created the boom but has nothing to do with the issues we now face.

In a compelling piece, David McWilliams also points out that at the heart of the job over which the new Taoiseach must preside is the stunning accumulation of wealth at the top of society. He recalls last year's wealth of the nation report from Bank of Ireland. The top 1% in the country own 20% of the wealth. The top 5% own 40% of the wealth. Let us pause to consider the fact that 40% of the wealth of the country is owned by the top 5% of the popu-

[Senator Alex White.]

lation. This is one of the legacies of the boom and an issue with which we must wrestle as we consider future economic policy.

It is not enough to state we improved social welfare in line with or above inflation. We must consider the opportunities we will present, spread, foster and offer to the young people, whether in Limerick or elsewhere, caught up in social problems and crime. Will the weaker in society suffer with a downturn in the economy? This must not be the case. We must examine this splurge of wealth at the top, whether it is symbolised in the Galway tent or elsewhere. We need to turn this around and ensure economic policies develop the country——

**An Cathaoirleach:** Is the Senator calling for a debate?

**Senator Alex White:** Clearly, I want a debate. We should have a serious debate on the economic future of the country with the new Taoiseach or the new Minister for Finance. Let us have all issues open, including this extraordinary inequality, which is one of the unfortunate legacies of the boom.

**An Cathaoirleach:** While we were not on a time limit yesterday, we are today and many Senators wish to contribute. I ask Senators to be brief with their points to the Leader and it is hoped to get through them all.

**Senator Cecilia Keaveney:** In the week of the tenth anniversary of the Good Friday Agreement, in recognising the DUP did not support it at the time but is now in Government, will the Leader examine the number of political celebrations and politically led commemorations which are taking place and rightly so? Will the Leader speak to the Taoiseach and to the Minister for Foreign Affairs about having a social event during the summer for the people of the island of Ireland to celebrate in a community sense the point we have achieved? Many people will state the political process has moved on and it is right to mark this. However, another side to this is that communities supported this. In the same way as we all voted on the same day for the Good Friday Agreement, we should have a commemoration at a community and social level for the people of Ireland to celebrate where we are and where we want to go.

I wish to add my voice to the issue of stroke care. Yesterday, I spoke about music therapy in the context of acquired brain injury. A part in regaining speech after a stroke is potentially played by music therapy. When we examine the development of stroke units, the holistic and multi-disciplinary approach of including all of the professions is extremely important.

I would also like to add my tuppence-worth on another matter and state there is an awfully warm glow around the two Houses today. I wish the Tánaiste and Minister for Finance well when he assumes the leadership of the country. We have had good experience with people leading in this House and I am sure it will be the same at political level in the other House.

**Senator Joe O'Reilly:** Among Senator Keaveney's many talents, it would seem she is also a latent poet. I join in the congratulations to the Tánaiste. We are all delighted that we will start to put socioeconomic issues and the real issues for the people at the top of the agenda once more.

There is no more pressing an issue impinging on this country than the World Trade Organisations talks which are going a bit unnoticed. Commissioner Mandelson has proposed to reduce tariffs on beef coming in from Brazil and elsewhere in South America by €3.70 per kilogramme. This will have a devastating effect on Ireland. I would like the Leader to arrange a special debate on this issue and to say to the Government that there needs to be a national diplomatic offensive. This threatens to remove 1 million suckler cows. There are also threatened losses of

€2 billion in export earnings and €4 billion to the Exchequer. Some 50,000 agriculture related jobs will go and 100,000 farmers will go out of beef production. These figures have been verified by the Department of Agriculture, Fisheries and Food and are not from a sectoral interest alone.

The implications are enormous, apart from European food security, safety, traceability and human health, which are serious issues. This threatens on-farm and off-farm jobs throughout this country and to eliminate in excess of 100,000 from the workforce.

This proposal will go through if we do not alert ourselves to it immediately. This House could perform a major role in this regard. This is a serious issue and I am grateful for the Cathaoirleach's indulgence. He also recognises the gravity of this issue which is the most serious one pending. I appeal to the Leader to treat it as such and to do something about it. It is our greatest responsibility at present and all issues should be put on ice until we deal with it.

**Senator Déirdre de Búrca:** I congratulate Deputy Brian Cowen on his election as leader designate of the Fianna Fáil Party and wish him luck in his new role. By taking up this new role, it will mean he will appoint a new Minister for Finance. When the new Minister for Finance is appointed, will the Leader invite that person to the House?

The Department of my colleague, the Minister for the Environment, Heritage and Local Government, Deputy John Gormley, recently commissioned a report on climate change and trying to establish what public attitudes were towards various measures which have been taken to try to tackle climate change. It would appear there are very high levels of public support for fiscal measures which would begin to tackle climate change seriously and help individuals to move towards behaving more sustainably. Such measures include the changes to motor taxation and vehicle registration. The public indicated it would support strongly other measures in the interest of addressing climate change. Will the Leader invite the new Minister for Finance to the House to outline the fiscal reforms which will be undertaken to truly green the agenda and to address climate change seriously?

Will the Leader raise with the Minister for Health and Children the audit of stroke care services commissioned by the Irish Heart Foundation, the results of which have been published and reported on in this morning's newspapers? The findings are very worrying. There are between 350 and 500 deaths each year due to strokes. Some 10,000 people present in hospital with the primary diagnosis of stroke. However, there is a lack of a comprehensive system to manage strokes. There are huge deficits in the stroke care provided to people.

In the hours immediately after a stroke has occurred, it would appear brain scans, CAT scans and clot busting therapy, which are an essential part of stroke care, are not available in our hospitals. As another speaker mentioned, there is only one stroke unit in the Mater Hospital. There are only 12 protected beds for stroke patients.

Unfortunately, people are suffering from strokes at a younger age and it would appear the community and rehabilitation services are not available, especially for people under 65 years who suffer from strokes. Today's findings are salient to us all and I ask the Leader to invite the Minister for Health and Children to come to the House to address this issue and outline what her Department intends to do in response to the findings.

**Senator Feargal Quinn:** Will the Leader arrange a debate on the number of universities we should have in this country? It obviously is our objective to take a leadership role in the knowledge society in the future. Until now the only voices we have heard in this regard have come from particular institutes of technology, which I am sure are very worthy. Waterford, Dublin and Cork institutes of technology are looking for recognition. I had not seen the other side of the argument expressed until yesterday. In *The Irish Times* yesterday, Dr. Danny

[Senator Feargal Quinn.]

O'Hare, the former president of DCU, said he thought we had too many universities. I mention this issue because it is worthy of a debate in this House.

In the past I have called for a reduction in the amount of paper our offices receive. Senator O'Toole spoke earlier about An Coimisinéir Teanga and I was very impressed when I received a CD of his annual report in the post today. I know others do this as well but it is a reminder to us that we can avoid paper. I am still frustrated by the large amount of paper we receive on our desks every day. We can do something about it.

I refer to a topic which I believe Senator O'Toole raised yesterday. I am very fearful of calls for boycotts of any sort. Boycotting the Olympic Games because of what is happening in Tibet is the wrong way to go. If we are to achieve success in bringing China along in terms of it taking steps with more caution, the way to do so is not by boycotting the games but by changing their hearts and minds no matter how serious the issues. Only a few weeks ago I raised this issue because of a debate about boycotting China because of Darfur. It is now Tibet but it will be somewhere else next month. No matter how serious the situation in Tibet and Darfur, the correct way to go is to change the hearts and minds of the Chinese Government rather than boycott the games.

**Senator Ivor Callely:** I am happy to hear the congratulations and good wishes to my colleague, Deputy Brian Cowen, on his election as leader of Fianna Fáil. At this morning's meeting, Deputy Cowen spoke with great passion about the motivation of the founding fathers of Fianna Fáil to make Ireland a prosperous country and to respect and provide security for the elderly and opportunity for the young. His ability, intellect and vision will raise all horizons. It is not only a great day for Fianna Fáil but it will prove to be a great day for this country.

I support Senator Quinn's call to deal with the issue rather boycott the Olympic Games which should be enjoyed by those participating. I would like to pursue that line of thought to see what progress we can make in that regard.

I would like either Senator Alex White or myself to be corrected on the following issue. We know there is a world economic crisis and that the financial markets are experiencing the worst difficulties since the Second World War. We have heard about the building and construction difficulties. There were building and construction difficulties but I have spoken to solicitors, auctioneers and builders and have been led to believe that since the stamp duty alterations last December, there has been a move in house sales. It is not only in regard to sale agreed signs, which Senator Alex White mentioned. I believe the lower and medium end of the market is on the move again but that it remains stagnant at the higher end. It is important we acknowledge there is some movement in respect of house sales. Those involved in house sales, namely, auctioneers, builders and solicitors have acknowledged there is a move in this area.

The Minister for Health and Children, Deputy Harney, is determined to introduce a reform programme in the health service. I share the concerns of many people with regard to progress by the HSE in the development of particular services. Will the Leader obtain from the Minister a schedule of the reform programme and the outcome or progress made in that regard?

When chairman of a health board, the need for beds for patients who suffer a stroke was brought to my attention. We put in place 15 beds in respect of stroke rehabilitation at St. Joseph's Hospital in Raheny. It is important these beds are put in place. Senator O'Toole mentioned people are dying from strokes. It is appalling that the HSE is allowing this to happen. All that is required is a little effort to achieve progress in this area. I would welcome a progress report on this matter.

**Senator Fidelma Healy Eames:** I wish the Tánaiste and Minister for Finance, Deputy Brian Cowen, well as future Taoiseach. I would like if he were to take immediate corrective action in respect of crime and the economy, two areas which have been in serious free-flow for some time.

Senator Joe O'Reilly referred to the importance of the WTO talks to our economy, farming and agriculture. What we need at this point is corrective action. In wishing Deputy Cowen well, I want also to ask him to grab the bull by the horns and to address the issues of crime and the economy in the short to medium term.

I second Senator Frances Fitzgerald's call for a debate in the next few days on the various reports on matters within the health service. We need accountability and to know what is working and where the mistakes are being made so we can all move ahead.

It is time we in this House debated third level education and its future in this country. Members will be aware there are currently seven universities and 14 institutes of technology in Ireland. This issue has been covered by every newspaper yet it has not been debated in this House. It is time we faced up to what are our national and regional needs, what are the needs of the knowledge society and whether our current third level model is meeting those needs. We must also consider the needs of artisans and apprenticeships and whether we are getting value for the €1 billion being spent on research at university level.

I would appreciate if the Leader should invite the Minister for Education and Science to this House for such a debate. Also, I second Senator Feargal Quinn's call for a debate on this issue.

**Senator Maria Corrigan:** I join with my colleagues in wishing the Tánaiste and Minister for Finance, Deputy Brian Cowen, well in his new position as leader of Fianna Fáil. I believe he will not only be good for the party but for Ireland and its people.

I wish to raise my concern in respect of the HSE's commitment to mental health. I do not believe this commitment exists at senior level. I have great regard for the staff who do their utmost to meet needs and I am clear on the Government's commitment to mental health as evidenced by the additional funding allocated to this area in 2006 and 2007. However, if the reply which I received to an Adjournment matter I raised yesterday is accurate it appears no additional services have been provided despite this additional funding.

The reason given by the HSE for not providing these services is that it is obliged to operate within its overall Vote and in this regard it took steps to ensure it met its objectives in 2007 by delaying some of its planning developments including developments in mental health. I do not believe this is acceptable. If the Houses of the Oireachtas approve funding for specific purposes, as indicated in approval of the budget, then that is where the money should be spent. If there is a reason to deviate from this, then, at a minimum, the Oireachtas is deserving of the courtesy of being informed by the HSE that it will not be able to meet its obligation in a particular year. We should not be getting the run-around we have been getting when seeking answers in this regard. While I have raised this matter a number of times including, prior to Christmas, I have not received the response I received last night. That is not acceptable.

On a positive note, I am pleased the HSE has given a commitment that it will deliver in the course of 2008 the additional services it should have provided in 2006 and 2007. I note also that at long last, having published its implementation report, the office of the Minister of State with responsibility for this area has raised concern that the HSE has not set out any long term objectives in terms of mental health services. It is clear that Members of the Dáil and Seanad believe mental health issues are now a priority. I ask that the Leader, as a matter of urgency, invite the Minister for Health and Children, Deputy Harney, to come before this House to discuss this matter.

**Senator Nicky McFadden:** I join with Fianna Fáil Senators in calling on the Government and, in particular, our Taoiseach designate, Deputy Brian Cowen, who comes from the midlands, to take the HSE by the scruff of the neck and to ensure it provides us with the services asked for in respect of mental health, as requested by Senator Corrigan——

**Senator Alex White:** Hear, hear.

**Senator Nicky McFadden:** ——and in respect of services for patients who suffer a stroke, as requested by Senator Callely. Senator de Búrca also spoke about this issue.

I have been waiting since I became a Member of the Seanad for the Taoiseach to address this House. I am now hoping that our Taoiseach designate, Deputy Brian Cowen, will come to this House, take us seriously and listen to what we have to say.

Currently, there are few respiratory physicians and only six adolescent psychiatric beds in Ireland and there is no ophthalmologist in the midlands. Also, dental services are being cut and there have been several desperate sagas in respect of cancer services as pointed out by Senator Frances Fitzgerald. The Minister for Health and Children, Deputy Mary Harney, has graced the Seanad with her presence several times. However, we have not succeeded in having these matters progressed.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Nicky McFadden:** I ask that the Taoiseach designate, Deputy Brian Cowen, to take control of the HSE and ensure it is answerable to the Oireachtas, as requested by Senator Corrigan.

**Senator Alex White:** Hear, hear.

**Senator Nicky McFadden:** I agree with Senator Corrigan that it is high time we were listened to.

**Senator Labhrás Ó Murchú:** I endorse Senator Feargal Quinn's views on the proposed boycott of the Olympic Games. I made a point on this yesterday morning. I do not believe this is the road to go. Those of us with a knowledge of China know it has made a great effort in recent years to open up to the rest of the world. I fully understand people's concerns, some of which I share, in respect of the treatment of Tibet as shown on our television screens. However, I believe this is not the right road to take.

Ar maidín, labhair an Tánaiste faoi stádas na Gaeilge i saol an náisiúin. Ní an gnáth cupla focal a bhí aige: labhair sé go h-ilghabhálach faoin cheist agus thug sé geallúint dúinn go mbeadh an cheist seo i dtús áite aige an fhad agus a bheidh sé mar ceannaire agus mar Thaoiseach. Chuir sé ionadh orm an méid ama a chaith sé ar an ábhar. Glacaim leis an méid adúirt an Seanadóir Ó Tuathail maidir le tuarascáil an Coimisinéara, agus ar an mbonn sin, b'fhéidir gur fiú cuireadh a thabhairt don Taoiseach nua teacht go dtí an Teach le labhairt linn ar an ábhar nuair a bheidh sé ina Thaoiseach.

I was exceptionally impressed by the amount of time the Tánaiste gave to the subject of the Irish language this morning. It was not the customary few words but a comprehensive overview on the importance of Irish in the life of the nation. It was one of the best overviews on it I have heard since I entered public life. He also gave a personal commitment that he would work towards the promotion, enhancement and expansion of the status of Irish. For that reason, the Leader might consider extending an invitation to the Tánaiste to come to the House to have a debate on the Irish language, given that he has put it on his priority list. That would be the right level at which we should start that debate because in this House there is unanimity on

the importance of the Irish language. I have observed that in debates. The language does not belong to any political party but to the nation. We have seen that in the debates here. The Irish language has official working status in Europe, there is new legislation on equality for Irish and there are the gaelescoileanna, TG4 and Radió na Gaeltachta. All these developments are important. Would it not be wonderful for us to be led by the Taoiseach elect on this subject? The Leader might consider that request.

**Senator Dominic Hannigan:** Like Senator Alex White, I am concerned about recent developments in the Irish economy. FÁS has indicated it expects unemployment to rise to 5.5% this year and 6.6% next year largely as a result of the slowdown in the construction industry. Business failures are up 60% since this time last year. The value of the pound sterling against the euro is at its lowest level ever. Coupled with that, consumer confidence in the UK is also at its lowest level ever. The double whammy impact of these developments in the UK is bad news for our exporters and will affect the profitability of Irish companies.

There are actions we can take as a nation. As the Minister, Deputy Martin, said last week, we need to grow our indigenous companies. One way we can do that is by rolling out broadband nationally. This Chamber also has a role to play. We heard this morning that the director general of the European Commission and the Dublin Chamber of Commerce warned against the impact of a “no” vote in the Lisbon reform treaty referendum. They are concerned that this will be perceived internationally as us changing our stance away from business. Therefore, we must ensure a “yes” vote in the referendum. I was in Laytown last night and the sheer scale of misinformation and lack of interest I observed there is worrying. Unless we campaign for this treaty and explain the benefits of it, we will lose the referendum. Does the Leader agree it is up to all of us to get out there and explain how this treaty will benefit the country?

**Senator Jim Walsh:** Aontaím leis an méid a dúirt an Seanadóir O’Toole inniu mar gheall ar an Ghaeilge. Dúirt sé gur cheart dúinn go léir san Oireachtas feabhas a chuir ar an Ghaeilge atá againn. B’fhéidir go mbeidh seans ag Baill ar suim leo an dteanga dul go dtí an Ghaeltacht chun a gcuid Gaeilge a chuir i bhfeabhas sa chaoi sin. Aontaím freisin leis an Seanadóir Ó Murchú. Chualamar go léir an geallúint a thug an Tánaiste ar maidin an Ghaeilge a chur chun cinn. Cuirimid go léir fáilte roimh an méid a dúirt an Tánaiste mar gheall ar an bpolasaí a chuirfidh sé i bhfeidhm maidir leis an ábhar seo.

I wish to refer briefly to Senator Alex White’s comments on the economy. Undoubtedly tremendous improvements have been made. Rather than denigrating the fact that we have some very wealthy people, that should be welcomed. The priorities of Government will be to ensure the wealth of the nation is spread as far as possible——

**Senator Alex White:** It has not done that.

**Senator Jim Walsh:** ——but it is imperative, as is the case in any economy in the world——

**Senator Alex White:** The position has become worse.

**Senator Jim Walsh:** ——that wealth will be held by a small percentage of those who are entrepreneurs——

**Senator Alex White:** So it is okay then.

**Senator Jim Walsh:** ——and who take risks. I understand that at present more than 33,000 people in this country are millionaires. That is to be welcomed and policy should be pursued to grow that phenomenon.

[Senator Jim Walsh.]

Senator Alex White was correct in some respects. I do not begrudge anybody who pursues wealth creation and job creation, particularly in the productive economy. The arguments made by Senator White would be correct regarding some of the non-productive sectors of the economy. Among those I include some of the professions, particularly the legal profession, the members of which have been creaming it off in the past decade and more.

**A Senator:** Hear, hear.

**Senator Alex White:** Absolutely, among others.

**Senator Jim Walsh:** This also applies, to a lesser extent, to the medical profession. Those sectors should be examined and fees should be curbed to ensure the ordinary person is not exorbitantly charged for services that often times leave much to be desired. Part of the argument made by Senator White is correct. However, we must reward risk-takers because, ultimately, they create the jobs and the economy to which we aspire.

I endorse the sensible comments made by Senator Feargal Quinn. I listened to the criticism about China on “Oireachtas Report” last night. Using the Olympics as a tool to force political change is not the way to go. Sport should be above politics.

**Senator Feargal Quinn:** Hear, hear.

**Senator Jim Walsh:** It should be allowed function. I agree with what Senator Ó Murchú said. He has some knowledge of China, as I have. We have seen the tremendous progress that has been made there and that should be recognised. The political process and the interaction of nations is the way to achieve the globalised objectives to which we all aspire.

**Senator Paschal Donohoe:** Other colleagues have called for a debate on the escalation of crime and the Garda response to it. I support those calls. The response we frequently hear from the Government is that the necessary funding is in place and the needs of the Garda are being met to enable it provide an adequate and sufficient response to deal with this issue. However, a report published today from a body set up to examine the level of funding for the Garda shows this is not the case. Two significant points are made in the report. The first is that by August of this year the Garda budget for funding overtime requests will be exhausted and the second is that the current capital funding is not in place to provide new stations and expand current facilities to cope with the increase in the number of gardaí that will graduate from Templemore. It is imperative that we debate this. The point is consistently made that the Garda have the necessary resources to cope with the issues we face, yet an outside body, led by non-Garda personnel, states this is not the case. Mountjoy Garda station in my constituency has been threatened with closure and I want to know why this is happening and if resources are a factor.

I reinforce other calls for a debate on our economy and add another facet to those requests. The one area of our economy that has been performing very well in the past year has been the services sector, which has held up the competitiveness of the country. The share of trade that sector has in the world began to decline in recent weeks. At a recent conference organised on the future of the docklands and the IFSC a large number of speakers from international companies pointed to the extraordinary success of our financial services sector but also to how easy it is for that template to be copied and how many other countries are engaged in doing that. I call for a debate with the new Minister for Finance on the future of the financial services sector and for the Government to recognise the scale of the problem we face. I am concerned it does not recognise that. It needs to ensure the necessary plans are put in place to deal with it.

**Senator John Hanafin:** I ask the Leader to request the incoming Minister for Finance to attend in the House to discuss the challenges facing the economy. I am not one of those who believes we take responsibility for aspects that are outside our control. We have managed this economy with a view to it being an open market economy in a world market. Advanced factories, taxation policies, the IFSC, the Shannon free zone and grants were put in place. Therefore we have built the economy to benefit from world trade. If, as has happened, there was international trading in securities which caused the credit crunch that will pass, it is not our responsibility. Accordingly, I believe we can take credit for the work we have done for the economy and we do not have to take the blame for something that was completely outside our control. Listening to some of the commentators, one might believe the sky is falling. That is not my view. I do not subscribe to the “chicken little” school of economics. This is a well-managed economy, as it will continue to be, under the stewardship of Fianna Fáil.

**Senator Phil Prendergast:** I join with other speakers in asking the Minister for Health and Children to attend this Chamber. I met a former colleague the other day who was talking about attending a meeting on a summer bed cutting programme — and she was not referring to gardening. Unfortunately, she was talking about the closure of gynaecological beds during the summer period, when people might plan to undergo elective surgery.

I have asked in the past for a debate on the non-availability of adolescent psychiatric beds. There is a desperate need for such a debate and it has to be soon. I have put down a parliamentary question on the availability of beds and the geographical spread and the answer has yet to emerge from the HSE, although it is some time since it was tabled. I urge the Leader to seek to arrange the meeting with the Minister soon.

**Senator Terry Leyden:** I should like to place on record our best wishes to the outgoing leader of Fianna Fáil, An Taoiseach, Deputy Bertie Ahern. Last night, at the parliamentary party meeting, there were hours of tributes to him for his work and it was a wonderful occasion. This morning we appointed our new leader, Deputy Brian Cowen, Tánaiste and Minister for Finance. I know the Cathaoirleach is very happy over this great event. Deputy Cowen delivered a wonderful hand-written speech as Gaeilge and as Béarla this morning, and I hope it will be reproduced because it was very well structured and thought out.

**Senator Jerry Buttimer:** Was it about dancing at the crossroads?

**An Cathaoirleach:** The Senator should take it easy. I am not going to take it.

**Senator Terry Leyden:** I compliment the generosity of the Opposition parties in the House on conveying their best wishes to the new leader. He has enormous responsibility, but from my experience of being in the Seanad with his father, the late Ber Cowen——

**An Cathaoirleach:** The Senator’s time is up.

**Senator Terry Leyden:** I appreciate that, but Senator Eugene Regan will be out of business and needs a new portfolio——

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

**Senator Terry Leyden:** I want to place on the record of the House——

**Senator Alex White:** What about Senator Norris?

**Senator Jerry Buttimer:** What about Senator Harris?

*(Interruptions).*

**An Cathaoirleach:** The House will hear Senator Leyden, on the Order of Business.

**Senator Terry Leyden:** I should be obliged if the Leader would arrange for a discussion here on the situation in Tibet. Many people have rediscovered Tibet because of China holding the Olympic Games this year. The way to resolve the problem is not by boycott but rather through dialogue and discussions. In fact, the Dalai Lama is very open. Discussion should take place between the Chinese authorities and the Dalai Lama on the future of Tibet. A debate on this in the House would be worthwhile and I thank the Cathaoirleach for his forbearance.

**An Cathaoirleach:** My hands are tied in view of the 50 minutes allocated for the Order of Business. The time is up and I sincerely apologise to Members who have not had an opportunity to speak as I must call on the Leader. I may get tougher with Senators, who will have to show greater awareness when putting questions to the Leader in future. I shall ask the Whips of the various groups to talk to their Members on this. Unfortunately, people who might have been able to make important points are unable to contribute.

**Senator Donie Cassidy:** I appeal to Members of the House to support the Chair and its Leaders. We have done everything possible to ensure the House functions as efficiently as possible. The Whips will be in touch with Members. We on this side of the House are playing a very responsible role in terms of adhering to the Whips and the Chair. Naturally, there will always be Members who have more on their agenda than one or two issues.

Senators Fitzgerald, O'Toole, Alex White, Keaveney, O'Reilly, de Búrca, Callely, Healy-Eames, Corrigan, McFadden and Ó Murchú offered congratulations to the new leader of Fianna Fáil, Deputy Brian Cowen. I want to be associated with these sentiments. There will be another day on which to express our good wishes to the Taoiseach-elect and we all look forward to seeing him exercise his great vision and intellect as the country's leader. It is a proud day for his family and for Clara and Tullamore, County Offaly, the Cathaoirleach, indeed, and the entire midlands. It is a dream come true as those of us who have worked so closely with Deputy Cowen, on a day to day basis in the constituency, know. He has been our life's blood for the past ten years, as regards the economy and making things happen. Munster has its own identity, the east coast is so buoyant it is unreal, but the midlands has experienced a loss of identity and Deputy Brian Cowen is its shining light and bright hope. How proud we are today that this is happening to one of our own.

**Senator Joe O'Toole:** The Leader is safe enough now.

**Senator Donie Cassidy:** Senator O'Toole, who has been here for such a long time will appreciate the position. I know exactly what I am saying.

*(Interruptions).*

**Senator Alex White:** We thought the Leader was a shining light, too.

**Senator Donie Cassidy:** I would inform the House that the Senator has a few more continuous days of service to the Seanad than I, so I must recognise that this morning, Senator Ross is aware of it also.

Members have called on me to facilitate an urgent debate on all matters relating to the HSE. Since the Leader of the Opposition, Deputy Frances Fitzgerald raised this matter, my secretary has been in touch with the Minister's office on two occasions this morning. I am pleased to inform the House that the first available date for the Minister to attend the Seanad is Tuesday,

22 April, when we will have statements on the HSE and debate everything pertaining to the issues raised here this morning. These are urgent matters we all support. We all agree on the need for the HSE to give people the best possible service. Despite our stressing the urgency for such a debate, the Minister will not be available next week, unfortunately.

Senators O'Toole, Ó Murchú, Walsh, Prendergast and Keaveney called for an urgent debate, with the future Taoiseach, Deputy Cowen in attendance, on the total commitment given to the Irish language this morning at the special meeting of the Fianna Fáil parliamentary party. How uplifting and refreshing to hear such a commitment from the future Taoiseach, particularly for a Member of the House such as Senator Ó Murchú. We shall wait for an available date in Deputy Cowen's diary and then we shall have the statements in the House on the Irish language — and all matters requested this morning for him to deal with.

Senators Alex White, O'Reilly, Healy-Eames, Hannigan, Walsh and Hanafin spoke about the economy and called for an urgent debate on all matters pertaining to it. They mentioned what was happening as to employment and the global downturn. As we all know, ten years ago the unemployment figure was 11%. Today it is almost 5%. That is some transformation for a country that has experienced such high unemployment over the decades. I recall the high unemployment and high emigration 20 years ago. One of the major achievements of this Government in the past ten years was the creation of some 800,000 jobs. One third of all income earners are outside the tax net, as compared to 25% ten years ago and the entry point to the tax system for a single PAYE earner has risen from €5,804 to €18,300, a 350% improvement. In the tax year 1997-98 some 380,000 were exempt from tax. Today the figure is 878,000, an increase of more than 50%. The figures speak for themselves. I wanted to put the record straight regarding queries made of me this morning and statements in that regard.

On the remarks of my near neighbour, Senator O'Reilly, we are all concerned about agriculture. As stated in the House yesterday, I have agreed to have an all-day debate on the subject, including the World Trade Organisation talks. Senator O'Reilly will note that we are fortunate to have a Minister for Agriculture, Fisheries and Food from Ulster, Deputy Mary Coughlan, who understands exactly what he is saying this morning. The Minister has supported all the expressions of the good Senator regarding the serious implications for the Irish economy of even considering the Mandelson proposals, let alone accepting them. The Minister is fully opposed to what Commissioner Mandelson has been continuing to state on various occasions. Those of us who attended the WTO conference in Hong Kong two years ago could certainly recognise the concern of the Department and others about Commissioner Mandelson's proposals.

Senator de Búrca called for a debate on climate change with the future Minister for Finance. I propose that we have this debate and I certainly have no difficulty allocating time for it.

Senator Quinn asked three questions and called for a debate on the number of universities. This debate is very timely and I can allow for it. He also referred to the amount of paper being used in transactions in our offices. I will pass on his view to the Minister.

Senators Quinn, Callely, Ó Murchú and Walsh all supported fully our participation in the Olympic Games and supported the Olympic call. The most uplifting event of the very bad and bleak days of the 1950s was in 1956 when the great Ronnie Delaney won a gold medal in the Olympic Games. It was uplifting for every young boy and girl involved in sport, including myself. It was a great motivating factor for such a small nation. I certainly support the views of the four Senators and their requests for a debate.

Senators Healy Eames and Donohoe called for a debate on Garda funding and crime. We made a commitment in this regard in the House yesterday and the position remains unchanged. Senator Healy Eames also called for a debate with the Minister for Education and Science on

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third level education. I hope we can have a debate on education right across the board as soon as I can identify a suitable date in the Minister's diary.

Senators Corrigan and McFadden stressed the urgent need for a debate on mental illness. I made a commitment to Senator Corrigan on this topic in recent days and will try to honour it at the earliest possible date.

Senator Hannigan called for a debate on the update of broadband. I fully agree with his sentiments and certainly will try to organise such a debate.

Senator Norris's motion will be discussed in the House tomorrow morning, as agreed on the Order of Business yesterday.

**An Cathaoirleach:** Senator Fitzgerald has proposed an amendment to the Order of Business: "That a debate on a series of reports on the HSE in recent weeks be taken today." Is the amendment being pressed?

**Senator Frances Fitzgerald:** Yes.

Amendment put and declared lost.

Order of Business agreed to.

### **Civil Law (Miscellaneous Provisions) Bill 2006: Second Stage.**

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

**Minister of State at the Department of Justice, Equality and Law Reform (Deputy Seán Power):** The content of the Civil Law (Miscellaneous Provisions) Bill demonstrates the variety of areas for which the Department of Justice, Equality and Law Reform has responsibility. These range from courts and court officers legislation to video recordings, censorship of films, parental leave and employment equality. A miscellaneous provisions Bill such as the one before the Seanad is a convenient means of providing for small but important changes to many of the areas of law under the remit of the Department. The changes are essential to ensure we keep the Statute Book updated and effective. It would be possible to introduce individual Bills to deal with each of the 16 Parts of the Civil Law (Miscellaneous Provisions) Bill but to do so could clog the business of the two Houses and would represent counter-productive use of time, especially considering that in some cases there are only one or two amendments being made to the original Acts in question. Combining these changes in a miscellaneous provisions Bill gives the opportunity to make the necessary amendments in an efficient and effective way.

Part 2, which contains 25 sections and makes up roughly one third of the Bill, amends legislation relating to courts and court officers. The proper functioning of our courts system is essential to the administration of justice, and many of the changes proposed provide a means of overcoming practical difficulties that have been or are being encountered by the Courts Service and the Judiciary.

Section 5 deals with the ranking of judges appointed to the courts to ensure their order of seniority is reckoned from the time they are first appointed to a court. This removes the present anomaly whereby a judge returning to the bench following a period of service abroad with the European Court of Justice, for example, would have no account taken in seniority terms of an earlier period on the domestic bench before the service abroad.

The amendment contained in section 6 of the Bill will clarify the meaning of the word "county" for the purposes of the appointment and powers of peace commissioners. It ensures

alignment with the most recently designated local authority areas while maintaining the links with geographical areas familiar to most people.

Sections 7 and 8 make clear that regulations made under the European Communities Act 1972 for the implementation of EU directives or regulations can confer functions or impose duties on county registrars and District Court clerks. Section 8 also provides for the temporary reassignment of a District Court clerk at short notice, for example, when required to cover an absent colleague.

Section 9 formally transfers responsibility for the collection of court fees to the now independent Courts Service. This reflects what happens in practice the collection of fees and removes any perceived ambiguity as to who is the Accounting Officer for the Courts Service. The amendment also allows for the operation of the fee-prescribing power with significant flexibility to cater for possible future fund management approaches within the Courts Service. This will ensure the Courts Service can carry out the business of safeguarding and investing the funds for which it is responsible in the most appropriate manner available.

Sections 10, 11 and 12 bring the courts legislation dealing with the pension entitlements of judges who retire on the grounds of age or infirmity into line with the Pensions (Amendment) Act 2002. This change in the statutory provision is being implemented on an administrative basis at present.

Section 13 amends the Eighth Schedule to the Courts (Supplemental Provisions) Act 1961 in two ways. First, it ensures that regulations made under the European Communities Act 1972 may confer functions on the Master of the High Court in the same way as sections 7 and 8 do for county registrars and District Court clerks. Section 13 also alters the qualification requirements for appointment as Registrar of Wards of Court. This change will allow for persons from within the Courts Service generally, rather than only those attached to the superior courts, to be appointed to the post concerned and reduces from 12 to nine years the period of service required. At the same time, in recognition of the need for appropriate expertise on the part of appointees, the Courts Service, with the consent of the President of the High Court, may specify such qualifications to the post as it considers appropriate. Section 27 of the Bill provides that the same changes apply to the appointments as probate officer and examiner.

Section 14 permits personal service of documents by persons other than an official summons server, as an alternative to service by registered post in proceedings in the District and Circuit Courts. This will bring service of documents for these courts into line with procedures for the High and Supreme Courts. The amendment also allows for a degree of future proofing to take account of developments on service of documents in that changes can be catered for by rules of court. Further into the Bill, section 22 provides the same future proofing for service of documents for the High and Supreme Courts.

Sections 15 and 16 extend the functions of the Courts Service. Section 15 does so in a general way to encompass any functions that may be created for the Courts Service by future statutes. The aim of section 16 is to enable the Courts Service to provide support centrally to, and facilitate liaison between, the rules committees of the superior, Circuit and District Courts.

Section 17 will clarify the position on the electronic issuing of summonses, particularly where a summons is issued electronically through an outside controller, such as the Public Sector Broker. This is done by inserting a definition of “electronic means” into section 1 of the Courts (No. 3) Act 1986.

Sections 18, 19 and 20 of the Bill consolidate to the greatest extent possible the provisions relating to the superior courts, Circuit Court and District Court rules committees. These are at present scattered throughout the Statute Book. In addition, section 19 provides for a county registrar from outside Dublin to be nominated to the Circuit Court Rules Committee. This

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nominated person can change as and when the committee require the expertise of a specific county registrar.

The change being made in section 21 will allow for the authentication of a District Court order or warrant by a District Court judge or a District Court clerk other than the judge or clerk who was present when the order was made. This will not extend to search warrants or an order sending an accused forward for trial. This change is in response to administrative difficulties encountered by the Courts Service in the practicalities of producing and signing such orders while balancing the need, in criminal cases, to ensure that the authenticated order accurately reflects the decision of the District Court judge.

The amendment to the Petty Sessions (Ireland) Act 1851 contained in section 23 of the Bill removes the requirement that District Court judges keep a note of evidence when required to do so. This is no longer done in practice, nor would it be practical to do so given the huge volume of cases before the District Courts. Since any appeal from the District Court is by way of a complete rehearing, the utility of any such note is at best questionable. This amendment follows advice from the Attorney General.

Section 24 of the Bill allows for video-conferencing in civil proceedings as was recommended by the Committee on Video-conferencing. There are already similar provisions in criminal proceedings.

Section 25 provides for the possibility of anonymity in civil cases for certain witnesses, or either party to civil proceedings, who have a medical condition where publicising the fact would cause them undue distress. This amendment follows what is already provided for in respect of criminal proceedings.

The amendment at section 26 will ensure that a blind or partially-sighted lawyer or party to proceedings in need of the assistance of a reader in court will have access to one.

Section 28 amends the Courts and Court Officers Act 1995 to allow for a county registrar to take on additional functions of an equivalent office. This will free up judicial time and should have a positive impact on the timely disposal of a number of matters, not least of which will be family law matters in the Circuit Court.

Section 29 will amend the Civil Liability and Courts Act 2004 in respect of the *in camera* rule. The change will ease the practical work of those who have been approved for the reporting of family law proceedings under section 40 of that Act.

The final section in Part 2, section 30, provides for an additional three judges of the District Court as part of the Government's strategy to address youth justice issues. This will enable more District Court judges to be available to deal with cases that need to be dealt with under the Children Act 2001.

Part 3 of the Bill deals with some aspects of the legislation regarding solicitors. Sections 32 and 34 arise out of the 2004 Report of the Regulatory Review Task Force. That task force, which was led by Mr. Joe Brosnan, a former Secretary General of the Department of Justice, Equality and Law Reform, conducted a thorough review of the Law Society's own organisation and practices. Most of the recommendations contained in that report have been implemented and did not need legislative change. Those that do require statutory amendments are detailed in sections 32 and 34. Section 32 does away with the current requirement that at least two thirds of the membership of the Law Society's regulatory committees, and their quorum, be members of the Council. In addition, it provides that a majority of the members of the regulatory committee, which deals with the investigation by the society of complaints against its members, should be persons who are not members of the Council. Section 34 provides for the

Law Society to be able, on foot of a complaint of inadequate service being upheld, to award compensation to the complainant up to a maximum of €3,000, with provision for indexation of that maximum.

The additional three amendments to the Solicitor Acts provide for a number of matters. In section 31 the minimum length of time a solicitor needs to have been fully qualified and practising before taking on a trainee is reduced from five to four years. Section 33 will ensure there is no doubt that a solicitor who retires from active practice, in good standing, during his or her five year term as a member of the disciplinary tribunal, can complete his or her term on the tribunal without having to hold a practising certificate following his or her retirement. Section 35 gives the Law Society the power to invoke the High Court in order to enforce an order of the Solicitors Disciplinary Tribunal.

Part 4 amends the Landlord and Tenant (Amendment) Act of 1980 in a way that has significance for many business tenants. The change being made by sections 36 and 37 will enable parties to any business tenancy to contract out of the provisions of Part II of the 1980 Act which covers the right to a new tenancy. This opt-out is subject to the tenant having received independent legal advice. The opt-out is currently available to some business tenants, but only where the premises are let as office accommodation. This proposal will extend it to all classes of business tenancies. The law as it currently stands provides that, where a business tenant has held a lease for a continuous period of five years, that gives the tenant an automatic entitlement to renew the lease for a further period of 20 years. One of the effects this can have on the market in business leaseholds is that landlords may be unwilling to grant leases for more than, say, four years and nine months, to avoid committing their properties to longer-lasting tenancies. The difficulties that a lease of this length present to a business which in that time has successfully established itself are obvious. The changes being made by these sections will ease those difficulties for tenants whose leases expire after this Bill's commencement and who, having taken legal advice as required by the amendment, have reassured themselves that the opt-out is suitable for them.

Part 5 deals with what can be described as international aspects of statutory declarations. Section 38 makes an amendment to the section of the Statutory Declarations Act 1938 which deals with signing and attestation of statutory declarations. The change will allow for additional means of identification of a person making a statutory declaration. This is to take account of the fact that, increasingly, foreign nationals who are here to do business or as workers need to transact legal or other business that may involve the making of a statutory declaration. At present, the Act requires that the person making the declaration be either personally known to the witness before whom the declaration is being made or is identified to the witness by someone personally known. This has created great difficulties for foreign nationals who might have a need to make a statutory declaration but who cannot produce to the notary anyone in Ireland who could identify them otherwise than by passport or other suitable means of identification. The proposed change will allow for the notary to accept a passport, identity card or other similar document as proof of identity. It will not abolish the concept of personal knowledge or identification of the declarant but rather will add an additional means of identification. Section 41 amends the form in the Schedule to the 1938 Act to take account of these changes.

Section 39 offers a number of alternative ways for people abroad to make a statutory declaration. The preceding amendment will have the effect of making it easier for a foreign national to make a statutory declaration in Ireland and this amendment should make it easier for an Irish person who is abroad to make such a declaration. Currently, the declarant must make the declaration before an Irish diplomatic or consular office in an Irish embassy or consular mission. While this means of making such a declaration will continue, new means of making declarations are being introduced in recognition of the difficulties encountered by persons given the

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restrictive nature of the current regime. These new alternatives include making a statutory declaration before a person qualified under section 1 of the Act, namely, a notary public, a commissioner for oaths, a peace commissioner or a person authorised by law to take and receive statutory declarations. The amendment also makes it possible to use whatever the local equivalent process may be to the solemn business of making a statutory declaration as it exists under Irish law. These changes are modelled on provisions introduced by the Investment Funds, Companies and Miscellaneous Provisions Act 2006 which introduced a number of ways for the making of statutory declarations abroad for the purposes of the Companies Acts. The amendments in this legislation will do the same for the making of statutory declarations abroad for any other purpose of Irish law.

Along with these international dimensions of the statutory declaration process, section 40 has been introduced on foot of a request from the Standards in Public Office Commission that the period in which summary proceedings may be commenced for the making of a false declaration should be extended to 12 months from the time the offence was committed or six months from the date that evidence of the offence being committed comes to light.

The final section in this Part of the Bill amends the Standards in Public Office Act 2001 by extending the period in which an applicant for judicial office can produce a tax affairs statutory declaration from one to three months. This is on foot of a recommendation made by the Judicial Appointments Advisory Board to overcome administrative difficulties to which the current short timeframe is giving rise.

Part 6 contains a series of amendments to legislation covering jury service. The first three of these amendments at sections 43 to 45, inclusive, will make changes to the summoning and reporting arrangements for jurors. The changes will allow a county registrar to draw up panels of prospective jurors for more than one court if needed rather than drawing up panels of jurors for each court separately. This change is of particular relevance in light of the recently introduced practice of the Central Criminal Court sitting outside Dublin and the plans for the new criminal courts complex in Dublin which will be a multi-jurisdictional venue. These amendments also will provide the possibility for jurors to be summoned on their initial attendance and on subsequent days as directed to a reception area separate from the actual courtroom itself. They also will make it possible for a member of staff other than the registrar or officer acting as registrar to certify failure by a person to attend for jury service. This change will allow greater efficiency in the deployment of staff in the process of summoning a jury.

Section 46 will amend the provision of the Juries Act 1976 that deals with the separation of juries during a trial. Currently, where a jury has retired to consider its verdict but has not reached one by evening, it is sequestered overnight. The changes being made will allow for a jury, if so directed by the trial judge, to separate at any time prior to or after retirement for such periods as the judge allows.

Sections 47 to 50, inclusive, increase the maximum fines for the offences of failing to attend for jury service, giving false statement by or on behalf of a juror, service by an ineligible or disqualified person and refusal to be sworn as a juror.

Section 51 changes the nature of the language used in the First Schedule to the Juries Act 1976. That Schedule sets out the classes of persons who are ineligible for jury service. This includes a sub-heading for “incapable persons” and refers to people, including specifically deaf persons, as unfit to serve on a jury. The new wording removes the language that would be regarded today as unacceptable. Instead, the new wording makes no specific reference to a particular disability but rather refers to non-specific, enduring infirmity which renders it impracticable for persons to perform a juror’s duties.

Part 7, comprising sections 52 and 53, amends the Bankruptcy Act 1988 in two ways. The first ensures only persons who have formally proved through the Bankruptcy Court will have a say in what happens in a bankruptcy. The Office of the Official Assignee recommended this amendment to ensure there is no doubt as to the intention of the Act. The other amendment is a procedural one to provide for the deadline for filing the statement of affairs by the arranging debtor in a way that gives more certainty in calculating the deadline and that increases the period of notice from two to seven days.

Part 8 makes two changes to the Succession Act 1965. Section 54 deletes the words “in good faith” from the definition of “purchaser”. This is on foot of a conclusion in the Law Reform Commission’s report on land law and conveyancing law in 2003 to the effect that the inclusion of these words has had the unintended meaning of requiring the purchaser to make all reasonable enquiries when buying from a personal representative of a deceased owner of a property.

The other amendment to the Succession Act, at section 53, addresses the situation where two people die, or are presumed by law to die, simultaneously. The change will address in an equitable manner the disposal of property held by such people in a joint tenancy, such as a dwelling house owned by a husband and wife who both die in an accident. Currently, if one joint tenant dies, his or her share passes automatically to the surviving joint tenants and does not form part of the estate of the deceased. Ultimately, the last survivor of the two or more tenants will be the sole owner of the property. The sequence of deaths is crucial in determining the question of devolution in those cases. If all the joint tenants of a property are deemed to have died at the same time, the right of survivorship cannot under present law operate in the usual manner. This amendment provides that in such situations, the joint tenancy will on their deaths become a tenancy in common in equal shares and that the equal shares will form part of the estate of the deceased in each case.

The amendments contained in Part 9, section 56, will make a number of changes to the Video Recordings Act 1989. The change in paragraph (a) of the section will allow the censor to refuse to grant a certificate to a film released on video even if it has been previously certified for cinema release. This is not possible at present but is required because video release films are more widely available and access to them is more difficult to control than in the case of films under controlled release in a cinema environment. This change also will provide clarity in respect of the obligations on an applicant when submitting a video recording to the film censor for classification.

Paragraph (b) of section 56 introduces a new classification of video works, namely persons aged 12 years or more. In addition, the current law contains a power to vary the list of classes of video works by regulations but in light of the advice of the Attorney General having regard to recent jurisprudence, the opportunity is being taken to remove from the 1989 Act the power to vary the primary statute by statutory instrument.

The offence of supplying a video work to persons who have not reached the relevant age, together with its associated penalties, is being created under paragraph (c). Paragraphs (d) through to (p) increase the penalties set out for other offences in the Act. They will be increased to a level more appropriate for offences of this nature.

Paragraph (q) of this section provides for the Minister for Justice, Equality and Law Reform to set a reduced fee for the censor to apply to videos which he or she deems falls into one of two categories, namely, a film that is likely to appeal only to a limited audience or a film which is being distributed for charitable purposes. The current general release certification can make it uneconomical to release these movies. A technical provision is being inserted into the Act by means of paragraph (r) to ensure the income generated from fees fully meets the costs associated with the operation of classifying and certifying video works.

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Part 10 contains amendments in respect of the censorship of films. Section 57 amends the Censorship of Films Act 1923 by increasing the fines for showing a picture in public without a licence and for non-compliance with the special conditions laid down in the granting of a limited certificate. The amounts set in statute have not been increased since the legislation was enacted in 1923 and are now sufficiently low so as not to be a deterrent. This section also introduces a new reason for the censor to refuse to grant a certificate, or to grant a limited certificate, to a film to be exhibited in public. The additional reason is that the film is “likely to cause harm to children”.

Section 57 provides for the title of the Office of the Official Censor of Films, established by the 1923 Act, to be re-titled the “Irish Film Classification Office”. It is clear from the process and work of the film censor that classification of films is a more accurate description of the role undertaken by that office. Subsequently the amendment provides for the official censor of films to be known as the director of film classification, the Censorship of Films Appeal Board to become the Classification of Films Appeal Board and assistant censors to be known as assistant classifiers.

Section 59, which constitutes Part 11 of the Bill, provides for parents employed by the same employer to transfer all or part of their parental leave to the other relevant parent, subject to the employer’s agreement. This amendment achieves what was the intention behind, and what was thought to have been achieved by, an amendment to the Parental Leave Act 1998 made in 2006. The 2006 amendment was discovered subsequently to have been ineffective in achieving the aim that had been sought by its proponents and accepted by the Government.

Part 12, section 60, removes an anomaly as between civil servants serving in an ordinary Department and those serving as civilian staff in the Garda Síochána. Civil servants may be disciplined and dismissed by the relevant “appropriate authority”. In the case of officers below the rank of principal officer this is usually the Secretary General of the relevant Department. In the case of officers at or above the rank of principal officer, it is the relevant Minister. However the Garda Síochána Act 2005 appointed the Garda Commissioner as the appropriate authority for all civil servants and did not provide the standard two-tiered system for civil servants in the Garda Síochána. Thus any civil servant, irrespective of rank, who is assigned to the Garda Síochána may be disciplined and dismissed by the Commissioner. The change at section 60 makes the Minister for Justice, Equality and Law Reform the “appropriate authority” for the disciplining or dismissal of principal officers and higher ranks assigned to the Garda Commissioner, thus keeping such arrangements in line with all other civil servants.

The two amendments in respect of family law which make up Part 13 of the Bill, sections 55 and 56, amend provisions in the Family Law Act 1995 and the Family Law (Divorce) Act 1996. The changes relate to the registration of property adjustment orders and the limitation period for challenging transfers or conveyances of property. The two amendments each insert a subsection into the respective Acts which will have the effect of ensuring that where a property adjustment order has been complied with, the Property Registration Authority will cancel the entry made in the register or note the compliance with the property adjustment order in the Registry of Deeds, as appropriate. These amendments also introduce a six-year limitation period during which time a non-owning spouse may challenge a transfer or conveyance. This provision will provide more certainty for a purchaser of a property against which there was a property adjustment order.

Section 63, or Part 14, deals with an amendment to the Equal Status Act 2000. The proposed amendment is required to complete the transposition into domestic law of Council Directive 2004/113/EC of 13 December 2004 on gender non-employment. This implements the principle

of equal treatment between men and women in the access to and supply of goods and services. Most of the provisions of this directive are already reflected in the Equal Status Act. The amendment necessary for the final transposition is relatively minor and technical in nature. In addition, the amendment provides for a permitted derogation in respect of health insurance traded internationally, where gender differentiation is allowed under the law of the country in which the product is to be sold. This will allow for Irish companies trading abroad to be governed by the local regulations for the purpose of selling health insurance in that country. This again is essentially a minor technical amendment which maintains the *status quo* and according to legal advice is compatible with the goods and services directive.

Part 15, which covers changes to the legislation dealing with civil legal aid, deals with a number of important issues. Section 64 provides for the accountability of the chief executive officer of the Legal Aid Board to the Committee of Public Accounts and to other Oireachtas committees. At present the Secretaries General of all Departments and heads of statutory bodies are held accountable before the Committee of Public Accounts and the Oireachtas committees. However, in the case of the Legal Aid Board, an independent statutory body, the Secretary General of the Department of Justice, Equality and Law Reform appears before these committees on behalf of the board. This amendment provides that the chief executive officer of the board will now appear before the said committees to report on the accounts and administration of the board.

Sections 65 and 66 make the exclusions on the provision of legal advice subject to the same qualifications as for legal aid in property matters. As the Act stands the scope of legal advice is more limited than the scope of legal aid. It is highly unlikely that this was the intention at the time of drafting. In addition, the amendment will allow for the Legal Aid Board to provide legal advice, free of charge and without a means test, in rape and sexual assault cases. The final part of this amendment will provide for legal advice and legal aid to be given to tenants involved in disputes before the courts under the Residential Tenancies Act 2004. The provisions of the Civil Legal Aid Act 1995, as they stand, exclude not only disputes about the ownership of land and property as was intended, but also disputes between tenants and landlords under the Residential Tenancies Act 2004. This amendment will ensure consistency for tenants in the treatment they receive under the Legal Aid Act. This will be done without creating an entitlement to legal representation before the Private Residential Tenancies Board itself. The firm policy position remains not to extend the civil legal aid scheme to tribunals or quasi-judicial bodies of this nature.

Section 67 makes two provisions in respect of the waiving of the contribution payable for legal aid. First, it gives additional discretion to the board in respect of waiving the contribution. Currently the Act only allows the contribution to be waived if it is the minimum amount payable. The proposed change will also permit the board to waive the contribution in circumstances where more than the minimum fee is payable. Second, it clarifies the criteria that the board should have regard to in waiving contributions in respect of legal aid or advice.

Section 68 allows for the Legal Aid Board to issue proceedings in the name of the law centre rather than, as at present, in the name of the individual solicitor who is dealing with the case. Administratively this change will not only bring the law centres into line with private practices but will also have the benefit of easing the workload within the law centres as the professional staff will not necessarily be required to see and sign all legal documents. In addition it will not be necessary to file notices of change of solicitor with the courts when one solicitor leaves a law centre and is replaced by another.

Sections 69 and 70 make up the final part of the Bill, Part 16, and deal with the number of persons appointed to the Employment Authority and consequently the numbers required for

[Deputy Seán Power.]

a quorum at meetings of the authority. These amendments are necessary for the efficient functioning of the authority given the increase in its workload in recent years and to ensure fair representation of all the stakeholders, particularly those at risk of discrimination.

That is the Bill as passed by Dáil Éireann on 27 February. Senators will appreciate that the changes contained in the Bill are necessary for a number of reasons, including ensuring the effective and efficient implementation of legislation, updating provisions in respect of penalties to ensure there is sufficient deterrent and in some cases creating new offences in areas such as film and video censorship. Other amendments while more technical or administrative in nature are nonetheless necessary to ensure we keep our legislation updated, clear and accessible. In addition to the provisions of the Bill as presented to the Seanad today, a number of proposals have been prepared which may be introduced on Committee Stage if necessary and should be included in the Bill. One of the amendments it is intended to introduce would allow the President of the District Court to sanction a number of District Court judges, who on an ongoing basis would be authorised to sign warrants and orders outside normal hours. This would avoid the possibility of a situation where the president is unable, due to unforeseen circumstances, to authorise a District Court judge on a case-by-case basis to sign a warrant out of hours, which is the current situation. It is also planned to include a technical amendment to both the Road Transport Act 1986 and the Road Safety Authority Act 2006 to enable the Road Safety Authority to appoint its own officers and officers of the Minister for Transport on secondment to the authority, to be transport officers for the purposes of road transport operations. The opportunity to promote the change on behalf of the Minister for Transport is being taken in this Bill. There also may be two additional technical amendments in relation to the legislation governing solicitors.

Finally, consideration is being given to a proposal to amend the age limit provisions in respect of which persons are ineligible for service on a jury. The law as it currently stands excludes persons over the age of 70 years from being eligible to serve on a jury with a right of excusal from the age of 65 to 70. The increasing role and contribution of older people in society combined with the fact that the mandatory retirement age has been raised, make it seem unnecessarily restrictive to have a blanket exclusion on persons over the age of 70 from serving on a jury.

In conclusion, I remind the House that the Bill is a reflection of the Government's commitment to quality regulation. It epitomises that commitment, tackling a wide range of areas where change in the law is necessary or desirable in the interest of improving how the law operates, removing unnecessary obstacles and ensuring clarity. I trust the Bill will receive the full support of the House.

**Senator Eugene Regan:** I thank the Minister for his comprehensive outline of the Bill. It has been a long time in production and was promised by the last Government before the general election. The Bill tidies a number of legislative measures and includes some significant innovations. In general, however, many of the changes are technical and raise no particular difficulties. The most significant is probably the provision regarding the legal service ombudsman which, given concern about the regulation of the profession, is important in terms of assuring the public that the profession is working to the highest standards.

There was a significant debate on this Bill in the Lower House and many of the amendments and suggestions made on Committee and Report Stages are reflected in it. My colleagues will wish to raise a number of issues but I wish to raise one in particular, on which I will reserve my position in terms of amendments. Section 67 deals with legal aid. The Minister indicated that the provision clarifies the situation of the Legal Aid Board, but does this amendment

narrow the cases where a waiver or reduction in contribution will apply in cases of severe hardship? The definition of severe hardship is not included in the Bill. With regard to legal aid, FLAC has brought judicial review proceedings regarding the ability of the Legal Aid Board to grant legal aid. What is the background to this amendment in the Bill? I would be grateful if the Minister would elaborate on it. It is a matter on which I will reserve my position in terms of making an amendment.

That is the only specific issue I wish to raise. In general, I welcome the Bill. It is an important tidying measure.

**Senator Denis O'Donovan:** My colleague caught me off guard by finishing his contribution so quickly.

**Senator Eugene Regan:** I apologise.

**Senator Denis O'Donovan:** It is the Senator's prerogative. Given that we are dealing with the legal profession in this Bill, I congratulate our Taoiseach-in-waiting and Leader of Fianna Fáil who is a member of that profession. It is probably a great honour for the profession that Deputy Brian Cowen is in this position. I wish him the best of luck. If he has as much success as the outgoing Taoiseach, we are in for a long period of prosperity and peace on this island.

I welcome the Bill, which is important, tidying legislation, and I welcome the Minister of State, Deputy Seán Power. The last Government and Minister for Justice, Equality and Law Reform gave a commitment that a statute would be introduced to consolidate all the legal measures in criminal and civil law, some of which date from the Magna Carta. The aim was to have one over-riding statute in criminal and civil law to encompass all those measures. This has been considered for many years but for legislators, legal practitioners and the general public it is something that could be done in the lifetime of this Government. It is a huge challenge but is worth pursuing.

The most significant change in the Bill is the provision regarding the legal services ombudsman. This is a new position and I welcome it. The ombudsman will oversee complaints against barristers and solicitors. I have been a practising solicitor for almost 30 years and I wish to put on record my absolute confidence in how the Law Society — I cannot speak for the Bar Council — has dealt with complaints in general. Recent incidents which are, thankfully, the exception rather than the rule have brought a new focus on solicitors and the legal profession. There have been three headline cases in the past six months. It is right and fitting that such acts of impropriety or wrongdoing should be fully and vigorously pursued.

One should, however, consider the overall position. Since I qualified as a solicitor in the late 1970s the number of solicitors has quadrupled while the amount of business has multiplied twenty-fold. However, the number of complaints against solicitors is less than 0.01%. Of those, approximately 85% are without foundation and are spurious and vexatious. Nevertheless, it is important to ensure there is transparency and clarity in these matters. When one considers the overall situation with regard to complaints and scrutiny of the profession it is important to examine all angles. It is not good enough to have inadequate services, charge excessive fees or, worst of all, have misconduct by solicitors. However, I believe complaints to the Law Society get a fair hearing. We see the headline cases where people get away with serious misconduct but, in my experience, many solicitors have been chastised, penalised and, in some instances, they have been struck off the Roll of Solicitors. It should be put on the record that the Law Society has acted fairly. As in any other area, nobody is beyond reproach and there is no perfect solution. There will never be a utopia in any profession where there is no wrongdoing, but we always strive towards it.

[Senator Denis O'Donovan.]

Another old hobby horse of mine is that I have always advocated that there be a permanent High Court judge sitting in Cork. The old courthouse was revamped at a cost of many millions of euro and is wonderful. When practising as a solicitor before entering full-time political life, my experience has been that when High Court or civil matters bring expert witnesses from Dingle or Bantry to Dublin, whether they be gardaí, medical consultants, engineers or other experts, it clogs up the system and causes delays. While the High Court goes on circuit to places such as Limerick and Cork, each region, such as Galway and Cork especially due to the volume of population in the Cork-Kerry area, should have a permanent High Court judge. I ask the Minister of State to consider that.

A number of practical changes have been made in this legislation and I would like to mention the provision on statutory declarations, which I welcome. In the context of global commerce, people from China, Japan, South America or Canada, for example, come to business or technology parks in places such as west Cork, Galway or Mayo and stay for two or three days to do business. In such situations something must be declared under the Statutory Declarations Act. According to the old affirmation in the statutory declaration one must know the person to sign a declaration. The Bill introduces a practical change in that the provision of a passport would be acceptable as reasonable evidence of a person's identity. In some instances a valid driving licence might be acceptable.

I recently had a discussion with some business people on the right to contract out in landlord-tenant situations, and this is an important provision in the Bill. It was the bane of solicitors' lives in many areas when, in the not too distant past, a lease was confined to two years and 11 months. That was extended to four years and 11 months, beyond which one got what was then known as a business equity and could compel one's landlord to enter a 35-year lease. This has not worked in many practical areas. I am glad to say this Bill inserts a provision that both parties, especially the tenant, can contract out of this situation in the lease providing he or she obtains independent legal advice. That is very important. I know of several situations in my constituency where a tenant such as a hairdresser, solicitor or accountant has a lease on a premises and has to watch the clock ticking up to four years and 11 months because if it goes beyond five years, the matter usually ends up in court. It is a prudent provision that in future one can insert a clause at the outset saying one is fully aware of one's rights and obligations but accepts a clause that if one stays beyond the four years 11 months period, one will not force the landlord into a 35-year lease by going to court. That is practical, makes sense and I welcome it in particular.

There is an interesting provision in this Bill for changes to the Succession Act. From time to time it happens that a married or cohabiting couple in this joint situation are killed, for example, in a road traffic accident. I ask the Minister of State to explain the change a little more if possible and what it is intended to achieve. I am a bit confused and unsure on this issue and would like greater clarity on it.

The Bill is welcome. There are many other aspects of it that bring change. I recognise that I was pursuing the lines of the legal services ombudsman during Dáil debates and I want to clarify that. The issue will be examined again and rightly so. Whatever complaints procedure we have, whether the Bar Council or the Law Society of Ireland, it is important there is greater input from civil people, not from the profession, and that there is an ombudsman to oversee complaints in the event of a person being unsatisfied. There is always the question of who judges the judges. The legal profession, whether barristers or solicitors, is not above the law, and should not be. I welcome and support the Bill in so far as I have read and studied it.

**Senator David Norris:** I am a little rushed in my speech because I have just left the first meeting of the Oireachtas Sub-Committee on Human Rights.

**Deputy Seán Power:** Senator Norris is not fit.

**Senator David Norris:** I am not at all fit. The Minister of State is correct and I thank him for his concern. I promise to do better and during the week I am going to inspect the fitness room. Enough of my immediate personal circumstances.

I want to address the personal circumstances of some of the even more afflicted members of our community. I want to address one specific element only because this is a rag bag of a Bill drawing together many miscellaneous provisions. I want to strike the question of free legal aid services, the amendment that is being introduced under this legislation and the context in which it has taken place. The water has been muddied by information emanating from the Minister's Department, in particular an article in *The Sunday Times* which I regard, since its acquisition by Mr. Rupert Murdoch, as a disreputable newspaper. *The Sunday Times* of 6 April carried an article which referred to an unpublished piece of research by a reputable group, Indecon. This research purports to examine the number of people qualifying for legal aid and the circumstances. It stated, and this provides the context for this debate, that under the existing provisions, 70% of the Irish population would qualify for legal aid. This is seen as excessive but I do not think it is. Where we are happy to give education more or less free of charge to everyone with no means test, I see no reason legal aid should not be as widely accessible as possible because costs in the law courts are enormous and are way beyond the means of a large number of people.

An unnamed spokesperson for the Legal Aid Board was quoted in the article as saying although the report needed to be validated, the members of the board were perfectly happy with Indecon's work. It is curious that they can be happy without validating the report. They applied legal aid thresholds to a broad spectrum of statistical information from across Europe and applied them specifically to Irish incomes and living conditions. However, no other information was given about the parameters of this research. The Free Legal Advice Centres applied for further information and were told the board was not in a position to express definitive views on the outcome. When they asked when this material could be made available they were told it was not clear. It was a kind of holding operation and they were put at arm's length. The same article points out that waiting times for February, just a month or so ago, confirms that five law centres have waiting lists of five months or more, including seven months in Wexford.

There was a case in the High Court, *O'Donoghue v. the Legal Aid Board*, the Minister for Justice, Equality and Law Reform and the Attorney General during which Mr. Justice J. Kelly said, with regard to the question of a reasonable waiting time, that whereas one could not compare it directly to what one would get if one acquired the services of a solicitor in the open market, it should be possible to reduce waiting times to a much more reasonable figure. He felt that the target of two to four months was applicable.

In that context, I wish to look at a specific amendment of section 29 (2) of the Civil Legal Aid Act 1995, which at the moment reads:

The Board may, in accordance with regulations under *section 37*, provide legal aid or advice to an applicant without reference to his or her financial resources and may waive any contribution payable pursuant to this section and to any other regulations under *section 37* or may accept a lower contribution.

That is as it stands at the moment. What is proposed under the Bill is an interesting change, whereby this provision is split into two parts — (a) and (b) — which is sinister. The proposed change is as follows:

[Senator David Norris.]

The Board may—

(a) in accordance with regulations under section 37, provide legal aid or advice to an applicant without reference to his or her financial resources,

(b) waive any contribution payable pursuant to this section and to any other regulations under section 37, or accept a lower contribution, on the ground that a failure to do so would cause severe hardship to the applicant.

This introduces a very severe test and I do not think it is appropriate. It is being done because the Government is afraid that too many citizens will avail of this right, which is a basic one. It is miserly, penny pinching and unjust to introduce any such amendment and I will be opposing it when it comes before the House. I will table an amendment to this provision and will vote against it as it stands.

The Minister claims he is doing this because confusion has arisen due to the implementing regulations and he is attacking them. However, if the regulations are at fault, why does the Government not amend them? Why is it amending the primary legislation? That is a kind of conjuring trick and I do not like it. I remain to be convinced on this matter.

The situation at present is disastrous. The Free Legal Advice Centres have advised me that they believe the lengthy interpretation given in the other House is incorrect because the regulations do not limit the circumstances where the fees can be waived to those where only the minimum fee was payable. In specific terms, regulation 21(1) states:

The contributions, including the maximum income and capital contributions payable by a person in receipt of legal aid or advice under this Part, may be varied or waived having regard to sections 24, 25, 26, 27, 28 and 29 of the Act of 1995 and these Regulations.

The maximum income contribution, which is mentioned, refers to the maximum amount that a person may be asked to pay. A person must have a disposable income of €18,000 or less. Mercifully, the capital aspect of the enjoyment of a private home has been removed since August 2006. However, the existing legislation does not introduce the idea of “severe hardship”. I ask the Minister of State to tell us what is meant by the term “severe hardship”. Who decides on this? There is no definition of severe hardship available. People may in fact be in severe hardship in ways that are concealed. For example, a person may technically have a disposable income of €18,000 but may have binding financial commitments. People get into debt on their credit cards or they may have loan repayments which they are required to make, which can substantially reduce their income. Therefore, this stipulation regarding a disposable income of €18,000 does not amount to a real income test. What happens if €8,000 or €9,000 of that total must be paid out for mortgage or other such commitments?

I wish to put on the record what I see as the penny pinching aspect of this Bill. A person in receipt of legal representation who has a disposable income of over €11,500 is obliged to pay one quarter of the difference between €11,500 and the maximum disposable income of €18,000, plus the minimum contribution of €50. The contribution could, therefore, run from €1,000 up to €1,675, which is an enormous amount of money. It may seem nothing to us because, thank God, Members in this House are now in receipt of very considerable remuneration. However, to the average person in poor circumstances, with debt repayments to be made, it is a severe test.

The Minister said that confusion has arisen because implementing the regulations of 1996 purported to limit the applicability of the provisions enacted by the Oireachtas. It does not.

That is wrong. Furthermore, if this was the Minister's main purpose, why, as I said earlier, does he not examine the regulations? I ask the Minister to review the situation because rather than broadening the access of ordinary citizens to legal aid, this provision will substantially narrow access by introducing an unclear, vague test of "severe hardship", which is wrong, unjust and unfair. I ask the Minister to withdraw the amendment.

**Senator Lisa McDonald:** I am not sure how long my speech will take because I have been thrown slightly by the fact that the legal ombudsman provisions are now in a separate Bill. In that context, if I have time remaining, I wish to share it with Senator Walsh, with the agreement of the House.

As several speakers have said, the Bill is a tidying-up exercise. I do not wish to repeat the changes contained therein for the sake of it. However, I have a number of concerns which I wish to raise. In particular, I am concerned about the legal aid situation, to which Senator Norris has just referred. He has made some very valid points and this is an opportunity to examine the legal aid system in its totality. Perhaps an overhaul of the system is required.

As a legal practitioner and a politician, I would consider myself to have a community of interests in this regard, as opposed to any interest that must be explicitly stated. I find in practice that a lot of my time is given up to giving free legal advice. The waiting list in my home town of Wexford is in an appalling state. Something must be done.

The area of family law clogs up the civil legal aid system to such an extent that it puts pressure on the Legal Aid Board itself, thus adding to the waiting lists that are already in existence. We must examine the possibility of setting up a new system of free legal aid and civil legal aid for the victims of family disputes. While I do not want to prejudge any particular situation, it is often the case that women are impoverished and do not have the means to go to a solicitor, are afraid to do so or do not have the education to realise that they can. With a legal aid system that has waiting lists of between seven months and a year, we are adding to the impoverishment, hardship and possible domestic violence being suffered by such women. That can happen to men too and I am not being exclusive in this regard. However, we must grasp this issue at Committee Stage and examine the civil legal aid system more closely.

The content of the Bill is fine in itself but it is adding to, rather than subtracting from, the problem. I am seriously concerned about the means test. There should be a simple means test for everything in the social welfare system, which should then be incorporated into the civil legal aid test.

The provision that allows the Legal Aid Board to bring a case in its name rather than in the name of the solicitor is a welcome change. However, the nettle must be grasped because the position is worsening. Unfortunately, marriages are breaking down at a more rapid rate than ever before and this is adding to waiting lists. This issue must be examined and I agree with much of what Senator Norris said in that regard.

Reference has been made to the legal profession. We are all too well aware of the dangers of leaving any profession to its own devices and most solicitors and barristers welcome changes in this regard and the higher scrutiny and standard required.

I refer to the issue of the landlord and tenant opt-out clause. Currently, when leases expire after four years and nine months, tenants whose businesses are doing well must move somewhere else because the landlord is reticent to grant a 35-year lease and, therefore, requires vacant possession of the building. Sometimes the tenant might not realise he or she should seek an opt-out clause at the commencement of a lease as opposed to at its expiration. Perhaps more clarity is needed. Will the opt-out be provided only at the commencement of the lease

[Senator Lisa McDonald.]

or can it be considered at the conclusion of the initial lease? This would give additional protection to the tenant.

The proposed amendments to the Succession Act will be equitable. Where two joint owners or spouses are deemed to die at the same time, it is equitable that their equal share should go to the estate of the other.

Parental leave is covered by a small section in the legislation but I was disappointed because it does not address paternity leave. This Bill is the perfect vehicle to introduce paternity leave. There is no point in providing that one parent can transfer his or her leave to the other parent because that will mean the woman will have more days to take care of the children, allowing the man off the hook. Until we move to a position where paternity leave is paid, equality will not be achieved. I sometimes wonder whether we want that. Clearly, the European Union and others need to get their act together to introduce proper, paid paternity leave.

Civil law matters relating to single fathers, automatic guardianship and an amendment to the birth registration legislation could be addressed in this Bill. The minor amendments to family law in respect of property adjustment are fine. While this is more a property registration issue than a family law issue, I query the provision whereby a non-owning spouse will be permitted to challenge within six years because that will create more uncertainty in finalising the family law issues. It may provide certainty for the purchaser of a property but the lacuna in the family law system must be examined. Consultation with family law practitioners in this regard would be good and perhaps the Joint Committee on Justice, Equality, Defence and Women's Rights could examine this.

The Minister of State referred to the Road Safety Authority. Section 60 of the Civil Liability Act provides immunity from prosecution to local authorities in respect of road accidents and negligence for the way the roads are built and so on. This issue should be examined because it requires amendment. Somebody should be liable for poorly constructed roads or negligence in respect of a basic matter such as repairing a pothole. This is good legislation and, subject to the matters I have raised, I have no difficulty commending it to the House.

**Senator Jim Walsh:** I thank Senator McDonald for sharing time and I promise reciprocity at the first opportunity. I welcome the removal of the legal services ombudsman provisions from the Bill, as they will be considered in separate legislation, because both solicitors and barristers should be governed by independent bodies and I hope the Department will give consideration to this. Self-regulation does not work effectively in most cases. We are told there is an oversupply of barristers, yet they defy all the laws of logic whereby supply and demand, which is generally good for competition, is totally devoid of any influence in the Bar Council. It looks as if a cartel is operating to maintain fees at exorbitant levels. In the interest of the ordinary person and if we value ourselves as a republic, people must have equal opportunity to access the law. We are getting to the stage where only the rich can afford to do that and that is unacceptable.

I am amazed that two chairmen of our most prominent tribunals assumed the role of shop steward on behalf of the barristers working in them in order that their fees would remain at almost €2,500 per day. That is scandalous but it also reflects on us in these Houses that we allowed that to happen and we allow it to continue, despite the former Minister for Finance, Charlie McCreevy, setting out his stall to reduce fees by more than half. That has not happened and it is unhealthy and unacceptable.

Section 23 provides that district justices will not have to keep a note of the evidence presented to them. I understand the practicality of this provision in that an appeal to a superior court does not refer to those notes but will that give rise to lesser accountability at District

Court level? I hope legislation will be introduced soon to establish the judicial council that has been promised for some time. The remarks of a number of judges in court in respect of witnesses and gardaí on occasion have been outlandish and totally unacceptable. There was no excuse for a number of the remarks, as they denigrated witnesses who endeavoured to give evidence. Specific judges, who are easily identifiable, will do their best to embarrass gardaí who are doing their duty on behalf of the State. We need to be much more proactive in this area. Any body in society should be subject to independent control, particularly the Judiciary and the legal profession, and competition must be injected into the latter.

I welcome the provision of video-conferencing under section 24 and the amendment to business leases. It is impractical to limit business owners to leases of four years and nine months and it has created many difficulties for both landlords and tenants. Eminently sensible provisions have been inserted in the legislation.

I do not agree with the provisions on the standards in public office. They are not necessary for a member of the Judiciary. A chairman of one of the tribunals had tax difficulties. It is none of my business whether he had or whether his tax affairs are in order. The Revenue Commissioners are there and I do not think anybody would argue the Revenue Commissioners do not have adequate powers and penalties to pursue people in default of taxes. We should not have additional provisions in this Bill. It puts the status of tax compliance almost as a virtue above all others. People can be guilty of other far more serious offences about which they do not need to make statutory declarations. The same applies to ourselves. It is much more important in the appointment or election of people to specific offices that they have a degree of integrity and have the competence and commitment to do the job to which they are appointed or elected properly and effectively.

I wish to make a minor point on juries. We will have a change whereby when a jury is sequestered overnight the judge can separate the jurors. This could lead to a risk of intimidation. We have extremely serious criminal activities in the country and we have seen significant high-profile examples of the total disregard for law. I wonder about this provision. We must ensure that we do not place jurors in a situation whereby as a result of separation they find themselves intimidated during their consideration of the evidence prior to making their decision and returning to the court.

**Senator Alex White:** Unlike my colleague, Senator Walsh, I do not have a difficulty with elevating the necessity for tax compliance to the level it is in legislation. It is important that all public officials are tax compliant, that they are seen to be tax compliant and can certify themselves as tax compliant. I would not exclude a member of the Judiciary from such a requirement. It is a novel suggestion that while a tax clearance certificate should be required of people across the public service, politicians and others perhaps members of the Judiciary ought not to be required to do so. They should, just the same as everybody else.

To some extent, the Bill is a bit of a dolly-mixture. I counted 30 pieces of legislation, and I may have counted one or two twice, which it is proposed to amend on foot of the Bill. I do not know whether this is unprecedented, but it is a long list to be amended by one Bill. I understand the rationale in most cases because many of the amendments proposed, as the Minister of State fairly stated, are, to use the phrase, “minor and technical”. However, one person’s minor and technical amendment is another person’s federal case, as we have often seen. Something that looks technical may be of fundamental importance.

I take the point made by the Minister of State that some of the amendments proposed to the Equal Status Act — with which I am familiar from practice — the Succession Act and the Bankruptcy Act seem to be quite technical in nature and it would not be appropriate to have the infrastructure of an amendment bill in this context in each case. It is probably appropriate

[Senator Alex White.]

that it is done in this way. I am not sure about other areas. Relatively substantial amendments are proposed in the areas of video recordings and censorship. On reading them, I wonder — rather than being definitive about it — whether it would have been more appropriate to introduce an amendment bill under the rubric of the original legislation. I put this out as a comment.

Much of what is in the Bill is reasonable and to be welcomed and will probably win the support of the House. The Bill contains a number of amending provisions which seek to improve the efficiency of the Courts Service. This is good and it is important to remind ourselves that the Courts Service is a public service. When all is said and done about the trappings of the law, whether it is the wigs and gowns or the mystique about lawyers, in some cases a mystique prolonged by the profession itself without much justification, the Courts Service is a service to the citizen. Like any other service it should be accessible, efficient and professional.

To the extent the Bill seeks to improve the efficiency and accessibility of the Courts Service I welcome it. The change to a professionalised body such as the Courts Service has been a great achievement in recent years. Those of us who are practitioners in the system have all seen it. I think and hope users of the system and the service also see it is a more professional and accessible service.

I heard what Senator Walsh stated and I am sorry he is not here to hear my response. There is no question that lawyers in particular constitute an easy target, whether with regard to fees or complaints against the profession. The legal ombudsman Bill will be dealt with separately and this is a good idea. When abuses are reported publically and we have the shocking things we have seen happen, the call goes out for independent regulation. It may be in this day and age it is right that all professions should have a measure of independent or outside regulation.

However, I counsel against people thinking that some of the more outrageous abuses we saw in recent weeks and months can ever be removed or dealt with simply by having an element of independent regulation of the professions. If somebody makes off with clients' money or engages in what is effectively theft in his or her practice it does not matter whether we have independent regulation or regulation by the profession itself. In some cases these are criminal offences and are serious abuses. They ought not to, could not and would never be tolerated under any circumstances. The notion of how it is regulated and whether the complaints system should be fully managed within the profession or done independently will not deal with bad people or lawyers. Whether the sanction is imposed by and the matter is regulated by an independent body will not necessarily solve this. This is put out as a panacea and we must be careful.

One of the disadvantages of coming towards the end of a debate is that many of the issues one wants to raise have already been raised by colleagues. One of the advantages is that one has the opportunity to respond to some of the points made with which one disagrees. I again regret the fact that Senator Walsh is not here for me to respond in this way.

**An Leas-Chathaoirleach:** I remind Senators that it is not in order to refer to the absence of a Senator from the House.

**Senator Alex White:** It is more of a courtesy and I accept it in terms of the protocol of the House.

In terms of what was stated on the legal profession and fees, I would welcome a debate on lawyers' fees. We could have it in this House and I would have no problem participating in it. It might be more interesting than the brickbats which go across the House on this subject. Let us ask whether it is right that our great friend, the market, should define legal fees. This is the case. Whether colleagues like it or not, legal fees are determined by a market. If Senators have

ideas and proposals — I might share some of my own in due course — as to how this might change let us have them debated. It is not enough to rail against individual examples of high fees and the suggestion of a cartel among members of the profession. I am not aware of any such cartel in terms of setting legal fees or restricting competition within the profession. However, if there is such a cartel and if that allegation is to be made, let it be elaborated on and let us have the debate to see what people are talking about.

Again I remind Members that the fees in the tribunals were not set by the Bar Council but by the Attorney General. Let us be clear where the difficulty lies. If members of the Government are unhappy about the legal fees being paid to lawyers doing a professional job before the tribunals set up by these Houses, instead of railing against them and availing of 30 seconds to have a go at them in this House, let us have a real debate and ask why the Attorney General set fees for lawyers at the tribunals on a daily basis and in circumstances where it could be seen that the tribunals would go on for months and even years. Why did he do that or not change it subsequently? Let us have that debate and be clear about it. I am not here speaking on behalf of the profession or the Bar Council. I am a lawyer in practice but a certain amount of honesty and clarity about these issues would help all of us in such a debate whenever we have it.

I do not have the opportunity to go through some of the other issues in the Bill now but I might revisit them on Committee Stage if we believe it is appropriate to introduce amendments. One or two issues strike me in passing as welcome. For example, what the Bill proposes in respect of the management of the jury system, such as the empanelling and availability of persons for jury service, is very welcome. We often hear from people who serve on juries — I am not talking from a professional point of view but from an anecdotal one — that they must take two days or a week off work but that there is huge uncertainty surrounding the time required. There are exigencies in the legal system and that it is not always clear when a case will be taken. However, perhaps we could look again at how we manage the system and how we can give people a little more clarity if they are empanelled for jury service. We should give them some indication on how long they will need to be available so they will be a little bit more prepared to co-operate.

The Minister of State will agree it is vitally important that a wide range of people are available to serve on juries. This issue has come up again and again. There is often a preponderance of people who are retired or people who are more available than, say, people in business and people working for themselves. Sometimes there is an imbalance in the availability of people to attend for jury service. We should always strive to ensure there is a proper range of citizens available to serve on juries. The Minister of State said there was a possibility of increasing the age limit to 70. While I do not have a difficulty with that, it again reflects the experience that there tends to be a preponderance of people in the older age bracket available to serve on juries which is a pity.

The Bill does away with censors and replaces them with classifiers. I do not know whether that is a product of the more careful and sensitive language of our era or whether it represents something of more substance than simply a change in the nomenclature. Perhaps it is good that we depart from the kind of Victorian idea of censorship and look at it in a more professional way and describe the censors as classifiers. However, it does not have the same ring, but that is for another day.

I agree with Senators Regan and Norris in respect of legal aid. I would like the opportunity to review this issue which one can do on Committee Stage with amendments. If I understand it, it seems the rationale the Minister has proffered for this change does not stand up. Perhaps the Minister of State will revisit it in his closing remarks if he gets the opportunity. I hope the

[Senator Alex White.]

Minister has had the opportunity to discuss this with the people involved in FLAC who raised it with me and others. Their view is that the amendment would have the effect of narrowing the number of cases where a waiver or a reduction in contribution would apply in the case of severe hardship. That is a view people involved in this field have formed on the basis of their experience. The definition of “severe hardship” must be looked at. What is severe hardship as opposed to hardship? If the effect of the Minister’s amendment, which was passed by the other House, is to narrow the cases where a waiver or reduction would apply in cases of severe hardship, it would be wrong and would be a reduction in the level legal aid available to persons who need it.

Placing a further onus on an applicant to demonstrate severe hardship introduces a new hoop through which people must jump. From the analysis of this provision I have read, it would appear to represent a weakening or a reduction in the level of legal aid rather than simply being a technical adjustment as appears to be suggested by the Minister. This could lead to further hardship and a contraction in the number of circumstances in which we would make legal aid available. Will the Minister of State clarify what precisely is the reason for this and reassure us that it will not have the effect FLAC and others state it will?

**Senator Déirdre de Búrca:** I welcome the Minister of State and the opportunity to comment on the Civil Law (Miscellaneous Provisions) Bill 2006. As Senator Alex White said, the Bill contains amendments to 30 pieces of legislation. The changes are mostly to non-criminal areas of law. There are many small but important changes and I will refer to some.

I refer to the creation of the office of the legal ombudsman. Other speakers said the purpose of the Bill is to make the courts and legal services more professional and efficient. However, the issue of addressing confidence and public trust in those services is important. I understood the purpose of creating the office of the legal ombudsman was to enhance the transparency of, and public confidence in, the system of regulation of the legal profession. As other speakers said, the number of recent high profile cases in regard to certain members of the legal profession have served to undermine public confidence. I do not mean to cast aspersions on any members of the legal professions in this House or outside it but, unfortunately, people feel very vulnerable when dealing with legal professionals if they do not get the professional service they require.

Some of the recent high profile cases have shown that even where the professional bodies have investigated those who have been the subject of complaints, the outcomes of those investigations were not always very satisfactory. I look forward to the creation of that office and emphasise the Green Party’s hope that the person appointed is seen as independent in the performance of his or her functions. That will possibly be difficult to achieve. Certain professions will be excluded from those considered eligible for that position. However, the independence of the position and the perceived independence of the person who will hold that position will be important.

The Bill addresses the issue of the collection of court fees. The transfer of this function to the independent Courts Service, which reflects what already takes place, is a welcome provision. The Bill clarifies also the situation in respect of the electronic issuing of summons, especially where these are issued electronically through an outside controller. The clear definition of what is meant by “electronic means” is helpful.

I welcome that the Bill provides for video conferencing in civil proceedings. This is provided for already in respect of criminal proceedings and is a welcome development. The Bill also allows for the county registrar to take on additional functions of an equivalent office. This will serve the purpose of freeing up judicial time and will allow for the disposal of a number of

matters, including family law matters, in the Criminal Court. This will be helpful given the congestion that already exists in the family courts and in family law matters.

The Bill provides for the appointment of three additional judges of the District Court as part of the Government's strategy to address youth justice issues. This will enable more District Court judges to deal with cases required to be dealt with under the Children Act 2001, which is to be welcomed.

Section 51 addresses the issue of the language used in the First Schedule of the Juries Act 1976 and makes changes in that regard. This provision is also welcome. Senator White used the term "Victorian" to describe certain aspects of older legislation. I agree that the language used in previous legislation could be deemed offensive in today's terms by potential jurors. The use of language such as "incapable persons" and "unfit persons" is being done away with. The Bill is now more non-specific in respect of juror infirmities which would make it impracticable for a person to perform a juror's duties. I welcome this important and appropriate change.

Section 59 provides, as stated by Senator McDonald, that parents employed by the same employer may transfer all or part of their parental leave to the other relevant parent subject to the employer's agreement. I welcome this change which seeks to achieve that previously attempted by a previous amendment to the Parental Leave (Amendment) Act 2006. I echo Senator McDonald's comment that while this is welcome, it is only a small step in terms of the direction we should be taking in respect of parental leave. I hope it is not the case that we will have wait for the European Union to push us into adopting the type of paid parental leave provisions available in many continental European countries.

**Senator Alex White:** If the Green Party introduces a Bill, we will support it.

**Senator Déirdre de Búrca:** I hope the Department of Justice, Equality and Law Reform and other relevant Departments will consider this matter soon.

As stated by other Senators, section 67 waives the contribution payable for legal aid and allows the Legal Aid Board much more discretion. The Green Party's understanding of this is that it will improve conditions for those eligible for legal aid. I am disturbed to hear other Senators interpret it in a different way and suggest it will narrow cases to which a waiver might apply. It would appear from reading the Bill that it will allow the board the discretion to waive fees due even in circumstances where more than the minimum fee is payable. Perhaps the Minister of State will clarify whether this provision will widen or narrow the number of cases to which the waiver can apply.

I share some of the concerns expressed by Senator Norris in respect of the inclusion of the phrase "severe hardship" and how this will be defined. Perhaps the Minister of State will specify what onus this will put on applicants.

The Green Party welcomes the Bill and believes it is a timely tidying up of many outstanding issues dealt with in other legislation. I welcome the Bill's passage through both Houses of the Oireachtas.

**Senator Paschal Donohoe:** My colleague, Senator Regan, has outlined the general welcome our party gives to this Bill and to the wide variety of proposals and issues dealt within. I wish to focus on three elements of the Bill, namely, Parts 4, 9 and 11, which deal with leases for commercial property, the operation of the current film censorship office, and the reference to parental leave and the ability to share it across the same employer.

I have followed the passage of this legislation through the Oireachtas with some interest. The non-existence of this legislation has caused severe hardship to a constituent of mine in respect of her ability to maintain a commercial lease and to operate her business. This matter

[Senator Paschal Donohoe.]

received a fair degree of coverage in the media and the Minister of State carefully responded to it during an earlier discussion on the Bill. I welcome that this legislation is being discussed in the Seanad. The non-operation of this legislation has meant a small business operating in a commercially leased property is gradually finding the amount of space open to it being reduced. The landlords are legitimately concerned their responsibilities and the amount of control they will have over the lease will be steadily eroded over time. As a result of this fear, they have reduced the support and space available to this tenant.

The economic environment in which we operate means we are more focused on the need to support small businesses which, given their nature, are more reliant than larger businesses on commercial leases. This legislation is welcome. Having discussed this legislation with the tenant concerned, I believe there are lessons worth stressing in this arena. The first relates to how we reached a point whereby a gap in legislation resulted in the viability of a business, especially a small business, being threatened and compromised.

The Private Residential Tenancies Board, PRTB, exists to deal with matters in respect of the domestic rental sector. This organisation is quite vocal and adept at identifying gaps that exist in legislation in respect of the domestic rental market. It is important we learn from what has happened. I hope in future that body or another will be able to identify problems in this area before they develop. We must ensure no business is compromised in this way.

It is important we review the conditions upon which commercial leases are granted to ensure, as the needs of small businesses change and develop, the environment in which they operate is flexible. We must ensure legislation keeps pace with changes in the needs of these businesses. I hope we can deal quickly with this legislation and have it enacted to ensure the commercial sector in general and the tenant of whom I spoke earlier are not compromised further in any way.

I welcome many of the provisions contained in Part 9 which deals with the Censorship of Films Act and the changes made in respect of the Irish Film Censors Office. I welcome the increase in fines to be levied on those found to be in breach of the current legislation in terms of renting out videos and DVDs to minors. I welcome also the recognition that there exists some non-mainstream enterprises who, because of current charges, are unable to get their films out to charities and so on who may be interested in viewing or showing them. This is particularly welcome given the Irish film industry is leading the way in some of these films. It is a good change.

This legislation contains a reference to the threshold on the basis of which a decision will be made if the content of a film is likely to cause harm to children. I would like us to debate that issue further in the future. The films that are now part of mainstream entertainment have images and content which, if reflected on, would raise questions about whether children should be exposed regularly to them.

I raised a point previously, on which I have contacted the Irish Film Censor's Office, concerning the displaying of posters containing images advertising films, which when contained in a film result in it having a rating which prevents it from being viewed by minors. I referred to a film with an 18 rating. It was a horror film that contained scenes of explicit torture. The poster advertising that film contained an image of a man being tortured. That poster was displayed outside a cinema in O'Connell Street and outside other cinemas throughout the country. Following my raising this point with the film censor, he raised it with the distributor of the film.

When I raised the issue of this film poster, I wondered if we had become desensitised to the images we allow to be viewed by all members of the public, which lowers the threshold of images we perceive to constitute explicit violence. I would like to debate this point in future

and receive a more measured response to it. We properly spend considerable time discussing the prevalence of violence in our community. The advertising of such images in a mainstream manner should give us pause for thought but it should also give us cause for action. It is an issue I would like to debate in future.

Some colleagues referred to the issue of parental leave, the provision of which is a small but welcome measure in the legislation. As a new father who is desperate to take advantage of the opportunity to spend all the time I can with my new born children, I am strongly of the view that my role as a father is given little recognition in the existing legislation. We need to address that to ensure fathers are given the opportunity to play a more responsible role in the household.

Speaking as a previous employer, it is important to ensure employers are made aware of the existence of this clause. Employers, in general, are of the view that they are expected to be as flexible as possible in their response to mothers seeking time off for parental leave, but they do not have the same attitude to such requests from fathers. This change in the legislation is welcome, therefore, although it is a small step. It is important employers are made aware of this provision to ensure when fathers take advantage of this provision, which I hope they will, they are not be greeted with baffled looks or looks of indifference from employers. I would like the Government and the relevant statutory body to take this issue seriously and to act upon it in future.

**Senator Pearse Doherty:** Tá áthas orm deis a fháil chun labhairt ar an mBille seo. Nuair a fhoilsíodh an reachtaíocht seo i 2006 agus nuair a tháinig sé os comhair na Dála i mí Meán Fomhair 2006, chuir mo chomhghleacaí, an Teachta Aengus Ó Snodaigh, fáilte roimh an méid a bhí sa Bhille, go háirithe an moladh chun ombudsman ó thaobh seirbhísí dlíthiúil a thabhairt isteach. Cé gur chuir Sinn Féin in iúl go gclárófar leasuithe chun cur leis na moltaí a bhí ann, bhíomar sásta go raibh dul chun cinn á dhéanamh sa deireadh thiar thall. Ar an drochuair, bhain an Rialtas amach cuid de na rudaí maithe a bhí sa Bhille ar Chéim an Choiste sa Dáil. Is mór an trua é gur tharla sé sin.

When this Bill was published and commenced in the Dáil in October 2006, my colleague, Deputy Aengus Ó Snodaigh, welcomed the prospect of the position of a legal services ombudsman being introduced. While we indicated our intention to table amendments improving those provisions, we were happy that progress, which was long overdue, was being made. However, unfortunately and unaccountably the Government removed those provisions from the Bill on Committee Stage in the Dáil, thereby further prolonging the current and unacceptable position where a powerful and often elite profession is left to regulate itself. Sinn Féin looks forward to debating the Legal Services Ombudsman Bill 2008 in due course.

In terms of the Bill before us, the Civil Law (Miscellaneous Provisions) Bill 2006, ba mhaith liom díriú isteach go háirithe ar rannóg 67, a meastar sa Dáil agus a bhaineann le legal aid. I particularly draw attention to section 67, as passed by the Dáil, relating to the provision of legal aid. This section amends section 29 of the Civil Legal Act 1995. Section 29(2) of that Act currently reads, "The Board may, in accordance with regulations under *section 37*, provide legal aid or advice to an applicant without reference to his or her financial resources and may waive any contribution payable pursuant to this section and to any other regulations under *section 37* or may accept a lower contribution." Section 67 of the Bill before us would amend it to read, "The Board may (*a*) in accordance with regulations under section 37, provide legal aid or advice to an applicant without reference to his or her financial resources, (*b*) waive any contribution payable pursuant to this section and to any other regulations under section 37, or accept a lower contribution, on the ground that a failure to do so would cause severe hardship to the applicant."

[Senator Pearse Doherty.]

As the Free Legal Advice Centres, FLAC, have highlighted, the Legal Aid Board's power to waive or reduce the contribution payable for legal aid services in the amended version is now dependent upon believing that a failure to do so would cause severe hardship to the applicant, a precondition that is not in the existing subsection. The rationale for the change provided by the Minister during the Dáil debate on the Bill is not accepted by the Free Legal Advice Centres. These centres are part of an organisation that has great experience dealing with the shortfalls of the current legal aid system. FLAC has real concerns and these are underpinned by persuasive arguments. The severe hardship test is excessive. It will overly limit and restrict the assistance that the Legal Aid Board can offer to those who cannot afford access to legal services.

The current means test already fails many because it fails to take personal indebtedness or other financial commitments into consideration. As FLAC outlined, the current means test for legal aid does not take into account financial commitments to the applicant such as consumer loans. Thus, many will have to pay a sizeable contribution based on their means, but their indebtedness will not have been taken into account. Confining the board's power to waive or reduce contributions on the ground of severe hardship will make it more difficult for persons to argue for a deduction despite their straitened financial circumstances.

The effect of the section 67 will be to make only the most residual of protections available, meaning that more legal needs will go unmet. When the safety net is this low, backs will undoubtedly be broken. I call on the Minister of State to delete this section from the Bill or, at a minimum, to reduce the test from severe hardship to hardship only.

**Minister of State at the Department of Justice, Equality and Law Reform (Deputy Seán Power):** I thank all the Senators for their contributions. We are attempting to cover a wide variety of areas under the remit of the Department of Justice, Equality and Law Reform. Some Senators referred to it as a tidying up exercise. Being the month of April, it is probably appropriate that we do some spring cleaning. Most Senators were supportive of the Bill, although some criticisms were expressed about certain aspects of it. I will try to deal with as many of the issues raised as I can in the time available. In the event that I do not deal with some of them, no doubt we will have plenty of time on Committee Stage to deal with them.

A number of Senators mentioned section 67 which deals with technical changes to be made to the Civil Legal Aid Act regarding contributions to be made by the recipients of legal aid. I am aware of one non-governmental organisation which perceives this amendment as in some way requiring legal aid clients to make greater contributions than they do at present. This is not the intention of the amendment, rather it is the reverse. The Legal Aid Board's advice on the matter is that the existing provisions give rise to doubt. The new provisions are designed to remove that doubt and give the board greater freedom to reduce or waive contributions in appropriate cases.

The question of providing a definition of "hardship" was mentioned. I am not sure how a word with such a plain meaning might be defined further. It is perfectly understood, I believe, by a majority of the population. I am not sure how it might be defined more clearly. However, I shall be more than happy to listen to any suggestions from Senators in that regard on Committee Stage. We are in regular contact with FLAC. It rarely keeps any views it has to itself and it is in regular discussion with the Department. No two organisations in discussion will agree on everything but we very much respect FLAC's views. On this issue, however, it has misinterpreted the proposal. When the Bill is enacted, it will become clear that what we are saying here will happen.

Senator McDonald requested clarification on the proposed changes to the Landlord and Tenant Act. I was asked whether they would apply at any time during a lease and not just when the lease was agreed to. I confirm this will be the effect of the amendment and, as such, it will allow not only persons entering into a lease after the commencement of the Act but also persons committed to a lease to avail of this opt-out at any time before the renewal date. This is provided the parties are satisfied following independent legal advice that the opt-out is suitable for their particular circumstances.

Senator Walsh questioned the effect of the renewal of section 24 of the Petty Sessions (Ireland) Act. I can clarify for the Senator that any hearing of an appeal from the District Court is by way of a complete rehearing which would render any note kept of the evidence useless. In practice, a note of the evidence is not kept. The District Court dealt with more than 560,000 cases in 2006. Given that type of statistic, it is clear it would not have been possible for judges to keep notes of evidence in each individual case. In addition, I remind Senators of the introduction of digital audio recording in the courts. The timeframe for that project provides for completion in all courts by the end of 2009.

Mention was made of the risk of intimidation of juries if they were allowed to separate following a trial. This provision is at the discretion of the judge who will not permit the jury to separate if he or she believes such a risk exists.

A number of Senators referred to the Succession Act and clarification was sought on what was being proposed. It pertains to a situation where people who own a property as joint tenants die at the same time. A Senator asked me to explain what would happen in that particular situation. Take the example of a husband and wife who own their own family home as joint tenants and are killed in a car crash. As it is a joint tenancy, if one spouse had died, the surviving party would become the sole owner automatically without the deceased's share ever forming part of the estate. However, the question is what would happen if both died and there was no serving joint tenant to assume ownership. The law at present is silent on this question and as a result, there is no certainty for the surviving relatives of the deceased couple. In addition to dealing with the grief of the double loss, the family are forced to go to the courts to determine what should happen to the family home. The proposal we make in this Bill will clear up matters and provide certainty as to the disposal of the jointly owned property. In the example that was raised, half of the value of the house will go into the estate of each deceased spouse and will be disposed of in accordance with the terms of the wills made by either party.

Senator O'Donovan mentioned the Government's commitment to tidying up the entire body of law. The Government has established on a statutory basis the codification of the criminal law review group which is in the process of codifying the entire body of criminal law. As a solicitor, Senator O'Donovan will understand the enormous task the group has in hand and I am sure we will come to appreciate the benefits the completion of the work will bring to the clarity and accessibility of the law. However, it is a time-consuming task, so we shall not see progress overnight. There are also plans to consolidate and restate the law covering the courts and court officers. This is the largest body of civil law on the Statute Book and therefore has been singled out for immediate attention. The Law Reform Commission is advancing that work.

Senator Alex White highlighted the need for clarity in the law. I remind the Senator that this area is included in the Law Reform Commission's third programme for law reform. Following completion of the Law Reform Commission's review of this area of law, the Government will address any changes recommended, including changes to ensure clarity. The proposal in the Bill relating juries will not prejudice the commission's valuable work in this matter.

Several Senators touched on a number of aspects concerning the legal profession. It was not unexpected that a number of Senators who are members of the legal profession participated in

[Deputy Seán Power.]

today's debate. From a professional viewpoint their contributions were very interesting and are very much respected. In the contributions a number of aspects of the legal profession were touched on, including disciplinary matters and the question of costs. I have no doubt these matters will be ventilated fully when the Legal Services Ombudsman Bill, at present before the other House, comes to the Seanad. The Minister is preparing a Bill to address the question of legal costs which will provide a further opportunity to debate this issue. Senator Alex White obviously was very keen to have the matter discussed. I am sure Senators will use the opportunity that presents itself to debate the issue.

I was interested in Senator Paschal Donohoe's contribution, especially on paternity leave. Very often when we are wrapped up in proceedings in this House and talking about particular issues, we believe the world is listening to us. Very often we pass legislation in the House that goes almost unnoticed outside the House. It is important the provisions in the Bill pertaining to paternity leave be publicised. It is important employers and employees are made aware of the changes we are introducing.

I thank the Members for their contributions and look forward to further dialogue with them on Committee Stage.

Question put and agreed to.

Committee Stage ordered for Thursday, 10 April 2008.

*Sitting suspended at 1.45 p.m. and resumed at 3.30 p.m.*

#### **Business of Seanad.**

**Senator Diarmuid Wilson:** With your permission, a Leas-Chathaoirligh, I seek the suspension of the House until 4 p.m.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

*Sitting suspended at 3.31 p.m. and resumed at 4 p.m.*

#### **Voluntary Health Insurance (Amendment) Bill 2007 [Seanad Bill amended by the Dáil]: Report and Final Stages .**

**An Leas-Chathaoirleach:** This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 103, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject matter of each related group of amendments. I have also circulated the proposed grouping in the House. Senators may contribute once on each grouping. I also remind Senators that the only matters which may be discussed are the amendments made by the Dáil.

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

**Minister of State at the Department of Health and Children (Deputy Brendan Smith):** I wish to apologise for inconveniencing the House and thank all Members for their co-operation in deferring this discussion from 3.30 p.m. I was launching a child and adolescent centre in Finglas

and was back in Leinster House at 3.30 p.m. so I was being cautious in notifying our Whip that I might be delayed.

I am reporting back to Seanad Éireann on some minor amendments that were made in Dáil Éireann which had the broad support of all contributors in that Dáil debate. The first is the addition of definitions covering the health insurance Acts, which relate to the provisions now included in the Bill under sections 3, 4 and 5, which I will address when dealing with group 3, and also the restructuring of the initial definitions of the relevant subsidiary on the services subsidiary. The meaning of these subsidiaries is now set out within the relevant sections. The other changes made are drafting amendments covering references in the Bill to the Companies Act.

**An Leas-Chathaoirleach:** The subject matter of amendments in group 2 — amendments Nos. 7, 8, 12, 13, 19, 21, 23 and 25 — is technical drafting.

**Deputy Brendan Smith:** The amendments contained in this group cover minor technical issues, being amendments made on foot of consideration by the Office of the Attorney General of the initial text. Amendments Nos. 7 and 8 more accurately reference the companies and insurance Acts. Some of the amendments have been made to improve the clarity of the provisions. Amendment No. 19 puts it beyond doubt that only one health insurance subsidiary is being provided for, while amendment No. 23, having regard to the contributions made in both Houses when the issue of extending the powers of the VHI was discussed, reaffirms that the establishment of subsidiaries to engage in new activities and functions provided for under section 7(c) can only happen after authorisation has been obtained. That was one issue that was raised with us in the Dáil and we want to confirm that.

**Senator Frances Fitzgerald:** I thank the Minister of State and welcome him to the House to go through what are effectively the Final Stages of this Bill. The amendments being discussed today have been subject to a good debate in the Dáil and clarify a number of issues which we have already discussed in this House.

The Bill essentially obliges us to comply with EU law. It is looking at the issues of solvency requirements, competitiveness and effectively creating a more equal playing field in health insurance. I am interested in hearing the Minister of State's comments on recent developments where we have seen Hibernian becoming involved in this area and taking over VIVAS. What will be the implications of this in terms of the changing role of the VHI?

The Government has essentially been under pressure from the Commissioner for Internal Market and Services, Charlie McCreevy, and EU regulation in this area. Court action was threatened if certain action was not taken in respect of the VHI and there was a threat that the Government would be pursued. Given the changes brought about by this Bill, does the Minister of State now believe this threat has gone completely?

In respect of the points raised in the Dáil and Seanad, has the VHI moved to bring everything in order so that it meets the point just made by the Minister of State? Does he expect it to be fully regulated by the end of the year? The Minister put in a date as a result of some of the points previously raised in the Seanad. Could the Minister of State clarify this?

**Deputy Brendan Smith:** What Senator Fitzgerald has said is correct. It is important that Members of this House are aware that the health insurance market is changing, as was witnessed very recently by the purchase of VIVAS by Hibernian. It is important that the VHI is empowered to compete in the market while also ensuring that it does so on an equal footing with its competitors. It is hoped that the Bill will enable the VHI to attain authorisation as an insurer by the end of this year. The recent changes in the market highlight the need to bring

[Deputy Brendan Smith.]

forward this particular Bill. Under the Bill, we are determined and anxious that this relevant authorisation will be achieved before the end of this year.

**Senator Frances Fitzgerald:** I welcome that because, as the Minister of State said, it is important given the very high level of insurance that Irish people take out. It is important that there is confidence in the market and the various providers and that the VHI continues to provide the sort of services which it has provided very effectively for a long time.

However, it may be that those who are paying for private health insurance in this State will not be able to avail of quite the level of service they have experienced up to now given the pressures on the health service and waiting lists for both public and private facilities. This must remain a concern for many.

**An Leas-Chathaoirleach:** Group 3 concerns the definition of a health insurance contract, which is the subject matter of amendments Nos. 9, 10 and 11.

**Deputy Brendan Smith:** The Bill, when published, provided for the removal of an exemption from section 2 of the health insurance Acts for cash plan type products that also include cover for outpatient and GP services. When the Bill was previously considered here, the Minister advised the House that the change proposed would limit regulation to the minimum necessary to protect the community rated indemnity market and would enable cash plan providers to design their products so as to be exempt from the regulatory framework under section 2(a) of the health insurance Acts or to be subject to only limited regulation.

Having discussed the matter with the Health Insurance Authority and providers in the market in the interim, it was considered desirable to bring forward amendments to the sections of the health insurance Acts covering these exemptions to allow the insurers maximum flexibility while protecting the broader indemnity market. The amendments provide for the amendment of sections 10 and 12 of the health insurance Acts to ensure that contracts that relate to relevant health services — GP and outpatient type services and-or public hospital daily inpatient charges only, with no inpatient indemnity payments — will be exempt from the regulatory requirements that apply to health insurance contracts offering indemnity cover for inpatient services.

Another exemption dealing with health insurance cover under an international plan sold to persons moving from one country to another on a temporary basis and which is set out in section 3(b) is being amended. The revised exemption substitutes proposed text for paragraph D of the 2001 Act. The amendments provide for the removal of a cumulative requirement currently contained in the exemption and some additional qualifications limiting exemption to temporary stays for employment purposes. That was an issue welcomed by all Members in the Dáil.

**Senator Frances Fitzgerald:** This is a technical amendment. Many Members raised the issue of having multinational companies here and having people who have health insurance products that might be deemed to be illegal, as it were, in this country, or that they would not be covered or would be exempted by the legislation. I believe this change clarifies the matter. We wanted to ensure their arrangements were not caught by our regulatory regime of risk equalisation. This amendment seems to meet the concerns highlighted in the previous debate. I am glad this is now addressed in the legislation and it seems very satisfactory. These, as it were, cash contracts will not be affected. Does it effectively mean inpatient charges cannot be covered under any circumstances if they have these contracts as appears to be the case?

**Deputy Brendan Smith:** I understand they will be subject to the law only if it is indemnity. I believe we had a fairly detailed debate on that relationship. The amendments provide for the amendment of sections 10 and 12 of the Health Insurance Act to ensure contracts that relate to relevant health services only, in other words outpatient-type services and GP services and/or to public hospital daily inpatient charges only with no inpatient indemnity payments, will be exempt from the regulatory requirements that apply to health insurance contracts offering indemnity cover for inpatient services, exempt if provided for in cash plans.

**An Leas-Chathaoirleach:** Group 4 on functions of the board is the subject matter of amendments Nos. 14 to 18, inclusive.

**Deputy Brendan Smith:** The bulk of the amendments to the section improve its layout and structure. While the scope of section 7 is essentially the same as that previously considered by this House, the section has been expanded by the inclusion of the term “or otherwise”. It would be undesirable to restrict the manner in which the board may provide insurance financial services after authorisation has been attained. This is also a technical amendment.

**An Leas-Chathaoirleach:** Group 5 on health insurance subsidiary is the subject matter of amendment No. 20.

**Deputy Brendan Smith:** The amendment clarifies that the provisions included in section 8(3) of the Bill shall also apply to the subsidiary established for the purpose of carrying on the board’s health insurance business under section 10. This amendment does not encompass the provisions under section 8(1). However, it clarifies further that on establishment the activities of the relevant subsidiary shall be required to be consistent with the provisions of the VHI Acts and that it shall have the objects and powers necessary for the attainment of the principal objects of the subsidiary.

**An Leas-Chathaoirleach:** Group 6 on report to the Competition Authority is the subject matter of amendment No. 24.

**Deputy Brendan Smith:** This amendment was of interest to Senator Fitzgerald. This section was added to the Bill when this House accepted an amendment tabled by Senator Fitzgerald. The change made in the Dáil reflects that it would be appropriate that VHI should report on its membership as opposed to on the overall market.

**Senator Frances Fitzgerald:** I welcome its inclusion, which is in the interest of transparency for the market. Given the dominant position VHI has had up to now and given the changes we are making to increase the work VHI can do, it would seem appropriate that that information be supplied to the Competition Authority and made available in a public way to competitors and to the media in general. It is a useful addition to the Bill and I thank the Minister of State for accepting it.

**An Leas-Chathaoirleach:** Group 7 on no State guarantee is the subject matter of amendment No. 26.

**Deputy Brendan Smith:** This amendment clarifies the liability of the board and its subsidiaries for any borrowings that may arise.

**Senator Frances Fitzgerald:** This is an interesting amendment. It effectively puts into the law and makes very clear that a State guarantee shall not be provided to enable the board or a subsidiary to raise or borrow money under this section or under any other provision of the Voluntary Health Insurance Acts. Perhaps the Minister of State could clarify if this was at the

[Senator Frances Fitzgerald.]

core of the EU concerns about the subsidy of Government to the VHI and infringing fair competition and competition law. It seems to deal effectively with the concerns expressed by Mr. McCreevy about the operation of the VHI and the State support it was deemed to have received over the years. It was seen as interference with fair competition. This provision will ensure that in future a State guarantee shall not be provided to enable the board or a subsidiary to raise or borrow money. I presume this provision has been written into the legislation in such a detailed way in the interest of fair competition.

**Deputy Brendan Smith:** Regarding the Senator's final point it is clearly relevant to competition. It is to make clear that no State aid is involved.

**An Leas-Chathaoirleach:** Group 8 on making of orders is the subject matter of amendment No. 27.

**Deputy Brendan Smith:** This new section is broadly similar to an amendment tabled by Senator Prendergast in this House. On foot of consideration by the Office of the Attorney General, it specifies the orders to be laid before the Houses of the Oireachtas.

Question put and agreed to.

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

**Minister of State at the Department of Health and Children (Deputy Brendan Smith):** I thank the Leas-Chathaoirleach and all the Members of the House for facilitating me with deferring the debate by half an hour earlier this afternoon. I thank Senator Fitzgerald for her positive contribution to the debate this afternoon. Senators Fitzgerald and Prendergast contributed to the discussion on the Bill previously in this House. I thank all the Members for their co-operation.

**Senator Frances Fitzgerald:** Obviously we raised a number of concerns in the course of this debate about the evolving health insurance market here. We highlighted issues about which we were concerned, some of which centred on the database. VHI has the potential for abuse of that database given the extension of subsidiaries etc. However, now is not the time to go into those matters again. We also raised our concerns about what people buying health insurance have access to at the moment given the changed nature of health services here and some of the challenges which face the development and provision of our health services. Clearly it was imperative that the Bill be passed given the concerns expressed at EU level on competition. One would want to wish the VHI well given the very wide range of services it has provided very effectively when nobody else in the country was doing so. I thank the Minister of State and his officials for their work in drafting the Bill.

**Senator Diarmuid Wilson:** I have been sitting in here today representing Senator Feeney who is unavailable this afternoon. It is a very joyous occasion for people of Offaly and she is with them at another location. I thank Senator Fitzgerald and the Leas-Chathaoirleach, for their co-operation in this matter this afternoon. I thank the Minister of State and his officials for the smooth passage of the Bill.

Question put and agreed to.

*Sitting suspended at 4.20 p.m. and resumed at 5 p.m.*

**Education for Persons with Special Educational Needs: Motion.**

**Senator Frances Fitzgerald:** I move:

That Seanad Éireann noting that:

- the Minister for Education and Science has been slow to enact the Education for Persons with Special Educational Needs Act, (EPSEN) 2004 as advised by the National Council for Special Education;
- schools and parents have difficulty accessing psychological assessments;
- parents of children with autism and other special needs still find themselves in the courts in order to obtain an appropriate education for their child;
- children with special needs are subjected to lengthy waiting lists in order to access necessary therapies such as speech and language, occupational, physiotherapy and sensory;
- child and adolescence psychiatry services in Ireland remain inadequate and under resourced such services also have waiting times of up to three years or closed lists;

and calls on the Government to:

- fully adopt and implement the recommendations of the National Council for Special Education on rolling out of the Education for Persons with Special Educational Needs Act (EPSEN) 2004;
- act immediately to resolve the barriers facing children with special needs and their families in accessing essential services;
- increase the number of national educational psychologists in order to be in a position to meet the commitment in the programme for Government to increase the number of psychologists to 200 by 2009; and
- recognise the importance of early intervention and support services for children with special needs.

I welcome the Minister of State, Deputy Jimmy Devins. I put this motion on the Order Paper as a result of the huge concern throughout the country about the difficulties parents are experiencing in accessing assessments for their children, getting inpatient beds where they are required and the huge difficulties schools and school principals have in accessing the support services they believe are required for children in their care. The motion aims to highlight the need to implement fully the EPSEN Act of 2004 as a matter of urgency and as advised by the National Council for Special Education. The council advised the Minister to bring the timetable for implementation forward as it considered it inappropriate that children should have to wait until the implementation date contained in the Act.

The motion highlights the need for the Government to address the shortage of psychologists and the huge difficulties encountered by schools and parents in obtaining assessments, the long waiting lists for speech and language therapies and other therapies which parents know their children need and, in some cases, have been advised by assessments that they need, and the difficulty many parents encounter when trying to obtain an appropriate education for their children. In the absence of these services parents must resort to the courts, as was graphically seen recently. Fine Gael also put down this motion as a result of the failure of the Government

[Senator Frances Fitzgerald.]

to fund an adequate number of mental health initiatives, its failure to ring-fence the funding for mental health, the stripping of assets from mental health facilities and the diversion of funding, as is evident at Beaumont Hospital where the site for a unit that was meant to replace facilities in St. Ita's has now been taken for a co-located hospital. This is a disgraceful abandonment of a commitment to people suffering from mental health difficulties.

There is a failure to provide adequate services in child and adolescent psychiatry throughout the country. Evidence of this is the closed list in Kill, County Kildare. Families in that area can no longer access the service because the list is effectively closed and is not taking referrals. Other child and family services throughout the country have waiting lists of one to three years. What are parents supposed to do with children who have mental health difficulties and who need help now, not in three years? Everybody is aware of the value of early intervention in such cases. This is the eleventh year of Fianna Fáil-led Government, a Government that inherited a surplus in the public finances and a strong economy, yet these are the statistics and the experience of children with special needs.

This country has experienced huge economic growth. The Celtic tiger roared loudly, but the roar was not even a whimper when it came to caring for children with special educational needs or those in need of psychiatric services. Why has this not been a priority area, as is evident from the detailed report, *The Lie of the Land*, launched some time ago and the waiting lists I have mentioned? Every Member of the House is aware of cases of children with special needs being unable to access an appropriate education, receive a diagnosis or obtain vital services such as speech and language therapy. If one does not get a diagnosis for one's child, how can one know what the child needs or the range of services that would benefit the child? If one cannot get a diagnosis, it is difficult to access the services appropriate to the child.

What is the Government's response to the motion? I condemn the long amendment it has put forward. It is full of words which try to paint everything in the garden rosy. I would be far more impressed if the Government had acknowledged the waiting lists and the difficulties, as opposed to complete denial in the face of the reality of poor services, and sought the support of the Opposition in trying to find a way forward and having a debate that examines the barriers that exist, the reasons the money is not being effectively spent in this area and why services are still not available to children. We know the number of children involved so we should surely be able to deal with their needs in a country such as this, given the type of economy we have had over the last 11 years. I will be saddened and disappointed if the Green Party accepts the Government amendment. Only 11 months ago that party was committed to this issue and critical of the Government's appalling record, a record that has not changed or improved in the time the Green Party has been in Government.

The amendment is an insult to families of special needs children. It is an insult to Bridget Keane and John Butler and their son Mark. Mark has Down Syndrome and in their local newspaper his parents spoke of how the lack of speech therapy is hampering his development. Ms Keane said that with proper help and intervention Mark could reach his full potential but that very little help was available. Mr. John Lindsay, the chief executive of Down Syndrome Ireland, went even further when he said: "The provision of this service by the State has reached crisis point". Mr. Lindsay is on the front-line working with children with Down Syndrome and their parents. He is aware of the situation. I accept the amendment's statement that there is increased funding. However, there is still huge difficulty because people cannot access the services they need. Why is this happening? Why did the Ó Cuanacháin family in Arklow, County Wicklow, have no choice but to take the Minister for Education and Science and the State to the High Court to try to obtain an appropriate education for their autistic son, Sean?

This amendment is an insult to every family waiting for a psychological assessment for their children and who have had to endure broken promises and unfulfilled commitments by the Minister with regard to increasing the number of educational psychologists. Some of the wording in the amendment is ridiculous. I ask any member of the Government to find a principal from any school in the country who will agree with what is said in the amendment, that schools are happy with the level of resources they have been given, are happy to assess the child's educational needs themselves and that there is no need for an educational psychologist in many cases.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Frances Fitzgerald:** It is the most extraordinary wording I have seen in an amendment and is so far from the truth that it beggars belief. The Minister promised to increase the number of national educational psychologists by 31 to 158 but only 11 have been delivered. The programme for Government pledges to increase the number of psychologists to 200 by the end of 2009 but given the lack of educational psychologists graduating, the slow recruitment process and the lack of resources it seems extremely unlikely that this will be reached.

I have quoted some individual stories and that is just the tip of the iceberg, as everyone in this House knows. Even if one were not moved by the individual stories, there is no doubt the economic arguments would make sense. The report of the National Council for Special Education, NCSE, the Minister's own organisation, makes this point that early intervention makes economic sense. If one does not intervene and help children with special needs at an early enough stage they go on to have increased difficulties, employment is more difficult for them, it is more difficult for them to pass exams and access third level education, life becomes much more burdensome and difficult and some will become more dependent on the State. It makes economic sense as well as everything else to put these services in place.

The Minister has been slow to implement the Education for Persons with Special Educational Needs Act 2004 as advised by the NCSE. We all appreciate that massive change in special needs education cannot be introduced overnight. However, the Act compelled the NCSE to draw up an implementation plan to guide the Minister and assist her in enacting the new provisions. Why has the Minister been slow to introduce the implementation plan? Page 150 of the NCSE's report to the Minister warns:

The council, in presenting its proposals on the implementation of the EPSEN Act 2004 notes that the proposals represent the most cost-effective approach to addressing special educational needs. A failure to invest in this kind of approach will result in parents seeking that the rights of their children be met through the courts.

This is exactly what we have seen. If the Government fails to meet needs, then parents have to resort to the courts. Approximately 50 cases are waiting to go to court.

On the same page of the report, in section 6.12, it states that, "The council's view is that these provisions cannot wait until the end of the five-year implementation phase." Yet on the amendment we see no reference to this. We see an acceptance of the implementation date in the Bill and no recognition of what the council said to the Minister. In this report we see in black and white the Minister's expert group specifically set up to advise on special education stating categorically that many provisions need urgent attention, yet the Government amendment does not address that. This is a serious situation for families and children. Some 30 separate actions should have been implemented. Perhaps the Minister of State would respond, because the Minister did not respond in the Dáil.

[Senator Frances Fitzgerald.]

I want to address briefly the question of inpatient and outpatient services for children, which is Deputy Devins's particular responsibility. A Vision for Change recommended 100 inpatient beds for children and adolescents in five units. Although these beds were promised by the end of 2007, it appears most of them will not be delivered until 2009. As I have said, mental health continues to be the Cinderella of our public health service. Why? Why are so many children being admitted to adult psychiatric wards? Between December 2006 and December 2007, 200 children were admitted to adult psychiatric wards. What are we doing admitting young children to adult psychiatric wards?

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Frances Fitzgerald:** I look forward to hearing what the Minister of State has to say tonight on implementing A Vision for Change and providing more beds and units for children in need of in-patient care. In 2006, 3,000 children and adolescents waited an average of 15 months for a psychiatric assessment. The waiting list was longer in 2007 and the money for the implementation of A Vision for Change was slashed. This cannot be tolerated. What reassurance can the Minister of State give Members that this situation will change?

The Irish Psychiatric Association presented a very detailed report some time ago analysing all this. Mr. Declan Coogan, a spokesperson for the Irish Association of Social Workers was quoted in *The Irish Times* about children who were in urgent need of proper intervention but were unable to access support. One example was an eight year old boy with serious emotional and behavioural problems at home and school. He had been on a waiting list for two years. His behaviour had become so problematic he had reduced hours at school and his family, understandably, was under considerable stress. What do we offer these families? Where is the funding to implement A Vision for Change? Where are the urgently needed inpatient beds particularly in the area of child and adolescent psychiatry? In the amendment the Minister of State mentions 1,050 posts. Will these be affected by the cutbacks the Health Service Executive is meeting to discuss today? Where are those posts? Has the recruitment process begun? I have been able to touch on only some of the issues of concern to us in this area. I look forward to hearing what the Minister of State has to say in response.

**Senator Fidelma Healy Eames:** I intend to share my time with Senator Donohoe. I thank the Minister of State, Deputy Devins, for being in the House. Informally he told me he loves his job. We can make this a great country for people with disabilities if we work together and listen to people with disabilities because they best know their needs. This is not a great country for people with disabilities. I will touch on education and employment in particular. To be given a fair chance or a level playing field people with disabilities need appropriate, timely intervention and various forms of assistance. Special educational needs exist on a continuum from mild to severe and similar adaptations need to happen in the workplace to make disabled people more employable.

What schools offer to children with disabilities is highly problematic and a bit of a joke. I know this because I work in those schools and have done so for many years. One third of our young people with disabilities aged from 15 to 19 drop out of school compared with one quarter of the rest of the population. Why? Senator Fitzgerald has touched on some of the reasons. The National Educational Psychological Service, NEPS, is haphazard. Just 1,303 of our primary schools out of a total of 3,200 have a NEPS service. At second level 456 out of 720 schools have a NEPS service. Psychological services are not in place to provide the adequate and timely assessments for children.

Autism care is a joke. It is entirely dependent on parent action. Before St. Patrick's Day I told the Minister for Education and Science, Deputy Hanafin, research is vital to track approaches that are successful for children with autism. Speech and occupational therapy for children with autism is entirely as a result of private funding sources. For example, Claddagh national school in Galway fund-raises to pay an occupational therapist €642 for one day's work. Leaving children with severe behavioural and communication problems without speech and occupational therapy is criminal. The Education for Persons with Special Educational Needs Act needs €397 million to be implemented. No appeals process is operational because the Act has not been implemented.

I read the Government's amendment. There is a great deal of legislation but none of it has been implemented. We have a real difficulty in that the assessments available by law are available only to those under the age of five. Until we embrace the principles of non-discrimination, inclusion — which means no cherry picking and exclusion of children with special needs by schools — and equal opportunity for all in education and employment across society, there will be no fair play for people with disabilities.

To achieve this in law the Government needs to ratify immediately the UN Convention on the Rights of Persons with Disabilities. The Minister of State might give the timeframe for that. We signed it last year. The 20 governments across the world which have ratified it are bound by law to give fair play to people with disabilities. Some of our EU partners such as Hungary and Spain have ratified it.

One of the main points about which I want to talk to the Minister of State is the need for the individualisation of service delivery and to move away from the old model we have been using. Service providers such as the HSE and the Brothers of Charity have become highly inefficient. The Comptroller and Auditor General's report is highly critical of this and my understanding is that the Government is too. Having spoken to many disability groups and representatives from NUIG, which specialises in this area, it is clear that we should be aiming for a new model of service delivery which will be person centred. Those groups and representatives have asked me to ask the Minister of State if he is committed to that.

I am proposing a more flexible approach so that people with disabilities, following an assessment of their needs, would hold their own budget. This would be radical for Ireland. In the United States of America at the moment, this is called the ticket to independence, whereby a person with a disability literally shops around to meet his or her own needs. In Ireland, on the other hand, we have a totally different system. I just met representatives of Muscular Dystrophy Ireland who told me that 92 out of a total of 478 people with muscular dystrophy in this country have no physiotherapy. One fifth of those with this condition have no physiotherapy. A 17 year old with muscular dystrophy was told that there was no point in having physiotherapy because he would never walk again. What hope is that to give him and his mother? Physical stimulation is vital for this young man so his mother asked for a massage chair to stimulate her son's muscles. The chair costs €1,700 but the HSE has refused to fund it.

Currently, the HSE is contacting every user of Invacare wheelchairs, which were distributed through the old health boards, to tell them that they are no longer covered in the event of an accident. At the same time, however, the HSE will not provide these people with another wheelchair. The executive is further disabling people with disabilities. I urge the Government to get rid of the HSE.

People with disabilities are not protected in law. At present, no assessments are available to people over five years of age in this country, so the law is no good to them. Furthermore, the HSE is completely failing people with disabilities. It is wasting our money and has proved yet

[Senator Fidelma Healy Eames.]

again that it is ineffective. If the budget was in the hands of the 17 year old to whom I referred, does the Minister of State not think he would buy his own chair, appropriate to his own needs?

Is the Minister of State committed to a more flexible and person-centred delivery of service for people with disabilities? We must break down the monopolies in the current method of service delivery. I ask the Minister of State to answer my questions and look forward to his reply.

**Senator Paschal Donohoe:** I second the motion proposed by Senator Frances Fitzgerald. I find myself in an unusual position because the amendment from the Government more clearly illustrates the scale of the problem we are facing than the original motion tabled by my party. If one examines the range of measures and statements contained in the amendment, they demonstrate a level of disconnection from the reality of what is happening on the ground that is worrying.

Senator Corrigan has made some superb interventions on these issues in the past and did so again this morning in the House. She made an excellent point regarding the fact that the HSE has continued to fail to ring-fence expenditure and funding for pupils and people with special needs but the Government's amendment would have us believe this is not happening at all. The amendment would have us believe that the needs of the most vulnerable young people in our society are being met by this Government and that the funding is in place for that. However, anybody who has dealt with constituents with such problems or with the experts that are providing care in this area will know that the Government's amendment does not recognise the reality of what is happening in communities and families who are under enormous stress and are vulnerable when dealing with the Government in their efforts to provide care for their children with special needs.

I cannot think of any greater abdication of responsibility on the part of the Government than for families to be forced to go to the highest court in the land to secure their constitutional right to school their children.

**Senator Joe O'Toole:** Hear, hear.

**Senator Paschal Donohoe:** It is a disgrace that we have 70 families in this country who have been forced to go to the courts, 47 of whom did so to attempt to vindicate the rights of their autistic children. It is shameful that they had to go to court to secure the needs of their children. One such family lives quite near me and the desperation I see in their faces when I talk about the lengths to which they must go makes me ashamed as a politician and should make this Government ashamed of its willingness to force people to take such action.

As I was preparing for this debate, I examined the annual output statement from the Department of Education and Science for 2007. That document lays out the crucial strategic priorities the Department wants to deliver and the money it will put in place to do so. Nowhere in that 27 page document is reference made to the need for ABA schools. The people working in this area are not even mentioned, let alone recognised. I decry the amendment proposed by the Government.

**Senator Maria Corrigan:** I move amendment No.1:

To delete all the words after "Seanad Éireann" and substitute the following:

- recognises this Government's policy of mainstreaming service provision for people with disabilities within State agencies that provide services to citizens generally;

- acknowledges this Government's commitment to people with a disability through the national disability strategy which comprises the Disability Act 2005, the Education for Persons with Special Educational Needs Act 2004, the Citizen's Information Act, the six sectoral plans and the multi-annual investment programme of €900 million from 2006 to 2009;
- welcomes the additional funding which has been invested in support services for people with disabilities which was provided to enhance the level and range of services available to adults and children with intellectual, physical and sensory disabilities and those with autism and for the recruitment of additional professional support staff;
- notes that the Government's commitment has been continued with the allocation in the Budget for 2008 of an additional €50 million for the provision of additional health and personal social services for people with a disability;
- welcomes the commencement of the Disability Act 2005 for children under five and improved access to assessments for children with disabilities under the Disability Act;
- notes that since 2004, investment in special education has doubled to €900 million this year;
- recognises that the Education for Persons with Special Educational Needs Act is being implemented on a phased basis, in line with the five year time frame envisaged in the legislation;
- acknowledges that with the introduction of the general allocation model at primary level, most pupils with special needs no longer need psychological assessments in order to access extra teaching support;
- notes that the limit on the number of assessments encourages schools to take responsibility for initial assessment, educational planning and remedial intervention and to avoid unnecessary referral for assessments. Principals can contact NEPS if they believe that exceptional circumstances warrant additional assessments for their pupils;
- recognises the improved co-ordination between the education and health sectors, with the appointment of a Minister of State and the setting up of the Office for Disability and Mental Health with that specific responsibility and the establishment of a cross-sectoral team to co-ordinate the implementation of Part 2 of the Disability Act 2005 and the relevant sections of the Education for Persons with Special Educational Needs Act 2004;
- acknowledges the establishment of a complaints and appeals system under the Disability Act 2005 to provide a statutory system of redress;
- recognises the number of people employed in the public health service since 1997 has increased by over 64%, from just under 68,000 to 111,505 whole time equivalent staff in December 2007; and

notes in particular, by the end of 2007, there were

- 3,029 more medical and dental staff, a 61% increase;
- 9,767 more health and social care professionals, a 164% increase; and
- 11,660 additional nurses, a 43% increase;

[Senator Maria Corrigan.]

- acknowledges that the HSE has been given approval for an additional 1,050 new posts arising from development funding provided by the Government in the budget day package for 2008;
- notes that the temporary recruitment pause put in place by the HSE towards the end of 2007 ended on 31 December 2007;
- reaffirms the statutory requirement that the Health Service Executive should manage its budget within the Vote approved by Dáil Éireann;
- welcomes the early signature by the State of the UN Convention on the Rights of Persons with a Disability;
- welcomes the Government commitment that the convention be ratified by the State as quickly as possible taking into account the need to ensure that all necessary requirements under the convention are being met;
- notes that a high-level cross-departmental group is advising on the changes to the Government's national disability strategy that are required to ratify the convention and that the group has developed a work programme to address matters that need to be aligned with the UN convention in order that the ratification may take place;
- welcomes as an important part of the work programme, the commitment in the Government's legislative programme to bring forward a Mental Capacity Bill; and
- supports the Government's commitment to develop quality standards in the provision of health and personal social services for people with disabilities, including residential and day services, through the Health Information and Quality Authority.

I welcome the Minister of State to the House this evening. I wish to comment briefly on the points made by Senator Fitzgerald. I wish to make it clear that under no circumstances are we, on this side of the House, suggesting we do not have difficulties. We clearly have difficulties but we are making progress and believe that the multi-faceted framework that has been put in place by the Government will provide the mechanism required to address the continuing difficulties and allow us to move on and meet people's needs. It is important to acknowledge that there will always be challenges. Indeed, there should always be challenges because we should always be questioning and trying to get better. We should always believe there is a way to get better and to improve our services.

It is disingenuous to come into the House and not acknowledge the extent of the developments and progress that have taken place over the last number of years although I acknowledge that Senator Fitzgerald made reference to the increased funding that is now available. With regard to the comments of Senator Donohoe, while I thank him for his compliment, I wish to clarify that the point I raised this morning was specifically related to the €25 million that was allocated directly for mental health services for the implementation of recommendations of A Vision for Change, not for children with special educational needs.

The amendment is quite extensive and it would not be possible for me to deal with every aspect of it in the limited time available. In that context, I will address a number of key points. I particularly welcome the incorporation of the national disability strategy into the new social partnership agreement, Towards 2016.

The national disability strategy, launched in 2004, stresses equal participation in society of people with disabilities and provides for a framework of new supports for these individuals. The strategy supports and reinforces equal participation in society of people with disabilities and comprises five elements, namely, the Disability Act 2005, the Education for Persons with Special Educational Needs Act 2004, sectoral plans published in 2006 by six Departments, the Citizen's Information Act and a commitment to a multi-annual investment programme for disability support services of €900 million for the period 2006 to 2009.

The central components of the strategy are the Disability Act and the Education for Persons with Special Needs Act. Since the launch of the strategy in 2004 until the end of 2007, €420 million in revenue and capital funding has been allocated. The programme provides a commitment to funding certain disability-specific services during the period 2006 to 2009. It is expected that by the end of 2009 there will be 1,235 new residential places, 398 new respite places and 467 new day-care places. This is a solemn reflection of the Government's commitment to the improvement of disability services.

I wish to briefly reflect on the underpinning theme of equal participation in society of people with disabilities. Sometimes as a society, although well-meaning, we can dwell disproportionately on what the person cannot do without an appropriate focus on what the person can do.

It is essential that we aspire and aim for equal participation and full expression of citizenship for people with disabilities. We must be ambitious regarding people with disabilities and we must insist on as high a quality of life as possible. The national disability strategy provides us with concrete opportunities to achieve this. From early childhood, supports are available to assist children in their development. I welcome the implementation of the Disability Act 2005 for children aged under five. This prioritisation reflects the importance of early intervention, which can have a significant impact on the disabling effects of a condition or impairment.

Part 2 will be commenced in respect of children aged between five and 18 in tandem with the implementation of the EPSEN Act. The Department of Education and Science has informed us it is envisaged that all sections of the EPSEN Act will be implemented over a five-year timeframe, which commenced on 1 October 2005. I welcome that the statutory requirements of Part 2 of the Disability Act will be extended to adults as soon as possible. A commitment has been given that this will happen no later than 2011 but I urge the Minister to strive for an earlier implementation date. Such developments bring their own challenges such as the sourcing of therapists. While additional training places have been provided in recent years for speech and language therapists, physiotherapists and occupational therapists, the Government faces an ongoing challenge of attracting people to work in the field. Will the Minister of State examine this issue? If children cannot access such services, all the plans in place will be impeded before they get off the ground.

The Government introduced, and is progressing, an extensive reform programme of health services. Part of this programme includes the development of national standards for services for people with disabilities along with the development of a draft code of practice for sheltered work services. Draft standards for disability service were produced by the Department of Health and Children in association with the National Disability Authority, NDA. Following the statutory establishment of HIQA, a standards advisory group is in place. I welcome the recent issuing of draft standards for residential services for people with disabilities and I particularly welcome the planned commencement of the inspectorate. This will finally address the long-standing anomaly whereby all residential facilities for children are inspected with the exception of those facilities for children with intellectual disabilities. Incredibly, residential facilities for children with disabilities were exempted from inspection.

[Senator Maria Corrigan.]

It is important that the introduction of standards does not become a paper-based exercise but rather that they result in meaningful improvements in quality of life for people with disabilities. This may mean all of us will face a challenge to our own mindset. Will the Minister of State encourage the development of residential options for adults with intellectual disabilities in the context of living options and ensure we follow international best practice in pursuing a framework of supported living for such adults, which would provide opportunities for people with intellectual disabilities to live as independently as possible in a safe and healthy way in their own homes? I had the enormous satisfaction of being involved in the roll-out of a pioneering supported living project. This has resulted in adults having their names on their own rent books, holding their own keys, accessing supports appropriate to their needs and determining when and if to have a cup of tea, a shower or go to bed. These are basic rights we take for granted every day. Will the Minister of State consider how many of our community group homes, albeit unintentionally, have become mini-institutions? Power shifts significantly when the residents hold the keys to the home and not the staff.

Progress has been made but many more steps must be taken before we experience the highest quality of care. The Government is fully committed to providing a high quality service to all persons with a disability and this is reflected in the establishment of the office for disability and mental health, which brings together responsibility for a range of policy areas and which will improve co-ordination. I wish the Minister of State well with this essential work. I particularly welcome the inclusion of a mental capacity Bill in this year's legislative programme. It will enable Ireland to meet its obligations under the UN convention and it will ensure our citizens with intellectual disabilities, in particular, will have the opportunity to exercise their rights as citizens.

I welcome the increase to 209 in the number of psychologists in the NEPS. I ask the Minister of State to enhance the remit of the service and to expand its role. Will he consider commencing a campaign on the MMR vaccination? The impending measles epidemic could be significant because it may result in people unnecessarily acquiring an intellectual disability. A review should be conducted regarding the needs of those with mild intellectual disabilities, who are quite vulnerable. Rather than being person-centred, perhaps it should be person-led.

**Senator Nicky McFadden:** That contribution took 15 minutes.

**Senator Joe O'Toole:** Senator Corrigan is learning the rules of the game quickly. It was the best eight minutes I have ever heard. I welcome the Minister of State to the House.

I congratulate Fine Gael on tabling the motion. I have a reasonably balanced record in the House of giving credit where it is due but Senator Corrigan's criticism of Fine Gael for not acknowledging developments is misplaced. I said to the Fine Gael leader earlier that she was quite soft on the Government in the motion but I listened to her powerful contribution.

I would like to make a number of points, of which Senator Corrigan might take note. Apart from the Government's amendment being bad and embarrassing, it is factually incorrect. For example, it is not true that the ESSEN Act is being implemented on a phased basis in line with the five-year timeframe envisaged. That is not happening. The legislation was passed having been supported by all Members in both Houses as the way forward. The background to it was that ordinary people found themselves going to the highest courts in the land to gain the right to education for their children. As soon as their cases reached the higher courts, the Government either crumbled or lodged an appeal to the Supreme Court. It was wrong whichever way it went and this legislation resulted.

It is simple and it means where a child is considered by school authorities as requiring special needs, they ask for an assessment. The assessment is conducted by a NEPS psychologist following which resources are put in place. At every stage, provision is made for appeals by parents, schools and a number of other bodies. Everything is belt and braces and it is superb legislation. It is so good that I travelled to teacher centres around the country and proposed to teachers that they should not worry about the legislation and they should support it because it would be a positive development. It was positive but the Government has walked away from it. The amendment is offensive because the body charged with implementing the legislation is the NCSE. Are the drafters of the amendment pleased about their reference to the council in the two and a half pages of text? There is no mention of it because it would be an embarrassment.

When the Minister for Education and Science passed the legislation, she forwarded it to the NCSE saying she wanted it implemented in a five-year timeframe. We all agreed that was reasonable, even though we all wanted it implemented the next day. The NCSE produced a superb, professional report outlining 42 actions relating to the implementation of the legislation. The report reflected the views of every group involved in special education, including parents, management, school boards, teachers and other professionals. The actions are listed in one column and there are columns relating to who is responsible for each action when it should be implemented. The next section of the report outlines the financial resources needed for each action. Everything was done and this was presented to the Government in the autumn of 2006. The programme was to begin in December 2006.

The first item was to do with research so I cannot tell whether it happened or not. The second item was to commence section 5(5) to establish a standards body. This was supposed to have happened in December 2006. To add to the irony and the offence of it, the fifth action is to appoint the members of an appeals board, which has been done. The appeals board is for people appealing against the outcomes of assessments. However, the assessments can only take place on the basis of what is determined by the standards body which has not been established. The appeals board has no work whatsoever to do.

As a psychologist, Senator Corrigan can explain to us how this works. At present, psychologists have various methods of psychological assessment. The role of the standards body is to put together the basis, formula, method and template for a psychological assessment which can then be accepted into the system within the Department by which it can determine structures, resources, needs and supports which will come from it. This has not been done. The Act has not got progressed from the first step. Extra NEPS psychologists have been appointed but they are nowhere near the numbers required. I acknowledge this has been done.

I probably know more about this Act than anybody else in the House. I do not state this from a position of arrogance. I have gone through it many times. I spoke about this in Navan, Sligo, Monaghan, Wexford, Carlow and on several occasions in Dublin. I met teachers everywhere who had grave doubts about it. I stated it is the way forward. I told them it is my utopian approach to how we should deal with special educational needs. The Government put it together and everybody welcomed it. It has not happened and it is a disgrace. It is a further disgrace that the impending amendment to the Act does not mention how it will be implemented.

This is how it is supposed to work. A school, parent, or the National Council for Special Education comes to the conclusion that a child has special educational needs. When the school confirms this, a NEPS psychologist comes in and does an assessment. This assessment can be done only on the template and reference points decided by the standards body which has not been established.

[Senator Joe O'Toole.]

Following this, the resources for dealing with the child in the school are put together and the support levels are decided. These might be at school level or other people may be brought in. The school has to put together a directed *ad hoc* educational plan for the child for the year. During the course of the year it is reviewed twice. At the end of the year, if the school principal and or the class teacher feels that despite everyone's best efforts it is not working, it goes back to the National Council for Special Education and the plan is changed or improved, resources are added or something is taken from it and perhaps the child is moved to another school. I have rushed through the description of the process.

Each step is open to appeal by parents. Parents such as those we discussed here who went to the High Court, such as the family from Wicklow or the Supreme Court, such as the family from Cork, would not have needed to do so because they would have been involved from point one. They could have made their case to the school, the National Council for Special Education or one of the appeals bodies attaching to the council. At least they would have been recognised all the way through. By the time it reached a court, a judge could state that in all reasonableness, it had gone through the system, the professionals had done their very best, everything had been done according to plan and everybody must live with it. Instead, parents are fighting and shouting.

Today, a group from a special post-primary school Dundalk was outside the gates of Leinster House. The school deals with children with mild mental handicaps, rather than use any politically correct language. They wanted their children to learn domestic science and other practical subjects. They were seeking extra hours. Where have we reached as a society? Perhaps they cannot do Latin or geometry. However, these children can learn a great deal. We can give them skills and help and support them. Parents are outside our gate 12 years into the Celtic tiger looking for a couple of extra hours of support a week.

It is not mealy-mouthed of Fine Gael to table this motion tonight. It not a lack of acknowledgement of what is happening. Fine Gael and other parties gave a great welcome to this Act. We are appalled that we have seen nothing happen with regard to its implementation since the day it was passed.

**Senator Ann Ormonde:** I second the amendment.

**Acting Chairman (Senator Paul Coghlan):** As it is a Government amendment it does not need to be seconded.

**Senator Ann Ormonde:** In that case, I am pleased to endorse the amendment. I listened to what other speakers stated on the motion and there is no doubt that the record of the State and successive Governments over decades in providing for children with special needs has been poor. We can all put up our hands and state that down through the years nothing has been done. It is only in the past couple of years that an effort was made and €900 million is now spent on education for students with special needs. This is almost twice as much as in 2004.

With regard to staff, 19,000 staff in our schools work solely with children with special needs and this includes 10,000 special needs assistants, compared with 300 in 1997. There are also more than 7,000 resource and learning support teachers compared with 2,000 in 1998. More than 1,000 other teachers support children in our special schools while hundreds more work in special classes. We have made strides.

I am not saying everything is rosy in the garden, nor would I. I come from this profession and I dealt with people with special needs. I know the problems as much as anybody else. As I see it, there are still huge defects. However, the Government is making major efforts. While

it is not absolute, let us hope over the next four or five years we will reach some satisfactory level. I know Senator O'Toole will throw up his eyes as I state this but we are trying and doing our best.

Having been in the system and having spoken to teachers within the schools, I am aware they are expressing the concerns outlined by Senator O'Toole. However, they are also saying that efforts are being made to try to reach out to those with special needs and God knows, we have to do this. We owe it to those children because under the Constitution they have to be given the same rights and opportunities as other children in our society.

With regard to the assessment procedure, we have a major lack of psychologists, particularly educational psychologists which is the area I know best. I am not familiar with clinical psychologists. I will use the model of the City of Dublin VEC, which is successful in how it deals with assessing children with special needs who come into the system. It has resource teachers, remedial teachers, special needs teachers and guidance counsellors. In a way, it works very well where one psychologist deals with a region. Case studies are done and a plan is made with the child's principal, to which Senator O'Toole made reference. This plan was always there. I used it seven or eight years ago whereby a student was assessed and a psychologist then came in.

However, we have a lack of co-ordination between the two Departments with regard to child guidance clinics. If an educational psychologist wants to refer a child to the child guidance area, it breaks down. We should examine this entire area to see how best we can improve co-ordination. We are short of psychologists. Yesterday I asked a psychologist what was wrong and how come the State was crying out for psychologists. I was told they are not going into education but into the business world where they are getting very cushy jobs doing assessments and training and earning huge salaries. Perhaps that is an area at which we need to look. Many attempts have been made to try to lure psychologists into the education system but it is very difficult. If those in Opposition were in power, they would say the same thing.

We are trying to put things right and to see how we can move forward in terms of doing the best for these children. Improvements have been made with the intervention programme for autistic children. Although all is not right, there has been a major improvement in that area.

Will the Minister of State address the issue of co-ordination between the Departments of Health and Children and Education and Science and do his best to lure psychologists into the education system to try to improve the assessment process and set up individual education plans because it all stems from them? If education plans are in place, we can work to give every opportunity to children with special educational needs to enable them to thrive.

There is a lot more to do. I am not sure we have made it yet but we have a five-year programme and I accept that over the five years, we will make it work. Will the Minister of State make every effort to honour the commitments in the Education for Persons with Special Educational Needs Act because it is a good Act which can work?

**Senator Brendan Ryan:** I welcome the Minister of State. The Labour Party is happy to support this motion and its call on Government to implement fully the National Council for Special Education recommendations for the implementation of the Education for Persons with Special Educational Needs Act 2004.

The proposers of the motion have outlined in great detail its background and why it is needed. I do not intend to go over that again but want to make some general points in support. The NCSE at the time of writing its implementation plan for the Act identified significant gaps between what should be as per the vision of the Act and what the reality of special educational needs in Ireland was at that time. Some of these are as follows: schools are under-resourced in terms of capacity to deliver inclusive education; there is insufficient investment in training and

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development at all levels; institutional and systematic support for schools in regard to inclusive education provision are inadequate; boards of management, school leadership and parents are not sufficiently involved nor are they adequately informed or trained or supported to play an effective part; not all schools are inclusive; and there are numerous soft barriers to access. I will return to that last gap later. Eleven other gaps are referred to in that report which I will not go through. However, a measure of progress in this area would be an evaluation of how well these gaps have been closed. Senator O'Toole outlined how little has been achieved and how few of these gaps have been closed.

A motion was debated by the INTO at its recent conference in which it demanded that in the implementation of the Education for Persons with Special Educational Needs Act 2004, the Department of Education and Science must ensure that appropriate in-service training is available to all teachers on a whole-school basis; substitute cover is provided on a systematic basis for all teachers engaged in planning and meetings related to the Education for Persons with Special Educational Needs Act requirements; all schools are covered by a comprehensive educational psychological service; administrative and information and communications technology facilities to schools are expanded to cater for the additional requirements under the Act; children have immediate access to the relevant health and educational professionals as identified for their needs; and an additional post of responsibility of special educational needs should be provided. This suggests to me that teachers at the frontline believe many of these gaps still exist and require immediate attention.

I acknowledge this report was presented to the Minister only in October 2006 — 18 months ago — and that everything cannot be achieved overnight but significant progress should have been made in such a period if a serious effort was being made to deliver on the requirements. Almost one third of the planned implementation time has elapsed. As I said, I look forward to the Minister of State's response in this regard.

I wish to raise another matter. Resources allocated for the phased implementation of the Education for Persons with Special Educational Needs Act should not be at the expense of essential funding to improve the pupil-teacher ratio and other educational issues. The Minister often defends her lack of progress on the matter of the said ratios by stating that she has concentrated on special needs education. Neither of these issues is being progressed quickly enough. Both these matters must be dealt with. Adequate funding must be delivered by this Government to achieve both objectives. In this regard, the NCSE argues that the funding envelope proposed should not divert monies from mainstream education given Government's commitment to additionality.

I turn briefly to one of the gaps referred to earlier. Not all schools are inclusive and there are numerous soft barriers to access. It is of great concern to me that many schools are refusing to enrol pupils with special needs. This cannot be allowed to continue. Many of these are in the fee-paying sector but many, including some in my constituency of Dublin North, are not. There is wholesale discrimination against children with special educational needs and it must be brought to an end. A Department audit on this matter has been carried out and that report is with the Minister. Comments attributed to the Minister in the media suggest that the report confirms the anecdotal knowledge we have picked up. I know from media reports that the Minister is not in favour of publishing the report but I believe these schools must be dealt with in some way.

Schools are using such methods as examinations and interviews to exclude special educational needs students. It is being suggested to parents of special educational needs children that their son or daughter will not fit in. There should be some sanctions against such schools but so far there is none. Some people have called for the publication of the report but I accept

that publicly naming them might lead to a drift in their direction rather than having the desired opposite effect. However, I call on the Minister to put in place urgently a penalty system to deal with this matter.

The Education for Persons with Special Educational Needs Act 2004 is great legislation and, as Senator O'Toole said, was supported by all parties when it went through the Houses. However, it must be fully resourced and implemented within the planned timeline of five years or less, if possible, so it can deliver the educational outcomes children with special needs and their parents are entitled to as of right. Time has been lost and it must be made up.

**Minister of State at the Department of Education and Science (Deputy Jimmy Devins):** I am delighted to be here for this debate and to hear the views of the House. I welcome the opportunity this debate provides me to emphasise this Government's commitment to providing a high quality service for all people with a disability. I was honoured to be appointed by the Taoiseach to the position of Minister of State at four Departments and with responsibility for disability and mental health.

In that context, I have responsibility for the oversight of the Government's national disability strategy, including the six departmental sectoral plans, and the co-ordination of the implementation of the Disability Act 2005 and the Education for Persons with Special Educational Needs Act 2004.

In January 2008, the Government announced the establishment of the Office for Disability and Mental Health to support me as Minister of State with responsibility for disability and mental health in exercising my responsibilities across the Departments of Health and Children, Education and Science, Enterprise, Trade and Employment and Justice, Equality and Law Reform. The new office brings together responsibility for a range of different policy areas and State services which directly impact on the lives of people with a disability and people with mental health issues. The office aims to bring about improvements in the manner in which services respond to the needs of people with disabilities and mental health issues by working to develop person-centred services focusing on the holistic needs of clients and service users and actively involving them in their own care. Substantial progress has been made in recent years in the areas of disability and mental health but much remains to be done. In particular, there is a need to improve co-ordination and communication across different Departments and agencies in the delivery of services to this client group. This will be the main focus of the new office in the coming months.

Among the key priorities for the office for disability and mental health are supporting the implementation of the health sectoral plan under the Disability Act 2005. The office will focus in particular on facilitating the delivery of integrated health and education support services for children with special needs by developing further existing mechanisms for co-operation and co-ordination between the health and education sectors at national and local level and developing an appropriate continuum of training and employment support services for people with a disability by working together with the Department of Enterprise and Employment, FÁS and the Health Service Executive. The director of the office is a member of the senior officials group on social inclusion which monitors progress on the Government's commitments on social policy, including commitments under the national disability strategy. The Government has agreed that meetings, to be held quarterly between me as Minister of State with responsibility for disability and mental health issues, the four Secretaries General of the relevant Departments and the director of the new office, will review progress in the priority areas.

The Government has provided significant additional resources in recent years to drive improvements in educational services for children with special needs. Since 2004, investment in special education has almost doubled to €900 million, enabling thousands of extra staff to

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be put in place. Indeed, there are now more than 9,000 teachers and almost 10,000 special needs assistants working solely with children with special needs. This compares with just a fraction of that number only a few years ago.

The level of training for teachers in a wide range of special education areas has also improved significantly. We have taken steps to reduce the need for educational assessments and to ensure children can get additional support as early as possible. All primary schools have been allocated a guaranteed number of resource teaching hours to cater for pupils with high incidence special needs such as dyslexia. As a result, most children with special needs no longer need to have an assessment before they can get extra support. These, and a range of other developments, have transformed special educational services for the better. Further improvements are also in train with the phased implementation of the Education for Persons with Special Educational Needs Act.

Given the sheer scale of the improvements to take place under the Education for Persons with Special Educational Needs Act, the legislation envisaged that the provisions of the Act would be phased in over a five-year period with full implementation by October 2010. It required the National Council for Special Education, NCSE, to prepare an implementation plan with advice for the Minister for Education and Science on the steps it believes should be taken to implement the Act within a five-year period from the establishment date of the council in October 2005. Upon receipt of this advice, the Department of Education and Science needed to consider it and consult a wide range of stakeholders before developing a final detailed plan for full implementation.

The Minister for Education and Science believes it is in the interest of children with special needs that the changes provided for in the Act are rolled out in a smooth and planned way. She has decided therefore to stick with October 2010 as the date for full implementation. Provisions that have been implemented include the establishment of the NCSE, the appointment of the members of the inaugural Special Education Appeals Board who are working to ensure appropriate structures and processes are in place once the relevant sections of the Act which would allow appeals to be undertaken are commenced, and the provision of guidance to schools on issues such as devising and implementing individual education plans.

A cross-sectoral team has been established comprising senior officials from the Department of Education and Science, the NCSE, the Department of Health and Children and the HSE. This team is working hard to co-ordinate the implementation of Part 2 of the Disability Act 2005 and the relevant sections of the Education for Persons with Special Educational Needs Act 2004 and to improve co-ordination between the two sectors. I can personally vouch, having attended some of the meetings, that they are working hard.

Investment in special education has increased significantly since the Education for Persons with Special Educational Needs Act was passed, enabling improvements in staffing and other resources to be put in place. The Act, therefore, is being implemented on the phased basis envisaged in the legislation as voted for by this House. There has been no delay. Many of its provisions have been implemented and the rest will be phased in by the October 2010 deadline.

The Private Members' motion refers to assessments by educational psychologists. I wish to make clear to the House that the purpose of the limit on the number of assessments is to encourage schools to take responsibility for initial assessment, educational planning and remedial intervention and to avoid unnecessary referral for assessments. The National Educational Psychological Service, NEPS, in common with other psychological services internationally, relies on a staged model of assessment with the school taking responsibility for these

actions in the first instance. Only where there is failure to make reasonable progress in spite of the school's best efforts should a child be referred for individual psychological assessment.

This system allows NEPS psychologists to give early attention to urgent cases and to help indirectly many more children than could be seen individually. In this regard, NEPS has recently produced an updated set of guidelines and a resource pack for primary school teachers comprehensively outlining this graduated problem-solving model of assessment and intervention. The limit of two assessments per 100 children in a given year for schools availing of the scheme for commissioning psychological assessments, SCPA, needs to be understood in this context. It also should be remembered that most primary school pupils with special educational needs no longer need psychological assessments to access extra teaching supports. I also point out that principals can contact NEPS if they believe that exceptional circumstances warrant additional assessments for their pupils.

During the last academic year 4,400 assessments were funded under the SCPA at a cost of approximately €1.5 million. In addition, almost 5,800 assessments of individual pupils were carried out by NEPS psychologists in the same period. In total, more than 10,000 psychological assessments were paid for by the Department of Education and Science in the last school year.

I assure the House that the Government is committed to increasing the number of NEPS psychologists from the current level of 139 to 169 by the end of 2008 and to 200 by the end of next year. This will enable all schools to receive a direct service from NEPS in the 2009-10 school year rather than being served by the SCPA scheme. Extra psychologists are in the process of being appointed.

I will now outline some important elements of the Disability Act 2005. Part 2 of the Act provides people with disabilities with an entitlement to an independent assessment of their health and education needs, a statement of the services it is proposed to provide, to pursue a complaint through the HSE complaints process if necessary, and to make an appeal to the independent disability appeals officer.

Part 2 of the Act commenced for children aged under five years with effect from 1 June 2007. Children under five years were chosen as the priority for the introduction of the assessment of need process under the Disability Act because of the importance of intervention early in life. This can have a significant impact on the disabling effects of a condition or impairment. The Disability Act will be commenced for children aged 5 to 18 years in tandem with the implementation of the Education for Persons with Special Educational Needs Act 2004. It is envisaged that all sections of the Education for Persons with Special Educational Needs Act 2004 will be implemented over a five-year timeframe with the assessment process provided for in the Act due to commence in 2010. In preparation for its implementation, health related support services for children aged 5 to 18 years and adults will continue to be enhanced to enable the Health Service Executive to meet needs identified for this group. The statutory requirements of Part 2 of the Disability Act will be extended to adults as soon as possible but no later than 2011.

During 2007, the Department of Health and Children and the Health Service Executive undertook significant work in preparing for the commencement of Part 2 of the Act in respect of children under 5 years of age. Standards for the assessment of need process were developed. Regulations and a commencement order were published and the Office of the Disability Appeals Officer was established. An assessment officer post has been created in each of the 32 local health office areas. The assessment officer is responsible for the co-ordination of the assessment report. Case managers have been created in each local health office area and they have responsibility for the provision of a service statement.

The Department of Health and Children and the HSE have undertaken the first of three annual reviews of progress on the implementation of the Disability Act. This review, which

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was published in December 2007, has identified further targets specifically on planning for the parallel commencement of the Disability Act 2005 and the EPSEN Act 2004 for five to 18 year olds and adults. A system of complaints is now in place in the HSE to deal with complaints under the Act and, for the first time, if a service user is not satisfied with the process, the independent disability appeals officer will deal with appeals from users of the system.

Significant work is being done in co-ordinating and enhancing work across the health and education sectors. A cross-sectoral team comprising officials from the Department of Health and Children, the Department of Education and Science, the HSE and the National Council for Special Education meets on a regular basis to address issues arising on the implementation of both Acts.

I will turn to an issue raised in the motion, namely, standards in the provision of services for people with a disability. As Senators are aware, the Government introduced, and is progressing, an extensive reform programme of health services. Part of this programme includes the development of national standards for services for people with disabilities alongside the development of a draft code of practice for sheltered work services. Draft standards for disability services were produced by my Department, in conjunction with the National Disability Authority, prior to the establishment of the Health Information and Quality Authority, HIQA.

A standards advisory group has been put in place by HIQA to consider the development of service specific standards, including residential and community based services for people with disabilities in residential centres. The work of this group, which includes the statutory and non-statutory sector, is well advanced.

In regard to standards in the area of sheltered work and other adult day services, the HSE has established a national review group to carry out a comprehensive national review of all HSE-funded adult day services, including sheltered work. The review will include, as part of its work, consideration of the draft code of practice for sheltered work services and the draft national standards for disability services.

The motion also refers to the control of employment levels in the HSE. Approximately 130,000 people work full-time or part-time in our public health services. The Government's ongoing high level of investment in health in recent years has achieved and maintained significant increases in the numbers of doctors, nurses and other health care professionals employed in the public health services. The Government has also invested heavily in the education and training of such personnel to secure a good supply of graduates to provide for the health care needs of the population into the future.

There has been a growing demand for, and investment in, therapy services over the past number of years. A particular priority has been the expansion of the supply of therapy graduates. Training places for speech and language therapists have increased by 320% since 1997, from 25 to 105; training places for occupational therapists have increased by 313% since 1997, from 29 to 120; and training places for physiotherapists have increased by 137.5%, from 64 to 152. Since 1997, there has also been growth in the number of such therapists employed in the health services. There were an additional 152% speech and language therapists; 257% more occupational therapists and 139% more physiotherapists by the end of 2007.

The budget day package for 2008 provides for the creation of an additional 1,050 new posts for the delivery of health service developments. Included in these extra posts are 710 posts for the provision of additional health services for people with a disability. This demonstrates the Government's ongoing commitment to resourcing the health services. The employment levels approved for the HSE for 2008 of 112,560 whole-time equivalents includes these additional 1,050 posts for the budget day service developments.

Consistent with the Government's investment is the need for the HSE to manage within the budget allocated by Government and to deliver on its priorities. The recruitment pause put in place in September 2007 was initiated as part of the HSE financial break-even plan to facilitate the delivery of services on budget in accordance with the provisions of the 2007 national service plan. This pause meant that the recruitment of staff to approved posts was delayed. The HSE put in place a derogation process to deal with the filling of essential posts to protect front-line services and close to 900 posts were approved under this process. This temporary pause in recruitment ended on 31 December 2007. New arrangements introduced in January 2008 by the HSE are aimed at ensuring that health services are delivered in accordance with the provisions of the 2008 national service plan and within the funding provided by Government.

The motion also raises the ratification of the UN Convention on the Rights of Persons with Disabilities. Ireland was in the first group of countries to sign, subject to ratification, the UN Convention on the Rights of Persons with Disabilities when it opened for signature on 30 March 2007. A high-level, cross-departmental implementation group was established in 2007 to advise on any changes to the Government's national disability strategy that may be required to enable the State ratify the convention. This group has developed a work programme to address matters that need to be aligned with the UN convention in order that ratification may take place. It is the Government's intention that the convention will be ratified by Ireland as soon as possible, taking into account the need to ensure that all necessary requirements under the convention are being met.

One of the key areas of reform required is in regard to the law on legal capacity of vulnerable adults. The Government's legislative programme contains a commitment to bring forward a mental capacity Bill. That Bill is an important element of the programme of work on the convention. I am glad to report that the scheme of the Bill, which is being prepared by the Department of Justice, Equality and Law Reform, is at an advanced stage of development.

As part of the 2005 budget, the Government announced a multi-annual investment programme in services for people with a disability, which will provide €900 million from 2006 to 2009. The Disability Act is underpinned by this multi-annual investment programme. It is building the additional capacity required to put in place the framework set out in the Disability Act. As part of the multi-annual investment programme under the disability strategy, the Government provided the HSE with an additional €75 million in both 2006 and 2007. This funding included moneys to provide new and enhanced services for people with disabilities. The Government is also honouring its promise on the multi-annual investment programme for people with disabilities, with a further €50 million investment, which was announced in the budget for the current year.

I have some information on the health and personal social services this huge investment is providing, which I would like to share with the House. Currently, 8,800 people with a disability receive care in residential places with more people living in group homes within their communities than in residential centres. Some 7,200 residential places provide respite care for people with a disability. Some 30,000 people with a disability attend day services. The Health Service Executive provides 3 million hours of personal assistance or home supports for people with a physical disability.

The national intellectual disability database annual report for 2007 states that 97% of the people registered with it are in receipt of a service. The report says that there has been significant growth in the level of provision of services to people with an intellectual disability which reflects the success of the Government's investment programme.

The social partnership agreement, Towards 2016, outlines our vision for people with disabilities. The Government will work with the social partners to achieve continued improve-

[Deputy Jimmy Devins.]

ments in the quality of life of people with disabilities. The establishment of the Office for Disability and Mental Health is another step in that process.

The Government's decision to establish the Office for Disability and Mental Health reflects its commitment to developing a more coherent and integrated response to the needs of people with disabilities and mental health issues. It recognises that clients and service users need to be at the centre of service delivery and that we may need to examine the way in which services are currently delivered to ensure that is the case. To effectively achieve this requires an inter-departmental, cross-agency response.

My designation as a Minister of State with responsibility for disabilities and mental health and the establishment of an Office for Disability and Mental Health to support me will facilitate cross-agency and interdepartmental working and enable this Government to deliver real benefits to clients and service users into the future.

**Senator Nicky McFadden:** I welcome the Minister of State to the House. I have not met Deputy Devins before and it is a great honour. I am glad that he is in the House for this debate.

I want to hone in on just two issues because this is such a vast area. The first concerns people with intellectual disability and the other is concerned with the services for people with muscular dystrophy, we were all at the presentation today. I share with Senator Corrigan a very serious concern over people who have intellectual disabilities and totally respect their right to enjoy a good quality of life. I listened to her, intently, when she spoke about people being able to choose when they should shower or eat and drink.

John, a person I know, has moderate intellectual disability, with autism. He lived with his family until he was six, and then had to take up full-time residential placement in Dublin after his father died. This was a very traumatic event for the family, and so he ended up in residential care. In Dublin he had a series of placements in large residential settings and secure units. His life story contains vivid descriptions of years of severe challenging behaviour, which were John's only way to communicate the stress of being disconnected from his family and community. It was a community that he loved and valued and he now lived a life that was meaningless and unsatisfying, without any activity.

Very high levels of medication, seclusion, living in a noisy crowded challenging behavioural unit away from home are among John's memories of large residential settings. Despite massive allocations of resources this model is the daily reality for many people. The Minister of State, in his speech said there were 8,800 of these people in residential settings. I am reliably told that almost 50% of Irish people with intellectual disability still live in such large residential settings. In England, Wales and Scotland the equivalent figure is zero.

In a review of 118 UK research publications between 1980 and 1996, Hatton and Emerson found that large residential settings showed considerably poorer outcomes in user and parent satisfaction, the material and social environment, privacy, choice and personal possessions, use of community facilities and the development of skills. This led to the dissatisfaction we spoke about earlier and levels of challenging behaviour, use of medication, participation in domestic activities and the support staff. Yet the costs of community living is only 12% higher than the expenditure on people in large residential settings.

To return to John, he is an artist. He has a superb memory for dates, places and the names of plants. In the last ten years he has come into contact with a community based service, which believes in the contribution people with disabilities can make. He now works on an urban farm and is connected with a local community. He lives the life of his choosing. John is one of the lucky ones. Will the Minister of State say how long the Government is to mismanage resources

by ploughing enormous amounts of money into human warehouses? That is very strong language, but I truly am convinced about that. When will the potential of the many people, such as John, who continue to live in these expensive human warehouses, be realised? Perhaps the Minister of State will please come back to me on that.

As regards muscular dystrophy, we heard heart-rending presentations from parents of children who suffer from this condition. They said, in effect, that they were watching their children die, which to me was a very dramatic statement. The Minister of State has quoted some very fine statistics. I dislike statistics, but——

**Deputy Jimmy Devins:** I also dislike them.

**Senator Nicky McFadden:** ——I have other statistics before me outlining the number of people suffering from muscular dystrophy who do not have access to physiotherapists and occupational therapists. There are 97 members who have no physiotherapy when required. Some 240 receive it intermittently and need it more regularly. There are 20 members who cannot access an occupational therapist at all and 42 are waiting to receive equipment. I am told that waiting for equipment is futile. If someone needs a wheelchair or a breathing machine, he or she needs it now. When one's life is limited and the end is dismal, the equipment is required now. That was brought home to us very poignantly today, and it was heart-rending to listen to those parents.

Another point they made was that they need an investment of €2 million for research. They are involved with the Hammersmith Hospital, London, and the Minister of State met them in February. They acknowledged how supportive he has been to them and asked us as public representatives and Members of the Oireachtas to highlight the need to get the funding for this research. They emphasised there was no need to invent the wheel, or do the same research in Ireland. They are welcome in the UK and are part of the research programme there. Perhaps we could fund this research and help to prolong the lives of these patients. It is concerned with injecting their feet to make their muscles grow, so that they can achieve some quality of life.

**Senator Dan Boyle:** In looking at this Private Members' motion I have to ask whether the situation as regards people with special educational needs is what it should be. I am certain the answer is "No", and I do not regard that as acceptable. Neither do I believe the progress being made in this area is sufficient, or happening fast enough. In supporting a motion such as this, I must ask myself if I able to bring about any faster the necessary improvements that are needed. Again, the answer is "No".

In this regard, there are certain points we must acknowledge. First, the legislation must be admitted as an achievement. Of the three relevant Acts passed during the term of the last Dáil and Seanad, namely, the Disability Act, the Citizens Information Act and the Education for Persons with Special Educational Needs Act, the latter is the most important and best drafted. Everyone who considers the wider debate will accept that the Disability Act is not what it could be. It is subject to review and needs to be greatly improved.

There is wider political debate on the correctness of the decisions made, not only recently but previously, in respect of the dismantling of the National Rehabilitation Board, for which I worked for a short period. I refer to merging part of the board with FÁS and part with Comhairle. We need to revisit whether this is the best way to provide particular services for those with disabilities, especially meeting employment needs, of which education comprises an important part.

The Education for Persons with Special Educational Needs Act is fine legislation. The political dissent that exists in respect of it was articulated most clearly by Senator O'Toole. His

[Senator Dan Boyle.]

connection with education in general and the teachers' unions in particular affords him particular insight into this matter. The clarity provided in the Minister of State's speech, to the effect that all the provisions of the legislation will be implemented by October 2010, gives me some hope that the movement that needs to be made in this area will be made. The date is still two and a half years away and many of us in this Chamber and beyond would like a step-by-step approach between now and then to ensure that the resources are rolled out properly.

It was hoped there would be front-loading of educational funding this year in the order of €350 million in excess of the normal inflation-based rate received by the Department of Education and Science. An extra €100 million was provided but the shortfall of €250 million has made a significant difference in slowing down the rate of progress that would otherwise be achieved. The fact that there is a new leader of Fianna Fáil might offer some hope of a change in direction in this regard. One of the achievements we need to acknowledge is that when he was Minister for Health and Children, which position he did not enjoy, he instigated the idea of multi-annual funding.

**Senator Jerry Buttimer:** Angola, was it?

**Senator Dan Boyle:** He gave the impression he would prefer to be elsewhere. He instigated the idea of multi-annual funding, particularly in respect of those with an intellectual disability. Deputy Cowen's having held the health portfolio will help in shaping future Government policy in this area. We can only hope that is the case.

I agree with the sentiments of Senators on the parents of autistic children having to take court cases. I have made the same point in this Chamber. Unfortunately, all political parties in our system need to acknowledge a failing in this regard. The first court case of which I am aware to test the constitutional provision on the right to education preceded the Sinnott case. It involved a Cork mother, Marie O'Donoghue, who sought proper access to education for her autistic son Paul. This case led to the narrow judgment that our constitutional provision on education only entitles our citizens to basic primary education. As we seek to improve legislation, perhaps we need to improve the constitutional provision. Many of us in public life accept that education is not just about a basic grounding in three R's or basic life skills and that it is a life process itself. Until we recognise that it is ongoing and should be available to all citizens to the highest possible standard, we will be running behind.

I mention the O'Donoghue case because it went all the way to the Supreme Court, as unfortunately have many subsequent cases, including the Sinnott case and the Ó Cuanacháin case, which has been in the court quite recently. The first case occurred when the then Minister for Education was a Labour Party Minister in a Fine Gael-Labour Party Government. The principle of forcing parents to go to court to access the education system reflects badly on a number of Governments in recent years and all the parties that constituted them. I hope we can bring the practice to an end fairly soon.

On the wider aspects of meeting special educational needs, I acknowledge many of the statistics quoted by the Minister of State. It is true that a certain number of respite beds are in existence and a certain number of staff have been employed. If we are to have ongoing reform of the health service, direct responsibility for, and the funding of, services for people with disabilities should probably not lie with the Health Service Executive.

I had a meeting on homelessness today and noted significant questions must be asked on whether HSE funding in this area is influenced disproportionately by decisions the executive must make on supporting the hospital-based health service. If we are to have a proper review of the health system, money directed towards social inclusion, tackling homeless and meeting

special educational needs, which do not fall within the remit of Departments such as the Department of Education and Science and the Department of the Environment, Heritage and Local Government, should not be allocated by the HSE. What is happening is that the areas in question are not prioritised in the wider debate on health spending and are not being protected as a result. This results in diseconomies in terms of social policy.

I hope part of the review process that will see the full implementation of the Education for Persons with Special Educational Needs Act will address these inconsistencies. It would be unfair if the Bill were implemented fully while obstacles existed in respect of wider funding practices, thereby resulting in unnecessary funding anomalies for those who should be accessing services which we all acknowledge are not what they should be.

I am a member of a party that is part of a coalition Government and our belief is that participation in this Government will bring about the changes deemed necessary. Consequently I support the amendment and reject the Private Members' motion. I hope there is a way for us all to consider the wider sentiments in the original motion and the Government's amendment, which acknowledges the efforts made by it to ensure the ongoing problems regarding education for people with special needs can be dealt with and the deadline of October 2010 can be met.

**Senator Jerry Buttimer:** Cuirim fáilte roimh an tAire Stáit, Deputy Devins.

Can we begin by putting matters in context? Some of the parties in Government have been in power for 11 years and, day after day on the Order of Business a number of their members speak about disability and education as if they were in Opposition. Every day they berate the Government on the lack of action and joined-up thinking on disability, health and education. The Minister of State and his colleagues should not forget that cutbacks hurt the old, poor and handicapped. This was their slogan in 1987. They have not forgotten it and I will not forget it because they have done nothing to alleviate the problem since. We have spent an inordinate amount of money and the Government amendment reads well on paper, but it is not the case in real life, as the Minister of State, Deputy Devins, and Senator Corrigan know.

The motion is important for the individual pupils and the people who are directly affected by the full implementation and roll out of the EPSEN Act, but it also has an effect on their parents, their brothers and sisters, the wider school community and the wider population in general. We are concerned here with the most vulnerable in our society. If the way we treat them is indicative of the state of our health as a nation and a State, then it reflects badly on us and on the people who we supposedly cherish. Without doubt, children with special educational needs are among the most vulnerable to ongoing marginalisation if they do not get early and appropriate educational support and provision. I say that as a teacher and one involved with disability groups in my city of Cork. We must put people at the centre of any legislative programme and any activity of ours in the future.

While the EPSEN Act is important, it is only one part of the process of the identification of learning needs and the development of education and community-based programmes of intervention to ameliorate and remediate that need. Let us look at the EPSEN Act in the overall context of the Comhairle Act 2000 and Disability Acts, the purposes of which are to serve to give effect to greater access to essential services. Unfortunately, at the coalface there are significant discrepancies about the quality and manner of service delivery. Senator Corrigan sometimes raises issues here in her professional capacity. I admire her for that because she is not shy in doing so. The same can be said of Senator McFadden, Senator Fitzgerald and myself.

However, all groups campaigning and active on disability in this country, such as Inclusion Ireland, the Disability Federation of Ireland, the National Federation of Voluntary Bodies,

[Senator Jerry Buttimer.]

have spoken out against the ethos and underlying philosophy and ideology of the Acts I mentioned earlier. Disability groups and parents want rights based legislation and they have failed to get that. We have seen the consequences of that decision, most recently in the debacle in the debate in the other Chamber on the lack of essential ABA places and schools for children with autism. The Acts, which were drafted in the main in response to parents taking legal action, will result in many more parents, who feel deprived, taking the long road to the High Court to get what in effect should be essential elements of primary education for their children with special needs.

I agree with Senator Boyle. Let us not force parents to go to the courts. There is a duty upon us as legislators and on the Government not to do that. Let us not force parents to take that road.

One of the failures of this Government with respect to the provision of services for special needs has been the *ad hoc* nature of the development of services and implementation of legislation. The Departments and the Ministers for Health and Children and Education and Science have failed to develop co-ordinated programmes to ensure that there is a seamless interchange between the meeting of medical needs and education provision. The questions of who provides occupational therapy, speech and language therapy or neurological assessment have not been resolved, and protocols have not been put in place to ensure that these questions have been answered.

The Department of Education and Science has failed in service delivery. For example, NEPS is under staffed and under resourced. It was established in 1990s with the aim to have a full complement of 200 psychologists by 2000, and it is 25% below that allocation. According to subsequent published reports, such as that of the Task Force on Autism, the figure of 200 psychologists is a gross under estimation of the overall projected need.

Society and the needs of society have changed, and the types of support required change. In the past few years all of us who have been out knocking on doors would have met an increased number of parents and families with children with autism, Asperger syndrome and other aspects of ASD spectrum. There is a significant increase in the number of children presenting themselves with emotional and behavioural difficulties. All of these and other conditions require capable education planning and programming. Government has failed to acknowledge, or factor into its forward strategies, the number of children with special educational needs who are currently attending our mainstream schools and who will be attending schools in the next five years. Improvements in educational assessment and diagnostic techniques, and a greater understanding of the neurological pathways involved in learning, means that more children are now being classified with general and specific learning needs, and there are children with more severe and complex needs arising from organic syndromes and conditions who are surviving longer, thankfully, and now have an expectation of education. Today we were in Buswells Hotel meeting with people who have been left behind and who are being deprived of services.

We need to see precise attention to a careful development and implementation of individual education plans, which are seen as an essential and vital part of the jigsaw of special education provision. The motion is an important one because it deals with people. I agree with Senator Boyle in that on this side of the House there would be a welcome for a cross-party initiative whereby we can progress the issue, but there must be meaningful dialogue and we cannot have a situation where the HSE is used by the Minister as a shield.

We have invested billions of euro in education and health. Are we really stating in 2008 that, given all the amount of money we spent, the health service is better now than it was 11 years

ago? If one listens to the Joe Duffy radio programme, to the people on the street, to the people protesting and to the ordinary citizen, the answer is a resounding “No”.

I hope Deputy Cowen comes into the House as Taoiseach and says to those in the Departments of Health and Children and Education and Science that they have had 11 years and done nothing. I hope he tells the Minister for Health and Children, Deputy Harney, to pack her backs because it is time for her to go.

**Senator Frances Fitzgerald:** Hear, hear.

**Senator Jerry Buttimer:** I have the utmost respect for her, but she has failed completely in the delivery of the health service, as did her predecessor, Deputy Martin. It is time for change. The Minister of State, Deputy Devins, is in the Department. He cannot be above in Sligo saying one thing and here in Dublin saying something else. I respect where he is coming from in that he is a good local politician, but we need leadership. We have not had leadership from Professor Drumm and Deputy Harney. I hope we get leadership from 7 May because we need it and, more importantly, the children and their parents need it.

**Senator John Paul Phelan:** I welcome the Minister of State, Deputy Devins, to the House and thank him for being here and staying for the duration of the debate. I find it difficult to be overly critical because Senator Corrigan and Deputy Devins are two people who I would hold in high regard, but the amendment proposed by the Government takes some seeing to believe. In my time in the Seanad, usually private Members' time consists of either the Government proposing some inane motion on an obscure policy on which the Opposition must raise an amendment, or the Opposition pinpointing an area of difficulty and the Government coming up with a back-slapping amendment. I have seen back-slapping in this Chamber in my time but the nature of what is proposed in the amendment takes some beating in that regard.

I am particularly disappointed with elements of the Minister of State's speech. One will have heard the saying that “there are lies, damned lies and statistics”. The Minister of State's contribution was littered with statistics. Figures quoted include a 164% increase in the number of physiotherapists, a 130% increase in the number of occupational therapists and a number of other statistics in that regard. However, we heard no mention of the 3,000 out of 130,000 people who work in the HSE who do not know what their job is, what percentage of the overall workforce of the HSE this figure constitutes and what impact those resources would have on the area of special needs, disability and special education if they were provided in other areas.

I was also interested in what the Minister of State had to say about the bar on the recruitment of staff in the HSE. We are told that this bar existed until the end of last year and was lifted on 1 January. It is interesting because we are debating this motion at the same time that the top brass in the HSE is meeting in respect of further cutbacks in the health service and funding in different areas. I hope that people who need assistance, be they disabled or have special educational needs, will not be the soft target they have been in the past.

I am also interested in the reference in the Minister of State's speech to the Education for Persons with Special Educational Need Act where he said that the assessment process, as provided for under the Act, is due to commence in 2010. If they are to have an effect on the lives of people in this area, surely most of the other aspects of the Act are contingent on the commencement of the assessment process. We were told in 2003 or 2004 when this legislation went through the House that the assessment process would be introduced before 2010. The year now quoted is 2010. What will that mean in terms of delivery of the assessment process?

I referred to the Minister of State's mention of the number of different specialists that are provided within the HSE. Even in the amendment, the Government gives us the statistics

[Senator John Paul Phelan.]

with regard to frontline services. There are under 30,000 people who could be described as physiotherapists, occupational therapists, social workers, nurses or doctors. Over 100,000 people are employed by the HSE, including 3,000 who do not know what they are supposed to be doing in the first place but who are not providing those essential frontline services. In terms of the actual provision of the service, the statistics are not as good as the Government would have us believe.

I remember the general election in 1987 when I was only nine years of age. It was the first time I really took an interest in politics. I remember shopping in Waterford to the tune of “Rise and follow Charlie”. I very remember the election slogan, “Health cuts hurt the old, the sick and the handicapped”. This was probably the most cynical ploy that any political party has used in any election because as soon as the Government changed, funding for the health services was drastically cut. The reality is that in the disability sector and the mental health sector, for which the Minister of State is responsible, we are still suffering from those cutbacks in 1987.

I was disappointed by the fact that the Minister of State’s contribution did not mention mental health services. There was no mention of A Vision for Change. This is an area for which he is directly responsible. None of the Government speakers seem to have mentioned it. There can be a wait of up to three years for children and adolescents seeking psychiatric treatment. This is a disgrace in post Celtic Tiger Ireland. The usual waffle about funding is uttered. I agree with Senator Buttimer who mentioned the disgraceful situation whereby 70 cases are before the courts at present where families are trying to get suitable educational services for their children who have special educational needs. I am informed that 47 of these cases relate to autism. That is a disgrace in 2008 and is something over which the Government should hang its head in shame.

I must confess a personal interest because I was a teacher for a very brief period. I have some understanding of the education system. The appalling lack in our psychological assessment system is the fact that people cannot get access to that system. The wait for psychological assessments is disgraceful. We were told at the end of last year that there would be a projected 6% cut in the budget for NEPS. Where does this leave the Government’s pre-election promises?

I am told that one of the largest funders of psychological assessments in this country is the Society of St. Vincent de Paul, which must pay for them from its own resources. Last year, assessments for over 1,000 children were paid for by the society. This enabled them to go private because our public system does not work. In 1999, the former Minister for Education and Science, Deputy Martin, said that there would be 200 psychologists in NEPS within five years. At the moment, there are 138. The number has increased by ten since the last general election. It is nearly ten years since the then Minister gave that commitment and only 60% of students in primary education are covered by it.

I wish to say something about speech and language services and the fact that they depend on where one lives. One may get one’s assessment after a month or two or one might have to wait for over a year or two years to get such an assessment. I acknowledge the fact that funding in this area has significantly increased over that past few years but there is no commensurate improvement in the service provided to people on the ground. That is what the motion is about and is the reason why I fully support it.

**Senator Frances Fitzgerald:** I thank my colleagues who have spoken on the motion. The Minister of State has given us a detailed account of the Government’s approach to the issue of disability and special educational needs for which I thank him. However, there is a gap between

the amendment moved by the Government, the content of the Minister of State's speech and the reality on the ground. I can see that the Government is very concerned about structures, co-ordination between Departments and the new posts it has put in place. They are very important but the reality is that on the ground, people who need to access special needs services are not getting them and waiting lists are too long.

It is imperative that this is tackled, which is why we put this motion to the House. Everybody on this side of the House and across it has daily experience of families who are trying to get their children assessed, who need special services and who are routinely told that they must wait a year, a year and a half, two years or three years. Staff in my office phoned the HSE and double checked on the waiting time for speech therapy. We were told that it was two years. We asked principals in our local schools what was the waiting time for assessment and were told that it was between one and three years. These are very long waiting times. To be the mother or father of a child between the ages of two and five who needs assessment and to be told that one must wait two or three years when one cannot afford to do anything else is devastating. That is the reason we have moved this motion and have called for more urgency in addressing this issue.

I am very concerned at some of the Minister of State's comments. He said that many of the provisions of the Education for Persons with Special Educational Need Act have already been implemented, the rest will be phased in by October 2010 and assessments will be started in 2010. This is inaccurate and is not good enough. I can only assume that this is coming from the Minister for Education and Science. There is a degree of complacency in what has been said about the implementation of this Act. It is simply not good enough and is not accurate. There is a lot of rationalisation about what is a delay in the development of these services, about how principals can approach assessments and about the limit of two assessments per 100 children in a given year for schools availing of the scheme. It is an example of failing to acknowledge the reality of what is facing principals, teachers, parents and children. It is not good enough given the resources available in this country.

In January and February of this year 64% of children who need psychiatric care were admitted to adult psychiatric units. It is not good enough in Ireland in 2008 to provide this kind of service to our children. I hope the Minister of State, Deputy Devins, will get the funding that is needed and that the money that was taken from the mental health area will be given back to the Minister of State so that he will be able to implement A Vision for Change and change the reality that is facing families and their children who are in need of mental health services. It is simply not good enough, which is why Fine Gael tabled this motion. I commend the motion to the House and ask the Government parties to support it.

Amendment put.

The Seanad divided: Tá, 27; Níl, 20.

Tá

Boyle, Dan.  
Brady, Martin.  
Butler, Larry.  
Callely, Ivor.  
Cannon, Ciaran.  
Carty, John.  
Cassidy, Donie.  
Corrigan, Maria.  
Daly, Mark.  
de Búrca, Déirdre.  
Ellis, John.

Feeney, Geraldine.  
Glynn, Camillus.  
Hanafin, John.  
Keaveney, Cecilia.  
Leyden, Terry.  
MacSharry, Marc.  
McDonald, Lisa.  
Ó Domhnaill, Brian.  
Ó Murchú, Labhrás.  
O'Donovan, Denis.  
O'Malley, Fiona.

Tá—*continued*

O'Sullivan, Ned.  
Ormonde, Ann.  
Phelan, Kieran.

Walsh, Jim.  
Wilson, Diarmuid.

Níl

Bradford, Paul.  
Burke, Paddy.  
Buttimer, Jerry.  
Coffey, Paudie.  
Coghlan, Paul.  
Donohoe, Paschal.  
Fitzgerald, Frances.  
Hannigan, Dominic.  
Healy Eames, Fidelma.  
McFadden, Nicky.

Mullen, Rónán.  
Norris, David.  
O'Reilly, Joe.  
O'Toole, Joe.  
Phelan, John Paul.  
Regan, Eugene.  
Ross, Shane.  
Ryan, Brendan.  
Twomey, Liam.  
White, Alex.

Tellers: Tá, Senators Déirdre de Búrca and Diarmuid Wilson; Níl, Senators Nicky McFadden and John Paul Phelan.

Amendment declared carried.

Motion, as amended, put and declared carried.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Donie Cassidy:** At 10.30 tomorrow morning.

### Adjournment Matters.

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### Schools Building Projects.

**Senator John Paul Phelan:** I have raised a number of matters on the Adjournment recently relating to education and I am glad the Minister of State, Deputy Haughey, is present to respond on this matter. It concerns Colaiste Pobail Osraí in Kilkenny city. The school has operated as a post-primary school for a number of years and has been located in its current premises since 1995. The premises is located at the back of Ormond College on Ormond Road in Kilkenny city.

The school's difficulties involve the school buildings. Much of the existing school is accommodated in prefabricated structures and in recent years the school has been considering a number of sites in Kilkenny for a new school building. I call on the Minister and the Department to set the wheels in motion at the earliest opportunity to ensure the new school building will be provided. Colaiste Pobail Osraí is an Irish language secondary school and one of its requirements is that the site of the new school be located in the vicinity of its main feeder primary school, Gaelscoil Osraí. In raising the matter this evening I hope to put pressure on the Department's officials and engineers to locate and acquire a site and commence work as soon as possible.

Colaiste Osraí was granted independent status in 2007 and it is seeking to have that grant of independence acted on with the provision of a new school building. The school's existing structures are dilapidated and outdated, and are not suitable for education into the future. The school has gone from strength to strength in terms of increasing enrolment in recent years. There is a revived interest in the Irish language throughout the country and that is reflected in

the large number of students attending primary and secondary schools that educate through Irish. I hope the Minister will have a favourable response for me.

**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 to the Seanad the Government's strategy for capital investment in education projects and to outline the current position regarding Colaiste Pobail Osraí, Cill Chainnigh, in particular. In the lifetime of the current national development plan almost €4.5 billion will be invested in schools. Of this, €586 million will be spent on school buildings this year alone.

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. This investment will facilitate the provision of new schools and extensions in developing areas and the improvement of existing schools through the provision of replacement schools, extensions or large scale refurbishments over the next number of years. With regard to Colaiste Pobail Osraí, this school was initially established in 1991 as an all-Irish aonad or unit attached to and operating from Kilkenny city vocational school. Its feeder primary school is Gaelscoil Osraí, which is also based in the city. A separate board of management was appointed to the aonad in 2003 and in 2007 the Department approved independent status to allow the aonad operate as an all-Irish post-primary school in its own right under the aegis of the vocational education committee.

At that time, it moved from the Kilkenny city vocational school building and it now operates from separate premises in Ormond Road in Kilkenny. The Department was happy to allow this change of status because enrolment in its feeder school, which is in excess of 400 pupils, augurs well for the development of Colaiste Pobail Osraí into a fully viable school capable of delivering a broad and balanced curriculum over time. Current enrolment in the school is 74 pupils — an increase of four pupils over the previous year's enrolment. Officials in the Department have been in discussion with County Kilkenny VEC in recent times about the schools within its remit. The VEC has indicated the desirability of a new school building for Colaiste Pobail Osraí in this forum. It has been explained to the VEC that the Department is looking at the totality of educational provision in Kilkenny city, particularly in the context of recent and planned housing development, changes in demography and so forth. The purpose of this exercise is to identify long-term needs, including all-Irish provision, and to determine how best these can be met. When a decision has been taken in this regard, consideration can be given to advancing projects for schools that have applied for capital funding under the school building and modernisation programme in the context of the published prioritisation criteria for large scale building projects.

I again thank the Senator for giving me the opportunity to outline to the Seanad how the Department intends to address the needs of Colaiste Pobail Osraí, Cill Chainnigh and the requirements of Cathair Cill Chainnigh in general. I also assure the Senator that it is the Department's policy to support the provision of all-Irish school facilities at primary and post-primary level where a viable demand for such provision is demonstrated.

### **Pupil-Teacher Ratio.**

**Senator Shane Ross:** I raise the need for the Minister for Education and Science to implement the programme for Government relating to class sizes in both primary and secondary schools, reducing pupil-teacher ratio to the appropriate level of 24 pupils per teacher.

I salute the teachers of Ireland for their recent concentration on the pupil-teacher ratio. It was refreshing to witness the union conferences at Easter and to see that the teachers of Ireland have put pupils first. The pupil is, thanks to these teachers, centre stage. There was a time when people might have been forgiven for thinking the unions did not put the pupil before their interests. It is time to acknowledge this has been done by all the teachers' unions, and let us salute and applaud them.

[Senator Shane Ross.]

As the Minister is well aware, the problem is that the Government has broken its agreement in the programme for Government to reduce the pupil-teacher ratio to 20 or below. This is a very serious matter for the future of the nation. The Minister is aware that former Minister, Mr. Donnacha O'Malley, is rightly credited with being the creator of the Celtic tiger. That is not because he spent an enormous amount of money on business but because he went on the plinth out there one day in 1967 and announced that secondary education would be free. If the Government does not regard education and the need to reduce the pupil-teacher ratio to an acceptable level of 20 or below as imperative, the economy and the pupils will suffer in years to come. It is short sighted of the Government not to take the measures it has promised. It is a betrayal of the teachers and future generations.

Every survey I have seen in the UK and US has found that the higher achievement of pupils is directly related to reduced numbers in classes. This is particularly important at primary level. Every survey I have seen has found that if one does not educate people at primary level with a low pupil-teacher ratio it is very difficult to compensate later by reducing class sizes at secondary level. It must permeate throughout all classes and all parts of the educational system. We must start young and continue it. The Government's failure to do this is a betrayal of future generations and teachers.

There are great practical problems with overcrowded classrooms and the Minister is well aware of that. Our reputation in Europe is falling fast. The Minister may correct me, but I think we have the second worst pupil-teacher ratio in Europe, second to the UK, which compensates to some extent by putting assistant teachers in some classes. This leads to overcrowding and a bad reputation for the Irish educational system. We are under-funded not just in primary and secondary education but these are the crucial areas about which the Government has made promises on which it is renegeing. If classrooms are overcrowded, education will suffer and the environment in which pupils are educated will suffer. There will be fewer offices for teachers. As a result we have many schools being established or extended into Portakabins where facilities are less than optimal. Education and health suffer and safety issues raise their heads. We are running into a situation which is indefensible in terms of the long-term care of children and teachers.

Above all, if the Minister damages or destroys the morale of the teaching profession, this will be reflected on the pupils. This is happening. We have a noble teaching profession which has decided the pupil must come first. The Minister and the Government are saying they have decided otherwise and pupils are not a priority. This kicks in the face of people who have a vocation and who are prepared to practice that vocation for the good of the pupils of Ireland. Motivation will suffer, stress will accelerate and the quality of education will deteriorate. I plead with the Minister to listen to what the teachers say and acknowledge it as a bona fide attempt to improve the education of this country and the lot of our pupils and to immediately take measures to reduce the pupil-teacher ratio to 20 or below.

**Deputy Seán Haughey:** I thank Senator Ross for raising this matter and giving me an opportunity to outline to the House the improvements that have been made in this area in recent years. In the primary sector alone there are approximately 6,000 more teachers on the Department's payroll than there were in 2002. Extra teachers have been provided in the 2006-07 and 2007-08 school years specifically to reduce class sizes. The latest figures available on average primary class sizes relate to the 2006-07 school year. At that time, the average class size was 24 and the pupil-teacher ratio, including resource teachers etc., was 16.4:1 compared to 22.2:1 in the 1996-97 school year.

In the 2006-07 year schools were staffed on the basis of a general rule of at least one classroom teacher for every 28 children. Given that the national average was 24, many schools benefited from much more favourable staffing ratios than this. For the current school year, extra teachers were provided to staff schools on the basis of a general rule of at least one classroom teacher for every 27 children.

Under the delivering equality of opportunity in schools, DEIS, programme, substantially lower class sizes apply in the case of urban primary schools with the highest concentration of disadvantage. The programme for Government contains a commitment to provide 4,000 additional primary teachers between 2007 and 2012. With the extra teachers already put in place this year and those provided for in the budget we are ahead of target with about 2,000 extra primary teachers to be delivered within just two years.

Significant improvements have been also made in the staffing of our second level schools in recent years. By the 2006-07 school year, there were in excess of 2,000 more second level teachers than in 1997 and the pupil-teacher ratio had been reduced from 16.1: 1 to 13.1:1. Post-primary schools are accorded a considerable local discretion in the way in which they organise matters of subject choice, teacher allocation and class size. Some second level classes can be very small, where few students choose that subject. A student who is in a class of 25 in English, could be in a class of ten in physics or a modern language subject. Similarly, the same teacher may have a large class at honours level and a small class at pass level. Both primary and post-primary schools can avail of an independent appeals process on the adequacy of their teacher allocation.

The most recent edition of the OECD report Education at a Glance found that the average class size at lower secondary in Ireland was considerably lower than the OECD average. During the lifetime of this Government, we are committed to prioritising reductions in the size of Irish, English and Maths classes at second level. The timing of these improvements will depend on the resources available in future budgets.

The Senator will be aware that budget 2008 provided €4.6 billion or €380 million extra for teacher pay and pensions. This is a very substantial level of additional investment in the current economic environment and reflects the huge improvements that have been made in school staffing in recent years. The Minister for Education and Science has made it clear that while she would have liked to have been able to reduce primary class sizes further for the next school year that was not possible in the present economic circumstances.

Teacher numbers at both levels have increased significantly in recent years. We are committed to further improvements over the lifetime of the Government. We will also continue our focus on measures to improve the quality of education in our schools to ensure that increased resources lead to better outcomes for our children. I thank the Senator for raising this matter in the House.

**Senator Shane Ross:** I note the most important sentence in the Minister of State's reply, namely, "The Minister for Education and Science has made it clear that while she would have liked to have been able to reduce primary class sizes further for the next school year that simply was not possible in the present economic circumstances". That indicates to me that the pupils of Ireland are the first casualties of the cutbacks by this Government. Can the Minister of State give me a commitment that the commitment made in the programme for Government on pupil-teacher ratios will be held to before the lifetime of this Government is over?

**Deputy Seán Haughey:** It is the intention to implement all the commitments in the programme for Government during the course of the lifetime of this Government.

**Senator Shane Ross:** Including this one?

**Deputy Seán Haughey:** Yes, including this one.

#### Northern Ireland Issues.

**Senator Cecilia Keaveney:** I thank the Cathaoirleach for allowing me to raise this matter on the Adjournment. I ask the Minister for Foreign Affairs what efforts are being made to overcome bigotry and sectarianism in an all-Ireland context, given the recent television documentaries which have outlined the intensification of these activities post the Good Friday Agreement?

[Senator Cecilia Keaveney.]

I deliberately raise this issue in the week when we celebrate the 10th anniversary of the Good Friday Agreement. We celebrate the good and positive sides of the Agreement and the fact that things have moved on and we have political stability, of sorts, which is only right. However, the Good Friday Agreement was the result of a process and led to the creation of an Executive which took some time to bed down. This is a week when we celebrate ten years since the Agreement but it is not the end of the process. Rather, it is another stage in a process.

I have been appointed by the Council of Europe to write a report on how to teach history in areas of recent conflict. As a result of that, I have engaged in an even closer examination of the issues relating to Ireland, particularly the North of Ireland, although the report also relates to Bosnia, Cyprus and the South Caucasus.

On Monday night last, the BBC broadcast a “Panorama” programme entitled “Divide and Rule”, which examined Northern Ireland ten years after the Good Friday Agreement. It outlined the position in Derry and the fact that during the conflict, people polarised to one or other side of the city of Derry. The Fountain area remained an exclusively Protestant enclave. The programme makers looked at that area, ten years on, after the conflict. The Fountain currently has 24-hour CCTV monitoring, most of the houses are abandoned and the current residents still feel under siege. Catholic teenagers are seen to be still antagonising their Protestant neighbours. Raw sectarianism has led to Catholic patrols of the area, which have resulted in a reduction in incidents of 61%. However, the residents feel that the place is still very volatile. Should a Protestant decide to wave a Union Jack, major trouble could flare up.

It must be said that there are many community workers in Northern Ireland. It is estimated that there are approximately 30,000 professional community workers and 70,000 voluntary community workers in the North’s economy. It is important that we find some mechanism to reach the people at the grassroots to ensure that the sectarianism that appears to be alive and well — judging by the television programme — and is potentially lethal, is addressed.

We are not at the start of a process but we are not at the end of one either. We do not expect problems to disappear overnight and everything to be wonderful. However, the difficulty is that it is younger people who are involved in the current sectarianism. It is 12 years since I entered Parliament and 13 years since I taught in Derry. I still remember going through check-points in Derry but the people who were three years old then and who are 16 now do not remember that. They do not remember the bombs either, or the really difficult times.

The programme makers also examined Ballymena and drew attention to the fact that the local Catholic school is two miles away from the town. They also highlighted the fact that in 1996 it was the picketing of Harryville for two years that led to the sectarianism. One would have thought that 1996 should have been the start of the end of sectarianism. It was pointed out that Ballymena was a shopper’s haven up until then but has now become a tribal area. A young Catholic teenager was murdered there in May 2006. As with the Derry example, there was much cross-community work which led to a 60% reduction of sectarian incidents. However, when the programme makers examined what was actually going on and spoke to people in their 20s in Ballymena, they found that the young people would not go to the leisure centre because it was perceived to be Catholic and would not go to Pizza Hut or down certain streets because they were not in their territory. It was made very clear that they were happy to be segregated in peace rather than living in harmony with their neighbours.

One of the points made very clearly in the programme was that if one was wearing the wrong coloured jersey in the wrong part of town, one was in trouble. That was seen recently in Belfast when a young man had his throat cut at random by a group of people who were allegedly returning from a football match. That was a sectarian incident.

I raise the issue tonight because the “Panorama” television programme made the point that within the political leadership people were fighting over their tea and coffee and where they had dinner while on the ground, people were still fighting with stones, knives, petrol bombs, paint bombs and nail bombs. Since the peace process started, 17 additional peace walls have

either been built, extended or heightened. The physical barriers between the two communities are greater than was the case previously.

If one examines this in purely economic terms, the programme suggested that to duplicate the school buses cost £2.5 million. Segregated housing cost £24 million while the cost of policing, per person, was £478,000. Policing in Northern Ireland costs £2,000 more, per head of population, than in Britain.

The Good Friday Agreement has led to a management of sectarianism rather than its removal. In north Belfast, the programme makers filmed on the Crumlin Road, where there are different bus stops for Protestants and Catholics for the same bus service. If we are at the stage where this is still happening, while we are celebrating peace, we must recognise that while there is a political process at which we have arrived, much work remains to be done. Much of the work must start in the schools and we must recognise that understanding and respect for the other person is key. There have been curriculum changes in the Republic of Ireland and in the North that will help in that process. However, unless the process that has begun in schools and the separate process that is happening through cross-community activism are linked together, so that what the children are learning in schools and the parent are learning through cross-community activities are connected, we will not succeed. We must decide to move beyond a political settlement to a settlement where people get on and enjoy one another's company.

This morning I suggested that ten years on from the Good Friday Agreement, we examine the possibility of all of the people of Ireland enjoying a social day to mark the event, whether with an old-fashioned tea party, a concert or in some other fashion. We should organise a social event so that people who are on opposite extremes can get together, recognise how far we have come while also recognising that there is still some way to go.

**Deputy Seán Haughey:** It is important to acknowledge the enormous progress in building relationships on this island, both within Northern Ireland and between North and South, in the ten years since the Good Friday Agreement was signed. Compared to the long decades of the Troubles, we are truly in a new era of peace, prosperity and co-operation. An inclusive, power-sharing Executive headed by Dr. Ian Paisley and Martin McGuinness was probably unthinkable only a few years ago but it is now a reality. Such positive developments demonstrate it is possible to change attitudes, develop relationships and work together for the benefit of all. The parties to the Good Friday Agreement collectively gave a commitment to take further steps to actively promote and develop respect, reconciliation and mutual understanding between the different traditions on the island. These commitments are as relevant today as they were ten years ago. They form the foundation stones for the new era of peace, partnership and prosperity which is being progressively built in Northern Ireland, and across the island.

In this spirit of reconciliation and inclusivity and of reaching out to all the traditions on this island, the Government decided to develop a visitor centre at the Battle of the Boyne site. Arrangements are being made for the Taoiseach and Dr. Paisley to open this new centre in the coming weeks. All Members will recall the genuine appreciation expressed for this work by all shades of unionism when Dr Paisley visited the site last May at the invitation of the Taoiseach. We will continue to maintain and develop this site as an expression of our ongoing commitment to our shared history.

It is, however, undeniable that there is much still to be done. In parts of Belfast and elsewhere in Northern Ireland, the number of so-called "peace-walls" and "peace-lines" has increased since the cease-fires of 1994. Such structures have been erected at the behest of local communities, both nationalist and unionist, which fear sectarian attacks and they are a sign of our collective failure to date to tackle sectarianism comprehensively. In this regard, I also refer to the attacks on Orange halls in the past few years, primarily in Northern Ireland, but there was also an attack on the Orange hall in Drumartin, County Cavan last autumn. In addition, there were attacks on GAA clubs in Fermanagh and Armagh last winter. I reiterate the Government's unreserved condemnation of such actions. These incidents have been rightly condemned

[Deputy Seán Haughey.]

across the community in Northern Ireland. They are cowardly attempts to intimidate and sow division. Those who perpetrate such acts are not representative of the wishes of the people of this island, North and South.

It is not all bad news on this front, with the overall number of reported sectarian attacks falling in recent years. However, it is clear that combating the scourge of sectarianism remains a key challenge in the months and years ahead. While leadership on promoting reconciliation and combating sectarianism must come primarily from the Northern Ireland Executive and the local communities involved, the Government also wants to play its part in dealing with these issues. In terms of specific action, the Good Friday Agreement included an undertaking “to positively examine the case for enhanced financial assistance for the work of reconciliation” by voluntary and community organisations. We have lived up to this commitment through the Department of Foreign Affairs reconciliation fund. Much of the work which promotes reconciliation is being carried out at a local level, by organisations that are small and that often have a relatively low capacity. We have long realised that even small grants offered to such organisations can have an immediate return, by building relationships and tackling issues head-on at a local level.

The positive example of these organisations is, unfortunately, juxtaposed with the reality that sectarianism is a continuing problem in many parts of Northern Ireland. The progress made at the political level is not always reflected in the experience of ordinary people and this was highlighted by the Senator. Thus, it was decided to include in the current programme for Government a commitment to prioritise the battle against sectarianism and, in pursuit of this objective, to establish a dedicated anti-sectarianism fund. This fund, launched by the Minister for Foreign Affairs in February is intended specifically to support projects designed to address the root causes of sectarianism. The projects availing of these awards illustrate the many ways through which we can challenge the scourge of sectarianism, assisting local communities to move forward.

For our part, we will continue to place reconciliation and the elimination of sectarianism, racism and other forms of hatred at the very centre of our policies. One of the projects funded by the reconciliation fund is Ballymena Learning Together which brings together the nine schools in the town in order that children from both communities can get to know each other. While at the political level much has been achieved, the true test lies at the community and grassroots level. Decades of division and mistrust cannot be dispelled in a few months. Reconciliation will be the work of a generation, perhaps more than one. Progress will be incremental but the goal of a better and shared future for the people of this island is one which, working together, we can and must achieve.

**Senator Cecilia Keaveney:** I thank the Minister of State for his comprehensive reply and I acknowledge the attendance of departmental officials for the debate, which is much appreciated. I would like information on the fund. A total of 200 students from six schools in Ballymena with varying backgrounds visited Leinster House in recent weeks, which was an important step forward. I also acknowledge the work of the Houses of the Oireachtas Commission in introducing an education programme for the Oireachtas reaching out into schools. That is a positive way forward and this will be a long-term project. However, if the project were avoided, we would end up with difficulties sooner rather than later.

The Seanad adjourned at 7.50 p.m. until 10.30 a.m. on Thursday, 10 April 2008.