

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 10 Meitheamh 2009.
Wednesday, 10 June 2009.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

An Cathaoirleach: I have notice from Senator Cecilia Keaveney that, on the motion for the Adjournment of the House today, she proposes to raise the following matter:

The need for the Minister for Communications, Energy and Natural Resources to outline whether he agrees that the Crown Estate has any financial or other claim on the River Foyle, as a sea, a river or in respect of its river bed.

I regard the matter raised by the Senator as suitable for discussion on the Adjournment and it will be taken at the conclusion of business.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion regarding European Commission proposals on Schengen evaluation; No. 2, Criminal Procedure Bill 2009 — Order for Second Stage and Second Stage; No. 3, Nursing Homes Support Scheme Bill 2008 — Second Stage; and No. 35, motion 31 regarding human trafficking. Due to the unusual business taking place in the Dáil this week, No. 1 cannot be brought back from the committee today. No. 2 shall be taken at the conclusion of No. 1 and shall adjourn not later than 2 p.m. if not previously concluded. Spokespersons may speak for 12 minutes and all other Senators for eight minutes, and Senators may share time by agreement of the House. No. 3 shall be taken not earlier than 2 p.m. and shall adjourn at 5 p.m. if not previously concluded. Spokespersons may speak for 15 minutes and other Senators for eight minutes, and Senators may share time. No. 35, motion 31 shall be taken at 5 p.m. and shall conclude not later than 7 p.m. If not previously concluded, the proceedings on No. 3 shall resume following No. 35 and shall be brought to a conclusion today.

Senator Joe O'Toole: On a point of order, what time has been set aside for the debate on No. 1?

Senator Donie Cassidy: No. 1 is not being taken.

Senator Frances Fitzgerald: Yesterday I asked the Leader to accept a motion from Members on this side of the House to debate the results of the recent elections and the implications thereof for Government. Has he considered my request and, if so, will he indicate the decision he has reached on it?

[Senator Frances Fitzgerald.]

Later today hundreds of people are due to march on the Dáil. They will do so as part of a march of solidarity with the victims of institutional abuse in this country. As a result of the Ryan report, it is clear that many thousands of people have been deeply scarred and hurt by their experiences while in institutional care. The House debated the Ryan report but not everyone who wished to make a contribution had an opportunity to do so. In that context, I ask the Leader to make further time available to allow us to continue our debate on the report. This is an extremely important matter, particularly in the context of how this House and the Dáil will deal with the findings of the report in the months and years ahead. There should be not just a one-off debate but, in light of the enormity of the report's findings and the range of issues it addresses, a series of debates. The Ryan report gives rise to many matters, not merely regarding the past but also in respect of the current state of child protection laws.

I wish to make a point that has not been brought to the fore to date. Many people who were abused in institutions emigrated. We have an obligation to reach out to the Irish communities in England, America and Australia, by means of the various hostels and the societies which work with people who were so scarred by what happened to them in this country. I ask the Leader to raise this matter with the Minister for Foreign Affairs because the time is right to do so. Every Irish embassy abroad should be given a copy of the report and should reach out, in the most appropriate way, to the people to whom I refer.

To return to current issues, there is a need for the House to address the protection of children. I previously referred to the 200 children who are being held in psychiatric hospitals — that is, adult mental health facilities — this year. This figure represents an increase on that which obtained last year. I also previously referred to the 20 children who died while in care in recent years and the fact that, to date, a report has not been published in respect of them. In the recently published Monageer report, the recommendations were blacked out. There are a number of very serious child protection issues that must be addressed in the House. In that context, I wish to ensure that time is made available before the end of the current term to discuss these issues, to which priority must be given. If the House engages in a debate in the coming weeks on the issues to which I refer, it will show solidarity with those who intend to take part in today's march.

Senator Joe O'Toole: I wish to raise a point of order. Earlier I asked the Leader how much time would be allocated in respect of No. 1 and he indicated that the latter is not being taken. I do not believe that is what he meant to say and I wish to get the record straight. I wish to make a contribution in respect of No. 1. I understand that No. 1 is a proposal to withdraw a previous motion. In other words, we are being asked to pass a motion to withdraw a previous one. Will the Leader clarify the position on that so that the House will be aware of what is taking place? When I put my question to the Leader, he indicated that the House would not be taking No. 1. However, I believe he meant that we are taking No. 1 and that this will, in effect, nullify something previously put to the House. Will the Leader clarify the position?

Senator Donie Cassidy: My notes on No. 1 indicate that it is a motion regarding European Commission proposals on Schengen evaluation and that, due to the unusual business in the Dáil this week, the motion cannot be brought back from the committee today.

Senator Joe O'Toole: Yes, but that means No. 1 must be taken.

An Cathaoirleach: The term “the following motion is hereby withdrawn” is used in the text of No. 1.

Senator Joe O'Toole: The House is taking No. 1 today because it rescinds the previous order.

An Cathaoirleach: Yes, it rescinds it.

Senator Joe O'Toole: We are taking No. 1 today. That is what I am trying to establish.

An Cathaoirleach: The effect of No. 1 is to rescind the previous motion.

Senator Joe O'Toole: I cannot agree to No. 1 being taken without debate. On each occasion on which I am obliged to produce my passport, when arriving in Brussels or some other city, I wonder how long it will be before Ireland joins Europe. Britain and Ireland are part-time members of the European Union because they refuse to sign up to the Schengen Agreement. It is unacceptable that they so refuse and the sooner we decide to sign up to that agreement the better. The House should engage in a debate on this matter. Ireland is barely a member, a part-time member of the European Union. I have always been opposed to its opting out of the Schengen *acquis* and I am absolutely intent that we should engage in a debate on the matter. The position, as it stands, is outrageous. When Irish people arrive in the airports of other member states, they are shunted into the queue with non-European citizens. That is completely wrong and it causes difficulties for people at many levels.

Senator Terry Leyden: Correct.

Senator Joe O'Toole: We should not be obliged to queue with non-European citizens. Ireland should opt in to the Schengen *acquis*. In such circumstances, I am seeking to make a contribution on No. 1. The Houses have never debated this matter in spite of the fact that I have raised it on a number of occasions during the past 15 years. We have not opted in because the British have a liking for stationing fellows on borders and allowing them to stop people crossing those borders. I am not in favour of such behaviour. We should be able to engage in the free movement that exists between Belgium and France, Belgium and Germany etc. Even Switzerland, which is not part of the EU, is considering opting in to the Schengen *acquis*.

An Cathaoirleach: Is the Senator moving an amendment?

Senator Joe O'Toole: I am moving an amendment to the Order of Business to the effect that No. 1 should be taken with debate.

I appreciate the support I received yesterday when I raised the matter of *Foinse*. Ceapaim go bhfuil sé scannalach nach bhfuil tacaíocht ag teacht ón Rialtas chun acmhainní a chur ar fáil do *Foinse*. Tá sé thar a bheith tábhachtach do shaol intleachtúil na tíre, go mórmhór ó thaobh Gaeilgeoirí agus Gaeltachtaí de. Mar a dúirt an Seanadóir Ó Murchú inné, tá an nuachtán thar a bheith tábhachtach freisin ó thaobh forbairt foclóireachta, maidir le cúrsaí reatha, srl. Ní féidir linn aon dul chun cinn a dhéanamh muna bhfuil *Foinse* á fhoilsiú sa tír seo. I gcónaí, nuair atá brú airgid ar an Stát, is iad muintir na Gaeilge agus na Gaeltachta a fhulaingíonn i dtosach.

What is happening in respect of *Foinse* is disgraceful. Many fancy words are uttered in respect of the Irish language. I have often engaged in arguments with Senator Ó Murchú about approaches to and policy on the Irish language. It is utterly unacceptable not to have an Irish newspaper, particularly if attempts are being made to teach Irish or encourage people to use it in their daily lives. The Leader should raise this matter directly with the Minister for Community, Rural and Gaeltacht Affairs, who is quick enough to argue with me about changing the name of my town and various of his other nonsensical proposals. This is a real issue and the Minister should become involved in dealing with it.

Senator Alex White: In light of the matters with which I was preoccupied in recent weeks, I did not have the opportunity to note in the House the sad news regarding the recent death of

[Senator Alex White.]

former Labour Senator, Mr. Dominic Murphy, who served here with great distinction for many years in the 1950s and 1960s. I would like to have it noted that I wanted to extend my deepest sympathy to Mr. Murphy's wife and his four children. Maybe steps can be taken to have that noted formally in the House.

An Cathaoirleach: That will be done at a later date.

Senator Alex White: I support the calls for us to return to the implications of the Ryan commission report. There is a need to debate this in greater depth and at some length. Many argued that it is time to revisit the deal done with the congregations and the wider question of the ownership by the congregations of a considerable amount of property, including most of our national schools. It seems this is a timely and important opportunity to reopen the question of ownership of our schools and the relevance of that fact in the context of what has been determined by Mr. Justice Ryan.

Can the Leader raise the following proposal with the Minister? The congregations will be required to make much more substantial reparation for what occurred than under the deal negotiated with them. One interim measure could be that the congregations could pay to the persons who came before the redress board and received awards and those who are awaiting hearings the 20% aggravated damages contemplated by the scheme. The maximum award is €300,000 but it was contemplated that persons could be awarded up to 20% of that award in aggravated damages. There is a precedent of aggravated damages being awarded in a number of compensation schemes. The hepatitis C compensation scheme is one with which I am familiar. I ask the Taoiseach to approach the congregations with the interim measure of awarding the 20% aggravated damages contemplated by the scheme to all those who received awards or those awaiting awards.

Senator Ned O'Sullivan: The Leader remembers that I raised the matter of the Go Safe programme and the installation of speed cameras nationally. I expressed concern that this aspect of Government policy was being dragged out. I spoke to the line Ministers in the Departments of Justice, Equality and Law Reform and Transport. There is a turf war between the mandarins in these Departments. This important programme, geared towards safety on our roads and badly needed, is being stalled.

Another interest in the matter for me is that the company designated as the preferred operator of the scheme is based in Listowel, County Kerry. It employs over 100 people and anticipated taking on 60 additional staff to cater for the new programme. However, a worrying article appeared in the newspaper at the weekend, suggesting the company had a meeting of its creditors and was in serious difficulty. This is a classic example of various Departments not being joined up. Instead of creating 60 jobs, we may lose 100 jobs. As a matter of urgency I ask the Leader to take this up with the Minister for Enterprise, Trade and Employment, Deputy Coughlan. This is absolute lunacy. Every job we can create is vital yet we are sitting on our hands and people will not put their hands up and accept responsibility. The Department of Transport will be caught for the budget of installing the cameras but the Department of Justice, Equality and Law Reform wants the fines that will accrue to go to its budget. This is silly thinking because it is all the one Government. I ask the Leader to take this up or else it will be a calamity nationally and for Kerry.

An Cathaoirleach: I apologise to Senator McFadden for not calling her yesterday.

Senator Nicky McFadden: I appreciate the indulgence of the Cathaoirleach. Yesterday I wanted to congratulate everyone who had put names on a ballot paper, especially my colleagues

Senators John Paul Phelan, Donohoe and O'Reilly, who put in tremendous campaigns. I have no doubt all will be back again, stronger and better.

Yesterday, I wanted to ask the Leader to clarify a matter raised by Senator Cummins before the election. I phoned the Leader two days before the election to ask him about asylum seeker units and reception centres. People in those centres have the right to be canvassed. They are allowed to cast their votes so they should be canvassed, which is their democratic right.

Senator Paul Coughlan: Not just canvassed selectively.

Senator Nicky McFadden: What upsets me is that they were disenfranchised from being canvassed by all political parties. I contacted the management company for asylum seeker units on Thursday and was told no politicians were allowed into these units to canvas the residents. My colleagues in Westmeath had also been in touch with the centre and had been told the same thing yet they managed to get in at weekends or during the evenings, when different management teams were on duty. I rang the Minister's office and got no reply, which is terrible. It is an outrage. I want the Minister to give us an answer in this House on how these people have been disenfranchised.

Regarding the Ryan report, Ms Christine Buckley was on radio this morning. It has been brought to my attention that 4,000 people with intellectual disabilities are still living in institutions. I can only describe them as human warehouses. We must show we are serious about respecting those who are more vulnerable by taking action and looking after them in our institutions. It is still going on and we have a responsibility.

Senator Mary M. White: Since 2006, when I launched A New Approach to Ageing and Ageism, I have drawn attention to the lack of human rights of older people and the archaic policies in our society. I draw the attention of Members to the newsletter of the Irish breast cancer campaign. I have referred to cutting off breast cancer screening at 64 years of age. The Europa Donna Ireland newsletter states:

BreastCheck stops at age 64 for women, despite the evidence that risk continues and increases for women as they age. Three quarters of breast cancers are found in women over 50 and while the cumulative risk of a woman developing breast cancer before the age of 50 is one in 48, before the age of 65 it is 1 in 16, and by 75 it is 1 in 11.

My all-Ireland active living award will be launched at the end of September. I will be working passionately North and South for the human rights of older people in our society. Most decisions in Departments are made by men because decision makers are male dominated. This is one of the main reasons women over 65 are not entitled to the wonderful, free breast screening programme we have. I want Members on both sides to become part of my anti-ageism campaign.

Senator Shane Ross: I ask the Leader to request the Minister for Finance to attend the House. The Minister has done very well in removing some of the top brass in the banks and he should be applauded for doing so. Some ten of the 12 covered institutions have lost either their chairman or chief executive, and the Minister has acted with great skill. Everybody in this House has been looking for a significant and dramatic change in the personnel at the top of the banks.

Senator Paul Coughlan: There is still a bit of cronyism.

Senator Shane Ross: Although the Minister has removed these personnel, he seems to be replacing them all with the old guard. There was a chorus of applause, which will increase, at

[Senator Shane Ross.]

the appointment of Mr. Pat Molloy this morning as chairman of the Bank of Ireland. This is just more of the old guard coming back. What the Minister has done with Bank of Ireland is appoint a chief executive who is an insider and a chairman who is a Bank of Ireland lifer. It is no good saying we are introducing a new broom to an old bank when an old broom is being brought into an old bank.

This is sleight of hand and I do not know if it is because the Minister wants to move into a comfort zone where he will be applauded by the business community, IBEC and others. It is not what the banks need, as they need a new culture, a new group of people from outside the banks. The Minister approved the appointment of a chairman from inside AIB as well.

An Cathaoirleach: I do not want any names mentioned.

Senator Shane Ross: I am not naming anybody. A chairman was also appointed to Anglo Irish Bank from inside, which is not good enough. There is an appearance of change in the banks but we are getting the same people or former employees coming back into the same positions.

Senator Jerry Buttimer: Hear, hear.

Senator Shane Ross: Nobody should be deceived by that. The Minister acted in a similar way in cases which I will not mention. There have been one or two good appointments as well and I will name somebody who I want to be positive about. Mr. Alan Dukes was appointed to the board of Anglo Irish Bank because he does not come with any baggage. There are others in this category.

Will the Minister come to the House and tell us his strategy? It is not good enough if we have the same old people on a directors' merry-go-round going back to the banks.

Senator Labhrás Ó Murchú: Bhí sé soiléir anseo inné go raibh an-díomá ar dhaoine go raibh baol ann don nuachtán lán-Ghaeilge, *Foinse*. Dhein mé roinnt fiosrúcháin maidir le seo agus de réir mar a thuigim, tagann an deontas do *Foinse* ó Fhoras na Gaeilge. Beidh cruinniú inniu idir Foras na Gaeilge agus *Foinse*. Socraíodh sin cúpla lá ó shoin. Tá súil agam go dtiocfaidh réiteach ar an scéal as an gcruinniú sin. Aontaím go hiomlán gur trua mór é go mbeadh baol ann don nuachtán, mar cruthaíonn nuachtán mar sin go bhfuil an Ghaeilge beo agus bríomhar agus in úsáid go laethúil.

Like others, I was very disappointed to hear yesterday that there was a danger that *Foinse*, the all-Irish newspaper, might not continue. It had a very professional approach to its work and in many ways there was a symbolism in it that the language was alive and well when a newspaper was being published on a weekly basis with current affairs and up-to-date information. I am reliably told there will be a meeting today between Foras na Gaeilge and representatives of *Foinse*. This meeting had been arranged a few days ago. The financial support for the newspaper comes from Foras na Gaeilge and I am hopeful there will be a meeting of minds today and that there will be a positive solution. All people interested in the Irish language would like to see an outcome that would ensure the continuance of that newspaper into the future.

Senator Paul Coghlan: I strongly agree with the sentiments and remarks of Senator McFadden in regard to what happened recently in the reception centres to which she referred. It is disgraceful that these good people are corralled, shepherded or herded and are not allowed to be visited or canvassed except by the chosen few. That is disgraceful in our democracy and should not be tolerated. It happened in many places that some of us are aware of and we could

not gain entry. Are some of us dangerous? The Leader should take this up urgently in connection with what we spoke of yesterday regarding the electoral register.

I agree with the comments of Senator Ross in that wonderful public interest appointments have been made to banks. I agree with the man named by the Senator and others. In the case of one very important institution, as the Senator has noted, an insider chief executive has been appointed and a lifer will be appointed as chairman. I strongly support the Senator's request that we have the Minister for Finance before the House soon for a debate on this. The last thing we need is any continuation of the bad banking practices of the past. As the Senator indicated, we need a total break from that and a new culture. We thought we were going in that direction but now one must ask if there is slippage. I look forward to hearing the Leader's remarks on that matter.

Senator Ivor Callely: In the past I raised matters relating to the provision of health and social services, airing certain doubts regarding the ability of the HSE in the delivery and provision of such services. I ask the Leader to get us some kind of briefing document in regard to the expenditure of approximately €20 billion on health and social services. We should also have a breakdown of front line staff compared with administration and management. People have brought to my attention a number of occasions where there appears to be managers, secretaries and various administration personnel put in place but when the front line provision of service is sought, we are told there is a reduction in the number of hours provided for home help, for example, or the availability of a physiotherapist etc.

One must question the basis of these decisions and before we do so we should get some kind of a briefing or breakdown on the total budget and staffing at administration, management and front line levels. The Leader has not come back to me although I have asked him about the medical card issue and if he could get clarity on what is happening. My understanding is that medical cards were to be brought under one roof and existing staff were being redeployed. I could not figure out the savings involved.

As I mentioned last week, it has been brought to my attention that more agency staff are being brought in to man this new centre for the processing and administration of the medical card section, with front line HSE staff being redeployed. I do not see where there is a saving in this or where a benefit accrues. Will the Leader advise on this?

Senator Michael McCarthy: I ask the Leader to arrange a debate relating to the awarding of contracts from Departments for services operated by ferries from our islands. I refer in particular to the removal of transfer of undertakings (protection of employment), TUPE, legislation for one of those clauses. This refers to transfer of undertakings, which guarantees that if a contract is awarded again, the terms and conditions of the workers are held as they were before.

In one instance that clause was removed and this allowed a ferry operator owning a new contract to sack or demote workers and reduce wages. There is now a stand-off in west Cork as the operator further proposes to reduce wages and refuses to enter into any form of discussion with the trade union.

Will the Leader arrange for the relevant Minister to come to this House and debate the awarding of contracts for ferry services? The Minister should also explain why, in this particular instance, a clause which guaranteed workers' rights was removed.

In west Cork, we had a similar canvassing experience to that of Senators Coghlan and McFadden during the recent elections. When we went to a lodge for asylum seekers which had people on the electoral register, we were informed we could not canvass there even when other candidates had. A sign about canvassing was put up in a window in the lodge but after some exchanges it was removed and we were able to canvass.

[Senator Michael McCarthy.]

A more serious issue I want to raise, however, is the length of time taken to process asylum applications. The political exploitation is only a small part of the overall exploitation of these people cooped up in these centres. It is not good for their physical or mental health to be cooped up for nearly two years seeing no administrative end to their plight, let alone a political one.

Senator Jim Walsh: Members referred to the Go Safe road safety campaign. While I support the general principle, I have called before for it not to be implemented until such time there is a comprehensive review of speed limits throughout the country. In most areas, speed limits are pitched at an unrealistically low level.

Senator Joe O'Toole: Hear, hear.

Senator Jim Walsh: Gardaí should not be taking the soft target of catching motorists with speed checks in areas where the speed limits are incorrect. I have raised this with the Garda inspectorate, which agrees. Such actions by gardaí bring the system into disrepute.

Billions of euro have been invested in upgrading our road network to international standards. Much good work, which I commend, has been done in many areas but, unfortunately, the speed limits are still artificially low. For example, the N11, a high quality dual carriageway which is up to motorway standard, has a speed limit of 100 km/h. When it is quite safe to drive at 120 km/h on this road one will find gardaí operating speed checks on it. The economy is not getting the benefit of the investment made in the road network. Competitiveness is a major issue for the economy. We are not taking action in this one area where we could and should. Will the Leader invite the relevant Minister to debate this issue in the House?

I want to raise a minor issue concerning the recent local elections but an important one for those concerned. Anyone who canvassed in urban areas recently would have been astounded at the disenfranchisement of many people living and working in towns. Many cannot vote in their town council elections simply because the town's electoral boundaries were set when the town was much smaller. There is a need to address this issue. It gives rise to much frustration and annoyance among those who do not have a right to vote for the council that most affects them and in which they are most interested. Will the Minister for the Environment, Heritage and Local Government attend the House to debate this issue?

Senator Fidelma Healy Eames: I am saddened by the news that *Foinse* could go to ground. Will the Minister for Community, Rural and Gaeltacht Affairs, Deputy Éamon Ó Cuív, intervene to save the newspaper? It is a newspaper for all Irish-speaking people and the Gaeltachtaí, and it is based in Carraroe in the Minister's constituency. The money he could direct into the newspaper would be better spent than the money going into the translation of reports into Irish, many of which are never read and could easily be posted on the Internet.

Yesterday, I asked the Leader to come back with news on the adoption agreement with Vietnam which I hope he has today.

Last weekend I was delighted to hear the Vatican plans to respond to the Ryan report. This House can make a difference if it ensures the report does not go off the agenda by having a rolling debate to monitor the implementation of its recommendations. The Children First guidelines must also be put on a statutory basis so that children are protected and that what happened in the past will never happen again.

Will the Leader arrange an urgent debate with the Minister of State with special responsibility for children and youth affairs, Deputy Barry Andrews, on next year's preschool scheme?

Senator Jerry Buttimer: Hear, hear.

Senator Fidelma Healy Eames: I am sure many Members are getting e-mails that it is already under threat. Up to 81,000 places are needed for next year. The cap of €64.50 per child per week the Minister of State has put on the fee is unworkable. No preschool provider can produce places at such a cost. All the providers are seeking is the possibility for the parents to top up the fee. There are serious quality issues as well but we are serious about the quality of education. This is one of the best schemes the Government has ever proposed. Evidence shows there is more of a return from preschool education in the long term than anything else but only if it is of quality and is workable.

Senator Feargal Quinn: I second Senator O'Toole's proposal to debate the Schengen Agreement motion today. I am not sure why we are not debating the motion or why it is proposed not to have that debate. Last year I wrote an article for *The Irish Times* on this matter and I received much comment stating it was ridiculous Ireland was the only country out of the EU 27 that decided to join Britain's travel arrangement. I accept part of the reason for this was because Northern Ireland may present a problem. However, one needs photo ID to travel from Northern Ireland to England, Scotland and Wales. We should debate this issue and should not allow it to go past without debating it.

I seldom disagree with Senator Ross but I believe the new appointee to the chairmanship of Bank of Ireland is an ideal choice. He left the day-to-day running of the bank 12 years ago and, therefore, was not involved in the period when it was tainted by property development. He is the right sort of person to have at the bank — professional and, even more so, 71 years of age. I am delighted there is no age discrimination in this case.

Will the Leader draw to the attention of the relevant Minister the suggestion yesterday from the UK Environment Secretary that supermarkets do away with best-before and display-until labels? Up to 1 billion people go to bed hungry every night when every year in the UK up to 6 million tonnes of potatoes, 4 million apples and 1 million loaves and slices of ham are thrown out. This is because people misunderstand the difference between use-by, best-before and display-until labels. These are used by supermarkets for stock control. It does not mean one cannot eat these foods. Serious consideration should be given to doing away with these labels. With people starving across the world, we should not be wasting the amount of food we do.

Senator Phil Prendergast: Will the Leader ask the Minister for Social and Family Affairs to clarify the status of the back to school allowance scheme? I have been inundated with questions from parents about when the application forms will be available and whether the allowance will be paid in time.

Recently, the transfer of a severely ill patient from Clonmel hospital to the Mater Hospital in Dublin could not go ahead, not because a bed was unavailable but because the hospital was depending on a pool of ambulances serving all Dublin hospitals. Therefore, a patient who no longer required the high-dependency bed in the centre of excellence could not be moved to allow this severely ill patient to avail of the bed. Surely it is not too much to ask that a hospital designated as a centre of excellence would have its own dedicated ambulance service. When the Minister for Health and Children addresses this issue, perhaps she could also address the issue of an ambulance service for Carrick-on-Suir.

Senator Eugene Regan: I thank Senators O'Toole and Quinn for supporting my call for a debate on the Schengen Agreement. I raised this matter last week and as the Leader agreed there would be a debate, perhaps he can confirm when the debate on Schengen will take place. The reality is that it involves passport-free passage between member states. One justification

[Senator Eugene Regan.]

for having this restriction and for Ireland not being part of Schengen was that we had a common travel area with the United Kingdom. Since it effectively has ended, it is time to have such a debate and for the House to lead on this issue.

The problem is that this issue forms part of an overall area that is called freedom, security and justice within the European Union and the Government has been most reluctant and recalcitrant in co-operating with the rest of Europe on such issues. This also is reflected in our opt-out from criminal law and police co-operation, which has been introduced in the Lisbon treaty. As one of the biggest selling points of Europe is the need to co-operate in tackling crime, drugs, human trafficking etc., it would be an idea to get rid of this opt-out. According to the former Senator Maurice Hayes, who then chaired the Forum on Europe, this proposal was the biggest selling point of the Lisbon treaty. However, the Government chose to introduce an opt-out. We should get rid of it, which would increase the ability to sell the Lisbon treaty.

Six months after the nationalisation of Anglo Irish Bank, which Fine Gael opposed, a business plan is being drawn up with the Minister for Finance, his officials and the Financial Regulator. After six months that is wonderful. There is a commitment of funding and possible funding required of the Government of up to €7.5 billion. More impairments are expected on loans in the wake of the establishment of the National Asset Management Agency, NAMA, and it has been suggested it would be more expensive to close the bank than to continue on. Members are owed clarification by the Minister for Finance in this House regarding what is going on and on the depth of the contribution and funding to this zombie bank that is required of the Government.

Senator John Hanafin: Having missed the opportunity yesterday to congratulate my county colleague, Alan Kelly, on his election to the European Parliament, I do so today. I also share the concerns expressed by Senator Quinn regarding the waste of food because people do not understand the context of the stamping of food. If anything can be done by supermarkets to educate the public in this regard, it would be useful.

I ask the Leader for a debate because to serve the public well, I believe the Seanad should be the forum in which each political party lays out its stall in respect of dealing with the deficit of €20 billion, by outlining the cuts and taxes it proposes and what it would do to ensure the correction of Ireland's fiscal and financial state. In other words, I seek a two-day debate in which each political party would lay out its stall once and for all.

Senator Rónán Mullen: First, I am glad that Senators O'Toole and Ó Murchú again referred to *Foinse*. Yesterday, I stressed its importance to the intellectual life of this country. The word "foinse" means "source" and that newspaper has been, is and must be a source of important debate. It is vital that current affairs are discussed through the medium of Irish in the broadcasting and print media. This is an important feature of the cultural life of this country and the Government must see it in this way.

Just as important is the issue of money to be spent on services for children with disabilities and mental health problems. It was reported yesterday that more than €100 million that was reserved for such spending has not been spent. The Leader should bring the Minister before the House to assure Members that the unspent €100 million of funds for suicide prevention programmes, services for children with mental health problems and disability assessments for children of school-going age will not be allocated elsewhere but will be committed to such areas.

Senator Fidelma Healy Eames: Hear, hear.

Senator Rónán Mullen: I thank Senator Healy Eames for her comments on the Ryan report. I am on record as stating that I hope the religious orders will be generous. I also have warned against attempts, on the back of the Ryan commission report, to open up debates on issues such as education and who specifically runs it. As I have stated, so doing runs the risk of being perceived as being manipulative and cynical and would be irresponsible. Moreover, it is important for people to check their facts. For example, Deputy Ruairí Quinn stated that 1,000 schools were run by religious orders when in reality only a few hundred are so run.

Senator Alex White: Only.

Senator Rónán Mullen: Taking that in conjunction with Deputy Gilmore's less than informed approach to NAMA a few weeks ago, one wonders whether people are rushing to the microphone to make political capital rather than checking the facts.

Senator Alex White: The Senator should check the facts himself. He misquoted someone.

Senator Rónán Mullen: One final fact for Senator Alex White is that a Labour Party Minister for Education oversaw our current arrangements in respect of primary schools.

An Cathaoirleach: The Senator's time is up now.

Senator Rónán Mullen: They are widely accepted as being good arrangements and this involved dialogue with all the partners.

Senator Alex White: Clearly, they must be revisited.

Senator Rónán Mullen: As I stated, a little fact checking would go a long way in this House.

An Cathaoirleach: I call Senator Coffey. No interruption, please.

Senator Paudie Coffey: It is generally agreed across the House that one of the main challenges facing the economy is the restoration of competitiveness. It is important to reprioritise and refocus attention on this area because the viability of many businesses, large and small, depends on our level of competitiveness.

In this context I refer to energy, an issue I have raised previously. The cost and sourcing of energy in Ireland must become a priority and Government investment must be refocused in this regard. While the Government is ready, and probably is obliged, to invest in the banks to keep them viable in the context of the banking crisis, it should invest in renewable sources. I call for a debate on energy and the sustainable use of energy in society. Our focus in this regard should be on electricity, oil and gas and the question of our resources. This is an island and Members already have spoken about the Spirit of Ireland project. Such projects are needed in Ireland and perhaps the Leader would provide for a debate in this regard. Our sustainable future, competitiveness in business and society in general, whether in schools or homes, depends on how viable and sustainable we are with regard to energy.

Senator Ivana Bacik: I thank colleagues for their good wishes expressed yesterday and today on the election. I believe I speak for all Members who ran for election when I state it was a very positive experience. It was important to hear people's concerns directly expressed on doorsteps and the anger at the current Government is palpable.

One concern to emerge from the election pertains to disenfranchisement and Senators McFadden and McCarthy have referred to this issue. However, various issues were brought to my attention regarding voters who were denied the right to vote in particular elections despite

[Senator Ivana Bacik.]

being legally entitled to so do. Returning officers in different polling stations were not aware of relevant electoral law and so on and this is a serious issue that requires further review.

Senator Jerry Buttimer: Hear, hear.

Senator Ivana Bacik: I certainly will raise it again. I echo comments made by colleagues on the Ryan report and the need for further debate on it. It was an issue on which many people expressed their views strongly and in very emotional terms. It was a real issue underlying the elections.

Moreover, issues arise from the Ryan report which is not a report about history. In response to Senator Mullen, Deputy Ruairí Quinn was quite correct to look at the issue of education more broadly because it would be irresponsible of Members not to consider the broader context in which the Ryan report's findings and recommendations are made.

Senator Joe O'Toole: Hear, hear.

Senator Ivana Bacik: Members should consider who controls our schools. At present, both national and secondary schools are still controlled predominately by the churches and by the Catholic church in particular and there is no issue in this regard.

Survivors of abuse, with whom I wish to express solidarity on their march today, may be highly dismayed to see reports in today's newspapers to the effect that the De La Salle Brothers have just launched an investment fund in Dublin. Christian Brothers Investment Services Inc. is a New York-based investment company that also is setting up in Ireland. There are real questions to be asked on whether it is appropriate for religious orders that have escaped their fair share of liability and that have been indemnified by the State to launch an investment fund for themselves or for their supporters in Dublin.

I express my sympathy to the families of the three Trinity graduates who died tragically in the recent aeroplane crash. As Members debate the Aviation (Preclearance) Bill, all think of airline safety and must think of the families and friends of those Trinity graduates.

Senator Jerry Buttimer: I wish to raise the issue of *Foinse* and welcome Senator Ó Murchú's announcement that a meeting is to be held today. It is important that the newspaper should continue. While the Minister comes into this House to pontificate about what he does for the Irish language, it would be a travesty were a newspaper that is required as a source of education and information to be lost.

I echo Senator Quinn's call for a debate on the use and waste of food. I do not blame consumers for the volumes of food that are thrown out of supermarkets. I blame the supermarkets because they are guilty of misrepresentation regarding labelling. Consumers cannot be blamed if they are not properly educated by food labels. We should have a real debate on that.

I ask the Leader to invite the Minister for Finance to come to the House. Senator Ross is absolutely correct. We claim we want a change in the culture of the banking profession, in the interests of restoring confidence and trust, but that will not happen if we do no more than reshuffle the old heads in the banks. While I accept that some good appointments have been made, the replacement of the old guard with a slightly newer guard does not instil confidence. We have not heard the Minister's opinions on the direction in which banking is going. Senator Ross is right to point out what Allied Irish Banks, Bank of Ireland and Anglo Irish Bank have done. If we are to have more of the same, the banking profession needs to show all of us more transparency and more honesty. What is the Government's strategy for the banks? This morning, Senator Regan made the good point that it has taken Anglo Irish Bank six months to

produce a business plan. It is important for us to have a debate on the banks. More importantly, we should have the rolling debate on the economy that was promised by the Leader. Some 400,000 people are unemployed and that number is rising. More and more people are looking for help to keep their small enterprises in business. More houses are being repossessed. What is the Government saying? The Taoiseach has said he will stay and fight. It should be a question of giving people leadership as they face their challenges, rather than a question of self-preservation on the part of those on the Government side.

Senator Donie Cassidy: On behalf of the House, I join Senator Alex White in expressing sympathy and sending condolences to the wife and family of former Senator Dominick F. Murphy, who died recently. In due course, with the approval of Mr. Murphy's family and the leader of the Labour Party, I will make available the usual opportunity for Members to pay their full respects to the hard work and dedication of the former Senator. I certainly want to be associated with the remarks that have been made today.

Senator O'Toole spoke about No. 1, motion regarding EU Commission proposals on Schengen evaluation. I understand the original motion was due to be discussed by a joint committee yesterday, 9 June 2009. That motion was intended to allow Ireland to opt into the initial negotiations before the relevant deadline, which is midnight today, 10 June 2009. Due to this week's unusual Dáil business, it was not possible to refer that motion to the Dáil today. It was scheduled to come back from the committee to both Houses today, which is the last sitting day before the deadline. That was not possible, however. The original motion has become irrelevant because it was based on the expected decision of the committee to allow Ireland to opt into the negotiations before midnight today, 10 June 2009. As such a decision was not made, there is no point in discussing the agreement to opt into the negotiations. It should be emphasised that the possibility of adopting the measure remains available to Ireland. As I said earlier, I would not have a problem with providing for a discussion on this matter. Senator Regan is quite correct in that regard. I have outlined the instructions I am following at the present time. I will consult the leaders after the Order of Business. I would not have a difficulty with this issue being debated by the House. As Senator O'Toole has quite correctly said, Senators on all sides of the House are strongly of the view that Irish people should not be classified as second-class citizens, in any shape or form, when they travel to other countries. If this House can do anything to help those of us who are proud to be Irish, it will do so. We can be a trusted nation and a trusted people. I will provide for whatever amount of time is needed to allow colleagues to make their views known to the Minister.

Senators Fitzgerald, O'Toole, Alex White and Bacik expressed strong views about the Ryan report. I am proud that this House discussed the Ryan report as soon as it became available. Outstanding contributions were made by many Senators during the debate, which took place on Wednesday, 27 May last. I understand that many other Senators would like to make their views known to the House. I will examine the schedule of sittings between now and 10 July to see when that can be done. It is clear from the schedule for today and the rest of this week that a huge amount of legislation is being dealt with in this House. Every minute of our time this week is being spent discussing legislation. Like all my colleagues in this House, I am pleased that two Bills are being initiated in the House this week. The primary objective of our membership of the House is to update, amend and pass legislation. I will endeavour to find time for a further discussion on the Ryan report before 10 July. I understand that one or two other reports will be submitted for our consideration before the end of the year. I assure Members that this House will not be found wanting when it comes to providing an adequate amount of time for contributions to debates on all such reports. I will make proposals, for the approval of the House, on all matters pertaining to these areas.

[Senator Donie Cassidy.]

Senators O'Toole, Healy Eames, Ó Murchú and Mullen expressed strong views about the publication of an Irish language newspaper. I am glad that Senator Ó Murchú has informed the House that an urgent meeting on this matter is taking place today. We will await the outcome of the meeting and wish those who are deliberating on the issue well. I hope the newspaper can continue to be a strong voice for those interested in the Irish language, including people in Gaeltacht areas and people who want to learn the language.

Senators O'Sullivan and Walsh spoke about various road safety measures, including the Go Safe programme. Before the recent elections, Senator O'Sullivan correctly reminded the House that a company in Listowel with which he is familiar is providing a great opportunity for an additional 60 jobs to be created. It goes without saying that the road safety measures represent the essence of what we are all trying to achieve. The Road Safety Authority has shown an outstanding commitment to saving lives. I worked closely with its chairman, Gay Byrne, and its chief executive for four and a half years when I was Chairman of the Joint Committee on Enterprise and Small Business. The then Ministers for Transport, Education and Science and Justice, Equality and Law Reform and their senior officials worked hard to bring about the huge amount of change that has taken place. Hundreds of lives are being saved on our roads each year as a consequence of the deliberations of such people, which led to the introduction of new measures. The joint committee system of the Oireachtas played a huge part in that. When Senator Ellis was Chairman of the Joint Committee on Transport in the last Dáil, I worked with him in my capacity as a committee Chairman to transmit the views of the Road Safety Authority and everyone concerned to the Government. We helped to improve road safety significantly over the past five to seven years.

Senator Mary White reminded the House of her strong support for the rights of older people. She suggested that BreastCheck services might not be available to people over the age of 64. The Senator has championed the rights of such people. It is good that people are living to a much greater age as a result of advances in medicine, health care and standards of living. Most people look after themselves better than they did some years ago. Good eating habits have been developed, for example. I agree with Senator White that in the past, men used to make most of the legislative decisions that affected women. The Minister for Health and Children has been exemplary in her championing of the cause of everyone living on the island of Ireland, regardless of whether they are male or female. I understand that Senator White is working closely with the Minister, Deputy Harney, in all of these areas. I thank her for bringing this issue to the attention of the House this morning. It is a priority for the House to do anything it can to relieve the plight of older people. We are all heading there one day. I certainly will have no difficulty in allowing the longest possible time in which to discuss the matter and assist Senator Mary White in her further deliberations. I thank her for the great documents she brings to the attention of the public, the media and every legislator in this area.

Senators Ross, Coghlan, Quinn, Regan and Buttimer all called for the Minister for Finance to update Members on the developments affecting the banking sector. I have no difficulty in making a commitment to the House that this will happen before 10 July. I note Senator Ross's views on the various appointments. As Senator Quinn has quite correctly pointed out, the new appointment of the 71 year old, one of the most experienced people in banking——

Senator Shane Ross: Here we go again.

Senator Donie Cassidy: We must have a mix. We cannot only have politicians as directors of banks or organisations. We are not bankers; our task is to amend legislation. It is welcoming to see former Tánaiste, Dick Spring, and former Minister for Finance, Alan Dukes, in their

current positions. It is a mix and perhaps the good Senator himself — Senator Ross — might be seriously considered in this regard. I would really like to see——

Senator Shane Ross: On a point of order, could I decline that at this stage?

An Cathaoirleach: The Leader is replying to the Order of Business and there should be no interruption.

Senator Fidelma Healy Eames: It is not a bad idea. It might be a means to stop Senator Ross speaking out, however. We need him speaking out.

An Cathaoirleach: No interruption, please.

Senator Donie Cassidy: I am only planting the thought in the good Senator's head. It has not entered his head up to now.

The banks and the country find themselves in a difficult situation.

Senator Shane Ross: The poor things. We dare not put up with that.

Senator Donie Cassidy: The people of Ireland——

(Interruptions).

An Cathaoirleach: Please, Senators.

Senator Shane Ross: God help them, God love them.

Senator Jerry Buttimer: Where was the Minister for Finance and the Taoiseach? They were inside the tent for long enough with them.

An Cathaoirleach: Senator Buttimer should not interrupt.

Senator Jerry Buttimer: The Leader has some cheek.

An Cathaoirleach: The Senator is not in a position to interrupt the Leader when he is replying. There will be somebody else walking out today if he or she is not careful. I ask the Leader to continue without interruption.

Senator Donie Cassidy: I have no difficulty whatsoever in allocating whatever time is necessary to continue our deliberations on the financial difficulties and the challenges being experienced by a very good Minister for Finance at present. It is the view of the majority of Members that we should do anything we can in the House to assist the Government in this regard.

Senator Callely called for a debate on the HSE and made a very good proposal on the breakdown in percentage terms of the allocation of staff to services, especially in respect of staff in administration and at the front line in hospitals, be they nursing staff or consultants. He asked that the debate encompass every medical challenge faced by the HSE. I have no difficulty in inviting the Minister to the House to discuss the difficulties emerging in regard to what would seem to be the high percentage of staff now employed in administration. In an era of computerisation there should be a greater opportunity to prioritise financial assistance for front-line staff, including nursing staff, rather than administrative staff. I have no difficulty in allocating time for this debate.

Senator McFadden quite correctly alluded to Senator Cummins who brought to my attention the question of whether asylum seeker accommodation centres should be accessible to every

[Senator Donie Cassidy.]

canvasser during an election campaign. I passed this view on to the Minister and am awaiting clarification from him on the issue.

Senator McCarthy referred to the awarding of contracts to ferry operators, workers' rights and all the challenges in this area. I will pass on his views to the Department today, try to ascertain the up-to-date position and revert directly to the Senator on his query.

Senator Jim Walsh pointed out the urgent need for the Minister for the Environment, Heritage and Local Government to review the local town boundaries in regard to elections to town councils. The population of Ireland has increased by more than a million and certain towns in respect of which there are local elections may have doubled in population since the boundaries were drawn.

Senator Healy Eames referred to the bilateral adoption agreement with Vietnam. I have a lengthy response from the Minister of State on this and will pass it on to the Senator directly after the Order of Business.

Senator Fidelma Healy Eames: I thank the Leader. I appreciate that.

Senator Donie Cassidy: Senators Hanafin and Buttimer but especially Senator Quinn updated the House on the waste of food and referred to best-before dates and other indicators on food packaging. We certainly could debate this in the House and I have no difficulty in allocating time for it

Senator Prendergast referred to patient transfer and the ambulance service for Carrick-on-Suir. I will certainly pass on the Senator's strong views to the Minister. Perhaps her point, which was certainly heartfelt, could be raised on the Adjournment.

With regard to Senator Bacik's remarks, we all want to express our condolences to the families of the three young doctors and the two employees of Aer Lingus who perished in the Air France flight tragedy. It is unbelievable, appalling and heartbreaking. I pass on our condolences, best wishes and sympathies to the families of the young people who lost their lives so tragically.

Senator Hanafin asked that each party present in the House its policy for economic recovery. This is a very worthwhile proposal and I certainly will consider it. The opportunity should be given to each party leader and party member in the House to make his or her proposals for a plan for economic recovery. Some very good opportunities and proposals could come from that and it would let the public know the Opposition's plans for the next three years.

Senator Alex White: And the Government's.

Senator Donie Cassidy: There is only one plan at present and that is that of the Government.

Senator Alex White: Senator Cassidy will have to contribute first in the debate.

Senator Donie Cassidy: The election is over and the people have spoken. Everyone must accept that.

An Cathaoirleach: The Leader's time for replying has elapsed.

Senator Donie Cassidy: It takes a little time to wind down but we will discuss it next week again.

Senator Alex White: The Leader will have to speak in the debate.

Senator Donie Cassidy: I will have pleasure in doing so. There will be no hiding behind the one-liners for the Labour Party.

An Cathaoirleach: The Leader's time for replying has elapsed.

Senator Donie Cassidy: I am just concluding and I thank the Cathaoirleach for reminding me.

I agree fully with the points made by Senator Mullen. Senator Coffey called for a debate on restoring competitiveness. I agree fully with his sentiments on the cost of gas, electricity and energy in general, and on the opportunity to create sustainable energy using wind and wave power.

Senator Fidelma Healy Eames: What about the preschool scheme?

Senator Donie Cassidy: I will revert to the Senator on that tomorrow.

An Cathaoirleach: Senator Joe O'Toole has proposed an amendment to the Order of Business: "That No. 1 be taken with debate today." Is the amendment being pressed?

Senator Joe O'Toole: I accept the Leader's offer to have a debate on this.

Amendment, by leave, withdrawn.

Order of Business agreed to.

Criminal Procedure Bill 2009: Order for Second Stage.

Bill entitled an Act to amend and extend the Criminal Justice Act 1993; to amend criminal law and procedure in other respects, including making provision for exceptions to the rule against double jeopardy so as to enable the Court of Criminal Appeal to hear and determine applications brought in certain circumstances by the Director of Public Prosecutions to quash certain acquittals and to have persons who are the subject of those applications re-tried, and to provide for an appeal to the Supreme Court on a point of law from a determination of the Court of Criminal Appeal in respect of such applications; to extend the powers of the Garda Síochána in relation to the investigation of certain offences; to extend the circumstances in which the Director of Public Prosecutions or the Attorney General, as may be appropriate, may take an appeal in criminal proceedings; to amend the Criminal Justice (Legal Aid) Act 1962, the Courts of Justice Act 1924 and the Offences Against the State Act 1939; and to provide for related matters.

Senator Donie Cassidy: I move: "That Second Stage be taken today."

Question put and agreed to.

Criminal Procedure Bill 2009: Second Stage.

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

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I am very pleased to initiate the Criminal Procedure Bill 2009 in the Upper House. I thank the Seanad for allowing us to take it here and look forward to the contributions on this important Bill. I thank my officials for bringing it forward quickly because I had given an undertaking when I launched the victims of crime initiative last year to bring it forward as soon as possible this year.

[Deputy Dermot Ahern.]

The Bill addresses two major topics, victim impact evidence and the circumstances in which acquittals may be reversed and new trials ordered. Both topics have particular relevance for the victims of crime. The opportunity to give victim impact evidence enables victims to tell about the hurt and pain caused. The reversal of undeserved acquittals will assure victims that their quest for justice can be satisfied. Few things can be more devastating for the victim than to see the offender escape justice.

Before dealing with the Bill, I acknowledge the contribution of the balance in the criminal law review group and in particular its chairman, Dr. Gerard Hogan. The group's analysis and recommendations inform many of the Bill's provisions. When I was appointed Minister for Justice, Equality and Law Reform last year one of the first documents I read more or less from cover to cover was the report written by Dr. Hogan and his committee. It fed into my thought process in bringing forward this Bill.

The Bill has 32 sections, plus a Schedule of relevant offences. Part 1 deals with standard matters such as commencement and expenses. Part 2 reforms the law on victim impact evidence. The law requires victim impact evidence to be considered at the sentencing stage in a trial. Part 2 replaces section 5 of the Criminal Justice Act 1993. The basic structure, however, is being maintained. It has two elements, one of which is mandatory — the court is required to take account of the impact on the victim when determining the appropriate sentence, with the exception of convictions for murder, where the sentence is, of course, a mandatory life sentence. For the purposes of the first or mandatory element, the judge may receive reports, often from a medical or other specialist. I am not altering those arrangements but I propose that in cases where, as a result of the offence, the victim has died or is ill or incapacitated, the court is obliged, for the first time, to take account of the effects of the offence on the family, in addition to the effect on the direct victim. These reports apply in every case, even where the victim chooses not to make an oral statement. They ensure that the impact on the victim is always considered.

The second element enables the victim to give an oral account of the impact of the offence. Until now, the possibility of making an oral statement was available only to the direct victim of the offence. Clearly, that presents problems in homicide cases. It is also a problem where the victim is unfit, as a result of the offence, and cannot avail of the opportunity himself or herself. The time has come when we must recognise that the trauma of the direct victim is often shared by family and friends and they too must be given an opportunity to have an input. We must also be mindful that young children or persons with a mental disorder may have difficulty in making a statement in open court. Equally, victims of, for example, sexual offences will find it hard to be in the presence of their attacker when speaking about the damage done. My proposals address all these situations.

In homicide cases, a family member may speak about the effect on the family. In cases where the victim is, as a result of the offence, ill or incapacitated, a family member may speak about the impact on the victim and on the family. A family member may speak on behalf of a child under 14 years or a person with a mental disorder. A child or a person with a mental disorder or any other person, with the permission of the court, may deliver the statement via a television link. I am providing for a wide definition of “family” to cover the extended family and the variety of relationships that arise. I feel strongly that victims must not feel pressurised into making statements; they have already suffered enough. I am also keen to ensure that the absence of a statement must not be seen to suggest that they suffered less harm than others. I am therefore providing that no inference is to be drawn that would suggest that the absence of an oral statement indicates there was little or no impact on the victim. I am not proposing

any changes in the offences that give rise to the need for victim impact evidence. They already include sexual offences and offences involving violence or the threat of violence.

I want to mention the provision that will enable the court to react when things are said that are not appropriate. I appreciate that victims and their families might feel frustrated by the procedures and formalities of the trial process. The legal process, however, is designed to be fair to all sides. For example, we must assume that evidence which is not presented at the trial was felt to be either not relevant or was not reliable. It would be unacceptable if the information became available by means of an impact statement. For this reason, the Bill enables the court to prohibit the publication of material it considers inappropriate. It will be an offence to breach a court order. The Bill develops victim impact evidence in a very positive and progressive way. It recognises that crime affects not only the people most directly concerned, but also those with whom they share their lives. I am in particular securing the entitlement of families to be heard in homicide cases; they will no longer have to depend on the judge's discretion.

Moving to the second area covered by the Bill, Parts 3 and 4 outline the circumstances in which acquittals may be overturned and new trials ordered. There are three circumstances. Part 3 deals with two of them, where new and compelling evidence arises and where the trial was tainted. These two circumstances represent a departure from the rule against double jeopardy. The third circumstance, which arises in Part 4 is an extension of the current powers available to the prosecution to bring appeals where the acquittal arises from an erroneous ruling on a point of law by the trial judge. The double jeopardy rule means an acquitted person may not be pursued again in respect of the same offence. An acquittal is regarded as a final decision which, until now, the State could not seek to reopen. As against that, a convicted person already has full rights of appeal against both conviction and sentence. Despite this imbalance, I accept that we must be cautious about changes to the operation of the double jeopardy rule. There is a public interest in respecting the finality of proceedings. Nevertheless, we must recognise that some acquittals cannot be truly said to be deserved. Obvious examples arise where someone commits perjury or where new evidence that is compelling becomes available after the acquittal. Both situations would suggest the acquittal is not a true or just outcome.

Sections 7 to 10, inclusive, set out the procedures to apply before a retrial can take place. The process is a rigorous one and ultimately, it is for a court to decide whether a new trial should take place. If it is a question of new evidence, it must be compelling, it cannot have been available at the time of the first trial and it must be clear that even with the exercise of due diligence by the Garda and the prosecution, it could not have been available at that trial. Critically, it must be of a standard that implicates the person with a high degree of probability in the commission of the relevant offence. That is the highest standard possible, short of saying the new evidence must amount to proof that is beyond reasonable doubt, in other words, that it meets the criminal standard. That would amount to a predetermination of the case. It is for the jury at the new trial to make the determination about the guilt or innocence of the accused.

"Relevant offences" are those that for the most part carry a mandatory or discretionary life sentence. The offences under the International Criminal Court Act 2006 which carry a maximum of 30 years in some circumstances are the exception. The offences in question are listed in the Schedule. These are the only offences in respect of which a retrial may be ordered based on new evidence becoming available. Limiting the offences to these most serious offences underlines the careful approach we have adopted to this area of reform.

In the case of tainted acquittals, a retrial may be ordered in respect of any offence tried on indictment where the first trial was tainted by an offence against the administration of justice. That covers bribery, intimidation or any other activity designed to pervert the course of justice.

[Deputy Dermot Ahern.]

It also includes perjury. There must be reasonable grounds to believe that the offence affected the outcome of the trial. The Director of Public Prosecutions must be satisfied that the acquittal was not merited. In the new evidence scenario, he will generally have available to him a Garda report on its investigation of the new evidence.

Sections 15 to 18, inclusive, set out the powers available to the Garda for the conduct of the investigation. The Garda may not pursue the investigation against an acquitted person except where it has judicial authorisation to use the powers in this Bill. In the case of tainted acquittals, there must be a conviction for the offence against the administration of justice. Once satisfied that the acquittal is without merit, the Director of Public Prosecutions may apply to the Court of Criminal Appeal for an order for a retrial. The acquitted person is put on notice of the application and may attend and participate in the hearing. Legal aid will be available. The court may quash the acquittal and order a new trial if it is satisfied that the Director of Public Prosecutions has complied with the requirements as to the standard of the new evidence or, where appropriate, that an offence against the administration of justice had occurred and that it would be in the interests of justice to do so.

Section 12 outlines important safeguards. The court may order restrictions on attendance at the hearing as well as restrictions on reporting of details of the case. The restrictions can be maintained until the trial has concluded. They are designed to avoid prejudicing the new trial, especially by avoiding publicity that might influence any potential jurors. Section 13 specifies details of the offences committed by publishers who breach an order.

The Director of Public Prosecutions may bring an application once only; there can be no question of repeated applications. If an acquitted person fails to attend and the court decides to proceed with the application, it may, in the event of it ordering a retrial, issue a warrant for the arrest of the person.

Section 14 provides that the decision of the court is subject to appeal to the Supreme Court on a point of law. The retrial will entail a full rehearing of the case. If convicted, the person is liable to the prescribed penalty for the offence in question. The usual rules on access to legal aid will apply.

Part 4 of the Bill provides for “with prejudice” appeals. These appeals are made by the Director of Public Prosecutions or, in some cases, the Attorney General, to the Supreme Court against a ruling by the trial judge on a point of law. Typically, they may relate to the admissibility of evidence or the legality of searches. Until now, such appeals were available only on a “without prejudice” basis; in other words, the outcome of the appeal did not alter the position of the acquitted person. It is now proposed that, in addition to this option, there should also be a “with prejudice” option. In other words, the acquitted person may ultimately be convicted. It entails the possibility of asking the Supreme Court to not only to clarify the law but to order a new trial. The procedures are similar to those I outlined earlier in terms of double jeopardy cases. They are set out in section 23. The same restrictions on reporting may be imposed as mentioned earlier.

I want to deal with the scope of application of the new measures and the question of retrospective effect. The possibility of quashing an acquittal arises in new evidence cases and in the case of the tainted acquittals where the person was charged with the offence on or after the commencement of the new legislation and was subsequently acquitted. Members will note that the offence may have been committed prior to the commencement date.

In cases where the acquittal arises from an incorrect direction on a point of law, the possibility of bringing a “with prejudice” appeal will arise where the acquittal takes place on or after the commencement day. In all three scenarios the acquittal must occur after the commencement

date. This is a significant point and I will elaborate on it after I look at the question of retrospective effect.

There is a general presumption, especially in criminal law, against retrospection. This is reflected in Article 15 of the Constitution. Article 7 of the European Convention on Human Rights takes a similar approach. However, the position as covered by the Constitution and the ECHR relates primarily to substantive criminal law; they make it clear that an act that was not an offence when committed may not later be regarded as an offence.

The Bill, on the other hand, is concerned with criminal procedure. I have been advised that if the Bill was to have full retrospective effect, there is a strong risk that the courts would regard it as interference by the Oireachtas in the administration of justice. An interference would arise if the Oireachtas allowed cases that were considered closed by the courts to be reopened. That would also represent a transgression of the doctrine on the separation of powers. I am advised that the Bill cannot therefore have retrospective effect. I am aware that a different view has been taken in the UK but I must operate within the constitutional framework in this State. The possibility of retrying a case under this Bill, based on new evidence, does not apply to cases where special verdicts were recorded under the Criminal Law (Insanity) Act 2006. Those special verdicts acknowledge that the person committed the act but lacked the necessary mental capacity at the time.

Sections 30 to 32, inclusive, address other matters relating to appeals. Sections 30 and 31 remove the requirements that a convicted person must obtain a certificate from the trial court or the leave of the Court of Criminal Appeal before being allowed to appeal to the latter court.

Section 32 amends section 29 of the Courts of Justice Act 1924 by clarifying that a person who appealed to the Court of Criminal Appeal on a number of grounds and was granted a retrial on some of the grounds may appeal to the Supreme Court for a decision on those matters included in the original appeal to the Court of Criminal Appeal but which were not addressed by that court when granting the retrial, provided they are relevant to the defence at the new trial.

I would like to mention some issues I am examining and may wish to bring forward as Committee Stage amendments. These include alterations to the current law on character evidence, prior notification on the use of expert witnesses and an amendment on the treatment of property being retained as evidence. I am also considering a further set of issues that include the use of restraint orders in relation to cases coming within the terms of this Bill, adding further offences to the Schedule to the Bill and a proposal to extend the time period for the preparation of the book of evidence.

The Bill I have presented will bring about much needed and overdue reform. It puts victims of crime on a new footing in so far as the legal process is concerned. They are being given much fuller and more generous opportunities to participate in the legal process. In addition, the gap in our law that allowed guilty persons to escape the consequences of their crimes is being addressed. I believe the integrity of the criminal justice system will benefit from the changes I am proposing.

The House will have noted that while breaking new ground with this Bill, I have been very careful to provide many safeguards. As a result, I am pleased to commend the Bill to this House. It is balanced and carefully constructed. It is grounded in a deep respect for our legal traditions and values but it moves the law forward in a measured way.

Senator Eugene Regan: I welcome the Minister. I also welcome the fact this Bill is initiated here and is being introduced in this House.

[Senator Eugene Regan.]

In June 2008, Fine Gael published its Victims Rights Bill to give the victims of crime comprehensive statutory rights for the first time under Irish law. The Minister at that time attacked Deputies Shatter and Charles Flanagan, the co-authors of that Bill, and surreptitiously announced his own Bill on victims' rights, which had not been drafted then and no heads of such a Bill were available at that stage. One year later, this Bill, albeit different from the more comprehensive Bill put forward by Fine Gael which the Minister for his own reasons did not adopt, which primarily deals with victims' rights is being introduced. We welcome the general tenor of it and the initiative to put the rights of victims more to the forefront in criminal proceedings.

The other aspect of the Bill concerning double jeopardy, which deals with potentially such issues as intimidation, errors in trial and new evidence emerging, which could not have been available at the time, is also very important to ensure that we have the necessary armoury in place to tackle crime. However, the legislation raises serious issues in regard to that principle which has a constitutional base and a basis in common law.

The issue of victims' rights and reform of the law that is being introduced here in regard to victim impact evidence, in particular to extend to family members of victims of crime the entitlement to make an oral statement, or a victim impact statement, at a sentencing hearing is to be welcomed.

The issue of double jeopardy is an important one to which I will refer later. In addition, the provision for the Director of Public Prosecutions to have a right of appeal to the Supreme Court on a with prejudice basis against an acquittal, where the acquittal arises from an erroneous ruling by the trial judge on a point of law, is something that can be supported. The right of appeal by the DPP against a decision by the Court of Criminal Appeal not to order a retrial following the quashing of a conviction is another important element. There are various miscellaneous amendments to which the Minister referred. It is important to note that many of the elements of the Bill were considered by the criminal law review group and many of the recommendations of that group are reflected in the Bill.

In general, Fine Gael supports this Bill, which reflects to some extent our initiative in putting forward a Bill on victims' rights last year. It goes some way towards giving greater recognition to the victims of crime rather than the perpetrators and, for the first time in Irish law, it gives a voice to victims of crime to allow them the recognition they deserve. As well as these general comments I reserve the position of tabling amendments on Committee Stage as there are quite a number of important and fundamental procedural changes in the substantive criminal law which will require further scrutiny.

The Minister has in this Bill put forward a series of changes to the double jeopardy law which put on a statutory footing the possibility of retrying criminal cases on the basis of new evidence. Given the constitutional basis of the double jeopardy rule and the provisions of the European Convention on Human Rights and the Charter of Fundamental Rights, which form part of the Lisbon treaty, it is important that we get this right. There are serious issues here for our system of justice and if we overstep the mark in this area it could prove embarrassing. The double jeopardy rule has a constitutional basis as well as a common law basis. However, it is desirable that a person who has escaped justice due to the impossibility of obtaining evidence at a particular time as a result of witness intimidation is held to account. Thus, there is an inherent logic in changing the rigid adherence to this rule and, in that regard, one would support the initiative to place on a statutory basis restrictions on the rigid application of that rule. However, it is important that we comply with the fundamental principles and jurisprudence to which we have signed up in the European Convention on Human Rights. The jurispru-

dence in this regard has been developed and I presume the Minister has taken the best legal advice from the Attorney General on this matter. We will need to return to this on Committee Stage.

Section 19 of the Bill is concerned with the admissibility of evidence. Although in many ways I welcome this, it appears we are providing greater flexibility with regard to admissibility and that evidence obtained with some technical error in procedure by the Garda Síochána will not be deemed automatically precluded as evidence in a trial. I welcome this change, which is similar to those contained in a Bill I introduced to this House but which was flatly rejected by the Minister. However, this idea is reflected in section 19 of the Bill and in another Bill which the Minister recently initiated. I am pleased that some of the ideas coming from this side of the House, while not acknowledged, are being adopted by the Minister.

I welcome the fact that the Minister has introduced the Bill in this House. It will receive close scrutiny on Committee Stage and we will bring forward some amendments in terms of the technical detail. The Bill is a very technical one, but its general purpose and objective will be supported on this side of the House.

Senator Denis O'Donovan: I welcome the Minister to the House and compliment him on his initiative in introducing this bold and brave Bill. I acknowledge that the Bill is being initiated in this House to give the Upper House greater status and recognition, which it merits. As a spokesperson on justice in the House, I am pleased the Bill is initiated here. I would like to see more legislation initiated in the Seanad and teased out by Senators before it goes to the Lower House. I am not sure whether it will be recognised that this landmark legislation is ground-breaking. The Minister is making a brave and bold statement, particularly as one of the pillars of the criminal justice system, which has been in place for 250 years — namely, the rule on double jeopardy — is being amended, although not abolished. If one had suggested this to some criminal lawyers two decades ago they would have said it should not be touched. This is a brave and ground-breaking step.

I acknowledge the efforts by my colleague Senator Regan in the initiatives he has taken. He referred to the Bill tabled in the other House by Deputies Shatter and Flanagan. I considered that legislation and this Bill, and we must put on record that while there are similarities, the Bill being presented by the Minister today goes much further, which is to be welcomed.

When we consider the systems in Australia, New Zealand and the UK, we can see that we are catching up with initiatives they have taken. The legislation passed in New Zealand has broad similarities to the Bill presented by Deputies Shatter and Flanagan. It is important that we consider how things are done in other jurisdictions. When I was a law student we looked at the British Companies Act 1947 and compared it to the legislation introduced here in 1963. Our legislation was bolder and braver because we had learned in the intervening years of the mistakes in the British legislation and made changes accordingly.

It is a reflection on society that the Minister must introduce such strong measures to prevent gangland crime. This Bill sends the message to drug barons that they will no longer be able to hide behind the right to silence. It will send a shiver down the spines of those who think they can hide behind antiquated, outdated procedures. The gardaí and the courts need to be able to take stronger measures.

The Bill addresses victim impact statements, the quashing of acquittals and the sending of cases for retrial in limited circumstances. Along with the Minister, I acknowledge the great work of Professor Gerard Hogan in the report of the Criminal Law Review Group. I had firsthand experience of working with Professor Hogan on a number of committees and I have

[Senator Denis O'Donovan.]

a great appreciation of his indepth knowledge of the criminal law and constitutional matters. He is the leading expert on such matters in the country.

Victim impact statements hit the headlines with the unfortunate case of a young person who died in east Cork. Two families were torn apart and this was the first time where the idea of such statements became news. I am glad there is now a statutory footing for such statements. Victim impact statements will be made only at the sentencing stage, after conviction when the jury has returned a verdict, and that is only right and proper because it would create problems if they were allowed in advance. The Bill allows the judge to take account of the impact on the victim when determining the level of sentence.

I also welcome the Minister allowing a broad definition of who can give a victim impact statement. It could be a child, spouse, partner or guardian *ad litem* of a person. It also covers vulnerable witnesses such as children, people with mental disorders or victims of rape or sexual assault, and allows for the statement to be made by television link. The Bill extends the possibility of making a statement to family members and facilitates vulnerable people. It meets the demands of victims' groups for a broader arrangement.

The most important element of the Bill is the altering of the concept of double jeopardy. Normally an acquittal marks the end of a criminal case but it is now proposed to change that in a limited way. An acquitted person is innocent in the eyes of the law. This change has been made successfully in Britain, New Zealand and in many states in Australia. An acquittal may be quashed in three circumstances; the Minister has been careful to ensure it is not a free for all because otherwise there would be all sorts of constitutional challenges.

The first circumstance is where new and compelling evidence emerges. This will apply to offences carrying a life sentence that are listed in the Schedule to the Bill. The second circumstance is where the acquittal resulted from a tainted trial where there was intimidation, perjury, bribery of witnesses or jurors. This can apply in any case tried on indictment. It is an important matter to mention because there have been incidents where jurors and witnesses were intimidated in gangland cases. This Bill will act as a shield to protect such people. The intimidation of jurors is serious. It has happened before so greater protection must be given to them. If there is an acquittal because a juror is interfered with, the verdict is tainted. There have been cases where, following an acquittal, a brave man has admitted the crime outside the courthouse. Until now we had no way to reverse that decision, there was no way back. This case allows an opportunity where a guilty person cannot use the double jeopardy rule.

There will also be a change to allow the Director of Public Prosecutions to bring a with prejudice appeal against an acquittal. An appeal of this type will arise from an error on a point of law by the trial judge where that error resulted in an acquittal. It allows for the possibility of not only quashing the acquittal but ordering a retrial. This appeal option is available for any case tried on indictment. Such an appeal on a with prejudice basis is a new phenomenon because an appeal on a point of law could lead to a lengthy custodial sentence. It is a new departure that I welcome.

In these landmark changes to the legal justice system, the Minister has put in place several safeguards. A retrial must be ordered by a higher court — the Court of Criminal Appeal or, in a with prejudice case, the Supreme Court. The court will make an order if it is satisfied the application brought to it by the DPP meets an exacting standard. Special powers are also being given to the gardaí.

I commend the Minister for this ground breaking legislation. It has gone further than the Fine Gael Bill that was introduced in the other House and it brings us in the right direction. I

hope it is passed swiftly. I welcome amendments from Members on all sides so the legislation can be fully teased out and I look forward to an indepth analysis on Committee Stage.

Senator Rónán Mullen: I wish to share time with Senator Bacik.

Acting Chairman (Senator Maurice Cummins): Is that agreed? Agreed.

Senator Rónán Mullen: I welcome the Minister and aspects of this Bill. Looking through it, I welcome the changes in regard to victim impact statements and that no inference will be drawn where a person, a victim or the family of a victim choose not to make such a statement. That is appropriate. As mentioned by Senator O'Donovan, I welcome the enabling of the courts to prohibit publication of material in certain circumstances in regard to victim impact statements and cases where the Director of Public Prosecutions succeeds in getting a retrial.

In the context of the case in the south to which Senator O'Donovan alluded, is enough being done to accompany victims and their families in the terrible traumatic cases of the kind which occurred? Is enough being done to explain the complex procedures and proceedings involved in the criminal law so that victims and their families understand where precisely they fit into the system? The mere fact that they are witnesses primarily can be a source of tremendous trauma and can lead to them feeling very disempowered in the whole process where they seek justice for the wrong done to a loved one. That is an issue about which we should continue to think.

In regard to the opening up of circumstances where there can be a retrial, this has been described as the end of, or certainly a significant attack on, the old rule in respect of double jeopardy or, as it is known in this jurisdiction, *autrefois acquit*. It is appropriate we ask from where this is coming. I am aware of changes in the law in England, certainly in the wake of the Stephen Lawrence inquiry. Particular circumstances arose in that case which led to change in England. Given that in the UK retrials hardly ever come to pass, how often does new and compelling evidence emerge? Does this proposed change in the law stem more from a sense that we need to be seen to be tough on crime than from particular circumstances which arise and necessitate it?

A number of issues need to be considered very carefully in this regard. I refer to the guarantees in Article 38 of the Constitution that a person has a right to a trial in due course of law. What exactly flows from those rights under Article 38? Certainly due expedition has been held to be involved. As has been said, there is a public interest in the conclusive determination of criminal proceedings. Given that a person has a right to a trial with due expedition, is there a need to look at some kind of Statute of Limitations arrangement in regard to what is proposed here where the Director of Public Prosecutions can apply to the Court of Criminal Appeal for a retrial in certain circumstances? What would be the courts' view if this was ever tested, that is, whether this abandonment, partial abandonment, call it what you will, of the rule against double jeopardy is fully in keeping with the spirit of Article 38 and the person's right to a trial in due course of law and what would flow from such a challenge were it to be made?

I refer to section 7 and the threshold which allows the possibility of a retrial where new and compelling evidence emerges. What is new and compelling evidence? Is that too loose a term? Does it open up the possibilities of judges agreeing with a nod and a wink that there is new and compelling evidence? Could this nurture inadequate approaches to inquiry on the part of the Garda Síochána? A trial could take place resulting in an acquittal and new and compelling evidence could come to light at that stage perhaps with the Garda Síochána having pursued a line of inquiry which it should have pursued in respect of the first trial. Does the threshold need to be raised to provide for the possibility of a retrial where new and compelling evidence

[Senator Rónán Mullen.]

emerges which could not possibly have been obtained with duly diligent behaviour on the part of the Garda Síochána? Would that be a safer threshold to establish in that particular instance?

There will be time to turn to these matters on Committee Stage. I do not want to sound like I am against this Bill in principle. I recognise the circumstances which could give rise to a justification for a second trial but, nonetheless, we must proceed very carefully. We need to look very carefully at the thresholds we establish.

Senator Ivana Bacik: I thank Senator Mullen for sharing time. I welcome the Minister and the opportunity to speak on the issue of criminal procedure. Issues about reform of the criminal justice system have been very pressing with recent murders really bringing it to the fore, the intimidation of persons who have been witnesses and so on.

I welcome some of the measures in the Bill, in particular Part 2 which deals with the impact of crimes on the victim. It is very important to see necessary changes being made to the victim impact statement provisions of the 1993 Act, in which the flaws had been very obvious, namely, that there was no provision for the families of homicide victims to give statements and there was a lack of clarity about how victim impact statements would be taken by the courts.

I am glad to see greater provision for children, in particular, to give evidence through video link and, under section 6, through an intermediary, which is very welcome. As a practitioner in this area — I declare my interest in it — I am very much aware of cases where there have been logistical problems with children giving evidence by video link, for example, in sex offence cases. That is a logistics matter for the Courts Service which normally deals very well with this. It is very important the person in the room with the child is trained. There should always be a trained person in the room with the child when giving evidence by video link because the video link experience can also be very traumatic for the child. We need to be aware of that when we expand the right to give evidence through video link. We need to tighten up the practice and ensure persons are trained if they are to be alone in a room with a child who is giving evidence in such a difficult circumstance.

I would like to see more support for victims. Various changes have been made in regard to sex offences to have some limited separate legal representation. I would like to see an expansion of that provision in this Bill.

I refer to Part 3 which deals with the new exceptions proposed to the rule against double jeopardy and the provisions that the Director of Public Prosecutions can now apply for a retrial order. Especially with developments in DNA, it should be possible, although only in very rare cases, for retrials to be ordered even where there has been an acquittal. However, it is essential that we limit cases where such retrials may be ordered.

I refer to the balance in criminal law review group report. As the Minister said, it is that group's recommendations which inform many of the Bill's provisions. The group said that any power to provide for an appeal in respect of an acquittal following new evidence or allegations of trial tampering would be rarely used. That is the experience elsewhere and it should only be used rarely. The group recommended that there should be an exacting threshold where the Director of Public Prosecutions seeks a retrial order. I am not sure the threshold in section 8 is exacting enough. The two examples given by the expert group — DNA evidence or a confession to the offence — perhaps seem to be the only examples of new and compelling evidence where a retrial order might be possible.

The Director of Public Prosecution's application to the court can be in the absence of an acquitted person, about which I am slightly concerned. It must be made on notice but it can be done in a person's absence. There is no time limit within which the Director of Public

Prosecutions may make such an application. The court to which the application is to be made is the Court of Criminal Appeal.

That was not envisaged by the review group, which made various criticisms of the manner in which the jurisdiction of the Court of Criminal Appeal has developed. The group specifically recommended that “greater rationality” be brought to bear on the “piecemeal development” of the jurisdiction of that court. The review group was of the view that it would be appropriate for appeals against acquittals to be brought to the Supreme Court. In regard to double jeopardy, the group recommended that the prosecution right could be exercised if the Supreme Court so decides. In other words, it recommends that this be a matter for the Supreme Court rather than the Court of Criminal Appeal.

Given the lack of consistency encountered by practitioners in judgments of the Court of Criminal Appeal, this is a worthwhile recommendation. A difficulty arises from this proposal in that there would then be a problem as to where an appeal could be taken. However, there is currently a problem with the appeal mechanism provided for in section 14 of the Bill, which allows for an appeal to the Supreme Court from a decision or determination of the Court of Criminal Appeal in a retrial application in that there is no right of appeal for the acquitted person unless either the court or the Director of Public Prosecutions agrees it. There may be a problem constitutionally in restricting this right. This issue of appeal and the question of the court to which the application should be made are issues that should be revisited.

I welcome the introduction of other restrictions. For example, summary acquittals are not included. The range of offences is limited to more serious ones and only one application may be made. However, there may not be sufficient safeguards in the legislation. Under Part 4, which deals with new provisions on without prejudice prosecution appeals, there is significant potential for abuse. This is also the case in respect of Part 3, sections 15 to 18, inclusive, whereby the District Court is to be empowered to give approval for powers relating to persons acquitted. I am concerned that this provision may give rise to serious issues. The provisions in regard to without prejudice prosecution appeals are broader than was envisaged by the expert group. The latter referred to the need to enure the absolute impregnability of jury decisions to acquit and that such decisions should only be made on very narrow points. In other words, the reopening of acquittals or appeal against acquittals should only be carried in restricted circumstances.

I am concerned that the provisions in the Bill in this regard are not sufficiently restrictive. For example, under section 16, the District Court may approve the arrest and detention of an acquitted person in respect of whom no retrial order has yet been made. In other words, the Garda can seek right of rearrest before the District Court before an acquittal has been set aside and a retrial ordered. I am not convinced this is constitutional. I accept there is a practical issue in that there may be a flight risk if the person concerned is not arrested before the retrial application is made. However, I am not sure whether the type of broad power of rearrest put forward in the legislation is in accordance with Article 38.1 of the Constitution.

I have a query regarding the power to grant search warrants under section 18. I am conscious there are strict laws prohibiting the use of rearrest powers by the Garda. I acted in a case where one of these laws was examined and found wanting. We must be careful about the potential for abuse where gardaí are rearresting persons who have been acquitted and whose acquittal has not been set aside.

In Britain, the law was changed in 2003 to introduce exceptions to the rule against double jeopardy. However, prior to the enactment of the legislation, a detailed Law Commission report examined all the issues. The review group report referred to some of the interesting cases that have arisen in Britain. We must examine these issues more closely to ensure we tread cautiously

[Senator Ivana Bacik.]

in opening up the potential to mount appeals against acquittals for prosecution. In view of recent heinous crimes, there is clearly a need to look at issues such as tainted acquittals where persons convicted of offences against the administration of justice may have been acquitted wrongly, thus leading to miscarriages of justice. This point is dealt with in section 9. I clearly see the merit of changing the rule on double jeopardy in those cases. In other cases, however, particularly in respect of with prejudice appeals, we must tread more cautiously. I thank the Acting Chairman for her indulgence.

Acting Chairman (Senator Fiona O'Malley): Although Senator Bacik will not appreciate it, I am glad she was not elected to the Dáil last weekend because this House would be poorer in her absence.

Senator Dan Boyle: This Bill is a sincere attempt to manage the fine line that exists in terms of maintaining and improving public confidence in our judicial system while protecting the entitlement of individual citizens to have their rights properly assessed in any court case. The Minister was assisted in producing this Bill by the recommendations of the balance in criminal law review group. Other speakers referred to welcome provisions in regard to victim impact statements, namely, that no inference may be taken from a decision not to make such a statement, and the provision whereby children will be allowed to make such statements via video link. All Members will welcome these measures.

Where controversy arises it is on a point of academic discussion, that is, the exceptions to the rule against double jeopardy. Other speakers outlined those concerns and how we must get the balance right in enacting this legislation. Senator Mullen asked for a tight definition of “new and compelling evidence”. Senator Bacik observed that where similar changes have been introduced in other jurisdictions, they have been used rarely. She argued that the legislation should reflect the imperative that such provisions be used only in exceptional circumstances. I agree that when it comes to trying persons for a crime of which they have previously been acquitted on the basis of new and compelling evidence, there must be some provision to ensure such powers are not only used rarely but also on only one occasion. There should be some control such that new and compelling evidence is not constantly made available on a regular basis. Such a scenario introduces a threat into our judicial system that we do not need and which would compromise the rights of individual citizens. Will the Minister clarify whether that type of definition can be introduced on Committee Stage or Report Stage to make the Bill stronger?

Process is clearly important in the context of our judicial system. However, where public confidence in that system has faltered, particularly in the case of serious crimes in recent years, it has been because there is a perception of an overemphasis on process rather than a focus on whether truth is established and guilt properly ascertained and acted upon. It is important that we ensure public confidence by introducing the necessary improvements in the system. The Minister, in introducing this Bill, is trying to achieve such an effect. We must move away from the perception, which may not solely be a perception, that in every circumstance, process will win out over truth in our judicial system. There is already, because of the distinction between criminal and civil law and the different standards of proof required, the possibility that a person may be declared not guilty under the criminal law but guilty of a similar offence under the civil law. This was the case in the verdict delivered in the High Court in Belfast this week in regard to the Omagh bombings in 1998. While the standard of proof and the ability to establish a conviction vary as between the civil and criminal codes, the fact that this distinction exists should make it easier for us to include these new qualifications in the law of double jeopardy.

I welcome the Bill and I ask the House to use the time afforded for deliberation on it on Second Stage, Committee Stage and Report Stage to bring about whatever possible further improvements might be made. We must enact legislation required to bring about the type of confidence for which many people are calling in respect of serious crime.

Acting Chairman: I take this opportunity to pay Senator Boyle the same compliment I paid to Senator Bacik.

Senator Dominic Hannigan: Before he leaves, I wish to extend to Senator Boyle my compliments on his recent performance.

I welcome the Minister and also the debate on the Bill. I wish to focus largely on the issue of victim impact statements but I will also comment on the matter of double jeopardy.

Alleviating some small degree of the pain and suffering endured by the victims of crime is a problem that has asserted itself in a number of difficult and high-profile cases in recent years. The Holohan case in January 2006 and, more recently, the Siobhan Kearney murder trial raise difficult moral, ethical and judicial questions. In the storm of media coverage and public opinion which typically accompanies such cases, it can often be difficult to engage in a measured debate. This is understandable because the victims of crime, particularly those crimes which offend people's sense of decency and regard for human life, deserve sympathy and resolve of and support from their communities, broader society and legislators. It can be difficult to resist calls for immediate and wide-ranging action at such times. In that context, I welcome the Minister's reasoned response, by means of the provisions in the Bill, to some of the concerns that have been expressed.

The usefulness of victim impact statements has been debated in numerous jurisdictions across Europe and in Australia and North America. Many see such statements as necessary and as an empowering outlet for victims who have been utterly disempowered by the powers against them or their family members. Those who disagree with victim impact statements frequently argue they do not sit easily with the dispassionate and unsentimental nature of the criminal justice system. I can appreciate both points of view. While I do not wish to further disempower the victims of crime in any way, a number of recent high-profile cases remind us that victim impact statements can occasionally serve the interests of no one but those in the tabloid press.

Nevertheless, I am of the view that the relevant evidence and international opinion and best practice justify the enshrinement of victim impact statements into Irish law. In a survey conducted in Canada, over 1,300 victims of crime were asked for their opinion on such statements and to rate the importance of various legal rights. Four in every five of those respondents rated their ability to deliver a victim impact statement as very important to them.

It is frequently argued that the criminal justice system sometimes appears to expend all of its energy on the perpetrators of crimes while totally ignoring their victims. The introduction of measures to protect a victim's right to make a statement is a welcome step towards rebalancing the burden of fear and hardship from the victim to the perpetrator. However, I concur with the assertion of the Irish Council of Civil Liberties, ICCL, that various small measures should be applied to ensure the passage of the victims through the criminal justice system is made somewhat easier and less traumatic. No victim should be made to feel further and undue intimidation or harassment during court proceedings. As the ICCL points out, the privacy of the victim is also paramount. A victim will have already suffered an attack on his or her dignity and rights and it is important the criminal justice system makes every responsible effort to reinforce the existence of those rights while the victim is moving through the system.

On the important point of a victim's privacy, there are a number of measures in the Bill which I welcome and support. The fact the Bill will allow minors and vulnerable individuals,

[Senator Dominic Hannigan.]

including those with mental health difficulties, to submit testimony through trusted intermediaries or via video link is a positive and progressive step that will ease the emotional burden placed on these individuals. On a practical note, will the Minister indicate the envisaged time-scale regarding the introduction of a system of this sort?

As attested to by the ICCL, it is the little things that are absent from the Bill. Those little things are largely environmental in nature and have the ability to radically alter victims' perceptions of the criminal justice system and the court experience. It is simply a no-brainer that victims and their families should be guaranteed the right to enter and exit a court in privacy. Similarly, waiting facilities for victims and their families should be provided separately and consistently. These are hardly mountains to climb but they are issues that continually arise for victims. In such circumstances, we must ensure they are dealt with in the legislation.

I support the establishment of the victims of crime office in the Department of Justice, Equality and Law Reform. I do not believe in playing politics with people's human rights or their right to seek redress. The Minister's commitment to victims' rights seems entirely genuine and he is acting in accordance with previous promises from and pronouncements by his Department. In light of the recent destruction of an equality and rights infrastructure which took almost two decades to build, it is comforting to know that somewhere deep in the Department of Justice, Equality and Law Reform there lurks some sort of commitment to people's human rights.

With regard to the proposals on amending legislation on double jeopardy, I agree with the comments of Senator Mullen. We must be clear in respect of what we mean by the term "new and compelling evidence". The law, as it currently exists, can only be changed with caution. I expect, therefore, that my party will table some amendments in respect of this matter on Committee Stage.

I have remained positive during my contribution and I do not wish to end on a negative note. In those circumstances, I reaffirm my support for the advances the legislation will afford to victims.

Senator Jim Walsh: I welcome the Minister. This Bill is an important component in the fight against crime. Significant improvements have been made in the context of strengthening the legislative framework to enable us to tackle crime. Public confidence in the criminal justice system has been dented by the fact that known criminals are able to walk our streets almost with impunity. This brings the entire system into disrepute. Any moves we make to strengthen the prospect of those who are guilty of serious crimes being held to account for their activities must be welcomed.

The Bill addresses two important topics. In the first instance, it revises the law on victim impact statements. A number of high-profile cases in recent years highlighted the need for certain amendments to be made in that regard. I welcome the fact that in certain circumstances acquittals can be quashed and cases retried. I accept the legal profession holds dearly to the double jeopardy rule and one can to some extent understand why that rule is in place. However, many criminal lawyers specialise in exploiting technicalities and there are those on the Bench who indulge the exploitation of such technicalities, even in respect of minor offences. As a consequence, the administration of justice may not be completely fulfilled.

Many eminent lawyers will inform people who go to court that if they are seeking justice, they are in the wrong place and what they will get there is the administration——

Acting Chairman: I advise the Senator to be careful with regard to his comments on these matters. He should observe the proprieties that exist in the context of the separation of powers.

Senator Jim Walsh: What the Chair has said will not stop me from commenting on the Judiciary in general. I accept that with regard to individual cases, we must not get involved. However, there are questions to be asked and we are elected to voice the concerns of the public and to improve the administrative framework relating to our laws. The matter of victim impact statements arose from the Hogan review group. One of the previous Bills introduced measures concerning the right to silence, again arising from the Hogan review group, and the fact that inferences can be taken where people exercise the right to silence when questioned about specific crimes. I welcomed it at the time. This is the direction in which we should be going. There is a legal right, not subject to the discretion of the judge, to make victim impact statements, which is welcome. I welcome the fact that vulnerable witnesses, including children, can give evidence through audiovisual links. This is a step in the right direction. In cases of rape and sexual offences, it is difficult for those who are under age to recount the criminal acts and anything we can do to alleviate their trauma is welcome.

The Minister has included provision in the Bill that no inference can be taken from the failure of a victim to exercise the right to a victim impact statement. It is essential that the absence of a victim impact statement cannot give rise to any inference. This is extended to other family members.

The victim impact statement is taken into account by the judge before passing sentence. It appears to be an influencing factor in the sentence. Some people can be much more articulate in the manner in which they display and illustrate the impact of the crime on them and their families. It is important that impact statements that do not have as great an impact as others do not dilute the sentencing.

I welcome the amendments changing double jeopardy. I will address some reservations. Regarding acquittals, when new evidence comes to light subsequently, through advances in technology and science, the Garda Síochána has greater technical capacity to mount a successful prosecution than heretofore. Where such evidence comes to light in the case of
1 o'clock serious crime, such as those carrying a life sentence, this is appropriate. I have some reservation that crimes that do not carry a life sentence but which may be serious crimes, with tremendous impact on victims, are excluded from this. I refer to serious sexual offences, which may carry long sentences but not life sentences. It is a pity they cannot be included. This is a step in the direction and I hope it will advance in time.

Where it subsequently comes to light that someone has committed perjury or where witnesses were intimidated or bribed, there can be an application for a retrial. The Minister has included precautionary measures with regard to this function. The DPP is now empowered to bring a with prejudice appeal against an acquittal where an error on a point of law has been made by the trial judge where that error has resulted in an acquittal. That is essential.

Why do we have laws? We have laws to protect society and to ensure people in society conform to a required norm. Where that is breached and it has an impact on others, people must be held to account for such actions. At its simplest, those who are guilty must be brought to trial and where they have escaped in the first instance through error, that can be corrected.

The Minister has pointed out that there cannot be retrospective implementation of these measures for constitutional reasons. We have had serious crimes in the past and where people have not been brought to justice and where evidence is available that would have a high probability of success, we should not be beyond proposing constitutional amendments to allow this. Where people committed crimes, were brought to trial and were acquitted, they should not necessarily escape the hand of the law.

Senator Feargal Quinn: I welcome the Minister, the Bill and the effort to ensure there is respect for legislation. I was in the House in 1993 when the Criminal Justice Act 1993 was passed. Repealing section 5 is clearly necessary because there is a danger that the respect on the side of victims is in danger of being damaged. This Bill will end the ban on retrials of those acquitted even where important evidence emerges about involvement in the offence. I welcome the fact the DPP can order a retrial where the original prosecution was “tainted”, a very good word that had not occurred to me, due to the intimidation of jurors or witnesses or where it emerges a witness committed perjury. In addition, the DPP can apply to the Court of Criminal Appeal to seek a retrial in cases where a trial judge has given a mistaken ruling on a point of law, leading to the acquittal of an accused person. These are the points that disturbed victims and brought law into disrepute. The proposed legislation will provide for a number of exceptions to the standard convention of international law that an accused person cannot be tried twice for the same crime. This is double jeopardy.

I had not realised the differences in many cases between civil and criminal law. I thought of the OJ Simpson case in the US but also the civil case in Northern Ireland, which reminds us of the double jeopardy rule that could apply. The Bill will also reform rules on the use of victim impact statements in trials and expand the range of persons who can make a victim impact statement in court to include the relatives of murder victims. Judges will be allowed to impose bans on the broadcast or publication of all or part of those statements.

I welcome the part of the Bill that allows the DPP to reopen cases concerning offences that carry a mandatory or potential life sentence. That is a necessary change. If new, reliable evidence comes to light that implicates the person concerned with a high degree of probability after the trial, the opportunity for justice should not be passed up. I am concerned at the changes to the delivery of victim impact statements. Calls for reform of the legislation governing victim impact statements were made after those several instances to which I referred, including one where evidence that did not come out at the trial was conveyed in the victim impact statement. I will not refer to the specific case but we know what we are talking about.

This Criminal Procedure Bill repeals section 5 of the Criminal Justice Act 1993, to which I referred, which currently governs the use of victim impact statements and substitute and alternative frameworks. The category of persons allowed to make such a statement is extended to the family of the deceased — a parent, guardian or other person acting *in loco parentis* where the victim is a child and unable to give evidence — or a family or guardian of a victim who has a mental disorder and is unable to give evidence.

In addition, the general scheme sets out the boundaries for publication or broadcast of a victim impact statement. I read a recent article by Ms Deirdre Duffy, entitled “‘Balance’ in the Criminal Justice System: Misrepresenting the Relationship between the Rights of Victims and Defendants”, which appeared in the *Irish Criminal Law Journal*. She indicated that guidance is required on the weight to be attributed to a victim impact statement and it remains unclear who has responsibility for the victim impact statement. She makes the point that it is not apparent who should guide the victim through the preparation of the statement. The problems posed by victims who stray outside the boundaries of the victim impact statement are not addressed.

Having learned the lessons of past use of the victim impact statement, I am concerned about these drawbacks, particularly that the boundaries of the statement are not addressed. I suggest that certain constraints to the statement be firmly set down in the Bill. Perhaps there is a need for an amendment to the Bill in this regard on Committee Stage.

It must be remembered that diminishing the rights of the defendant will not advance the rights of the other side, and both sets of rights must be protected in full in terms of European law and international rights. Ms Duffy states:

It is clear from the overview of European and international human rights standards that the advancement of the rights of crime victims can be achieved without restriction on defendants' rights. Legitimate reforms to the victim impact regime have been plucked out and tagged on to a host of criminal procedure reforms in order to dress up a package of measures as victim-centred.

I mention this quote because it is necessary to draw attention to the matter.

With this Bill it seems we are tampering with fair trial rights founded on our Constitution, as Senator Bacik referred to. I am reluctant to support it wholeheartedly until the Minister of State is able to put my mind at rest with regard to the area of which I spoke. The legislation certainly is needed and we must act on it. The main objective of this is to ensure the law is held in high regard. If this has not happened, it is because these flaws in this area have yet to be looked at.

Senator Bacik referred to some of the new technology being introduced, such as DNA analysis, which enables more evidence to come about at a later time. It would be a shame if we could not use that technology which enables us to discover something we did not know when a trial originally took place. It would provoke frustration and outrage in victims who could feel that evidence has come out but not been used because the law as it stands prevents this.

I welcome the tenor of the legislation and its objectives. On Committee Stage we, along with the Minister, should cover any of those areas that elicit concern.

Senator Paul Bradford: I am glad to have an opportunity to say a few words which I suspect will be relatively uninformed where this legislation is concerned. It is an important proposal being brought forward by the Minister and from what I have heard from previous speakers, there is a general welcome in the House for it. I am at one with the previous speaker, Senator Quinn, in welcoming the proposal while appreciating that we must tread carefully and examine the Bill's detail fully. In that regard, Committee Stage will be of much more interest to us.

The primary duty of the Minister for Justice, Equality and Law Reform, or the government of any state, is to protect and defend the state and its citizens. In that regard, this legislation is a step in the right direction as it will give a further possibility of justice to those who feel they have been denied it.

The part of the legislation which interests me most is the proposed modification of the rule against double jeopardy. It would be inappropriate to quote particular cases in this House but very many of us know of cases where acquittals did not seem to be the fair or just decision of a court. Up to now, once a decision was made in that regard, it was final. In a number of relatively high profile cases over recent years, including murder cases, the acquittal of the accused left a deep sense of injustice in the community and the family of victims. In this regard, the possibility of new evidence and a new scenario emerging where a retrial could happen is very welcome.

People contacted me about this legislation whose loved ones were victims, with one being a murder victim. Such people are concerned and disappointed that the legislation apparently is not retrospective. Will the Minister of State clarify that? From when will this legislation, if approved, apply? Could it apply to cases which have taken place and where family members feel justice has not been done? I look forward to the Minister of State's initial reply to that and a further teasing out of that aspect on Committee Stage.

We all appreciate that the criminal justice law in this country is based on fairness and the absolute need for the State to have the necessary evidence to convict the guilty. That is correct and must always be the case. We are also aware of cases where for various reasons, such as

[Senator Paul Bradford.]

the non-presentation of evidence or the intimidation of witnesses etc., a fair and just result to a trial does not seem to occur.

This legislation, if it would allow reflection and the re-entry of particular prosecutions, should not be feared. We should never fear justice or the opportunity to allow the vindication of people's right to a fair trial, and we should not fear the possibility of ensuring guilty people who have walked free are brought back into court and have the charges put against them again. In that regard, the issue of double jeopardy has been a major bone of contention and I welcome that it is to be addressed. I look forward on Committee Stage to ascertaining when the possibility of retrials in this regard will commence and if there will be retrospective application to cases which have received adjudication.

I also note the proposed changes on victim impact statements. There have been a few controversial cases involving victim impact evidence and we must be very cognisant of the rights of victims and their need, where they so feel, to have their feelings made known in court. For many, although not all, it can be a way to deal with suffering, bereavement and anger if they can state their feelings in front of the court. Any expansion of that particular entitlement should be welcomed.

I will leave my remarks at that as the Minister of State would recognise that I come to this legislation with no legal expertise whatever. I am purely reflecting what constituents are saying to me, especially constituents who feel the acquittal of the person charged with the murder of their sister was incorrect and wish the case to be reopened.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Moloney): The Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, apologises for the fact that he could not remain for the conclusion of the debate. I will bring the issues raised by Senators Quinn and Bradford to the Minister's attention. I thank Senators for their contributions to this useful and informed debate. The Minister may wish to consider Senators' points with a view to amendments on Committee Stage, where appropriate.

Meeting the needs of victims of crime is a major objective for the Government. This Bill contributes in a significant way towards meeting that objective. The importance victims attach to impact evidence cannot be underestimated. The significance of the proposals on the quashing of acquittals will also come to be seen to be important.

Although legislation has an important role to play in this regard, much can also be achieved by other non-statutory means. For example, the victims of crime office was established as an executive office in the Department of Justice, Equality and Law Reform under the justice for victims initiative, launched by the Minister in June 2008. Its main role is to promote and support the development of services for victims of crime. It is engaged in a major review and revision of the victims' charter, first introduced in 1999. This work is expected to be completed in the autumn.

Similarly, Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, supports and works closely with State and non-governmental organisations. Its mission is the delivery of well co-ordinated services. It has no direct role in the delivery of services but its co-ordination role is vital to ensuring the effectiveness of the initiatives taken by those organisations concerned with victim support.

Other agencies attached to the Department also provide a broad range of services and supports to victims of crime. The Garda has developed its charter for victims of crime with protocols on the information to be given to victims. Garda family liaison officers are appointed in more serious investigations.

The Courts Service has taken several steps to make the experience of being in court less stressful for victims. It provides training to volunteers to accompany victims and their families to court. Liaison officers have been appointed at every court venue where court staff are based. There have been many improvements in the facilities in courts buildings, including secure and private spaces for the victims of crime. Special seating is provided for victims' families in murder and manslaughter cases. The courtrooms in the new Criminal Court complex are designed to minimise the proximity of victims and their families to defendants and accused persons.

The Prison Service also has victim liaison officers who enter into direct contact with victims to inform them of any significant developments in the management of the perpetrator's sentence as well as any impending release. The liaison officer also provides victims with information on the prison system, for example, remission on sentences and parole, including the operation of the parole board.

The probation and welfare service devotes much time to assisting offenders but is also active in assisting victims. The preparation of victim impact reports provides one example. These written reports for the court were referred to by the Minister with the first or mandatory element of the structure. The Department supports restorative justice projects through the probation and welfare service. It currently provides funding to two projects, in Tallaght and Nenagh. Restorative justice gives the victim a voice and the offender an opportunity to take responsibility for his or her actions.

I wish to refer to the role of the Director of Public Prosecutions in the area of victim support. The director is independent and has a primary role to bring prosecutions, but his awareness of victims is evident from the development of the reasons project. It applies to cases where a death has occurred. Reasons for decisions not to prosecute, or to discontinue a prosecution, are to be given on request to parties closely connected with the deceased. Court procedures also recognise the position of the victim by, for example, allowing them to give evidence via television links in cases of sexual offences. Several provisions are in place to protect victims' anonymity.

I was pleased to see that the proposals on acquittals were well received and the Minister's measured approach was acknowledged. The proposals represent a major break with existing procedures but, in practice, they will be applied on an exceptional basis. The important point is that such cases can now be dealt with and the outrage and frustration felt at the occurrence of an undeserved acquittal will be a thing of the past. A remedy will be put in place.

The Bill adds to the developing awareness of the needs of victims. I commend it to the House.

Question put and agreed to.

Committee Stage ordered for Tuesday, 16 June 2009.

Sitting suspended at 1.25 p.m. and resumed at 2.30 p.m.

Nursing Homes Support Scheme Bill 2008: Second Stage.

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

An Cathaoirleach: I welcome the Minister of State to the House.

Minister of State at the Department of Health and Children (Deputy Áine Brady): I am pleased to have the opportunity to introduce to the House Second Stage of the Nursing Homes Support Scheme Bill 2008. The Bill will put in place a new scheme of financial support for those in need of nursing home care. It aims to ensure that care is affordable for each person

[Deputy Áine Brady.]

and to be fair to all. Before detailing the provisions of the Bill, I wish to begin by examining the wider policy vista and the reasons for introducing this Bill.

Government policy on older people long has been to support older people to live in dignity and independence in their own homes and communities and, when this is no longer possible, to support access to quality nursing home care. At present the State supports people in public and private nursing homes very differently. In a public facility, the State meets approximately 90% of the cost of care, while in marked contrast, the State effectively meets only 40% of the estimated average cost of care in a private facility. This discrepancy is wholly at odds with the principle of equity endorsed by the Government. It also is unfair to individuals and their families.

At present, an individual who obtains a public nursing home bed may be charged a maximum of up to 80% of the non-contributory State pension towards the cost of care. By contrast, the same individual availing of a private nursing home bed may be entitled to a subvention but is otherwise obliged to meet the full cost of his or her care. This can amount to as much as €1,200 per week. In addition, applicants for subvention are subject to stringent means testing and may be deemed ineligible for subvention based on the means test. This is in marked contrast to the current public system under which an individual may never be charged more than 80% of the non-contributory State pension, regardless of his or her level of means. The capped public charge is also regressive since better-off people pay a much lower proportion of their income towards the cost of their care. The net result is that many people in private nursing homes face uncertainty and unaffordable care costs. Some must sell or remortgage their family homes to pay for the cost of nursing home care, while others must turn to family and friends for assistance in meeting care costs.

In short, the present situation is unfair and unsustainable. It is deeply unfair that people of the same means face radically different costs for nursing home care, depending on where they live or whether their nursing home is public or private. It is deeply unfair that one person and his or her family with modest means could face very high bills to pay for care, while another might pay relatively little even though he or she had substantial means and assets. It is deeply unfair and unsettling that so many people and their families had no other option but to sell the family home to pay for care. All that will change with this legislation.

The genesis of the legislation may be traced back to 2005 when my colleague, the Minister for Health and Children, in conjunction with the Minister for Social and Family Affairs, established an interdepartmental working group on long-term care. The group examined the range of benefits, services and grants relating to long-term care for older people and examined policy options for a financially sustainable system of long-term care. It reported to the Government in January 2006. The group's recommendations informed the current social partnership agreement, *Towards 2016*.

That agreement reaffirms Government policy to support older people to live with dignity and independence in their homes and communities and to support access to quality residential care when needed. It also contained the following principles to guide the development of future policy on long-term care for older people. All relevant public services should be designed and delivered in an integrated manner centred on the needs of the care recipient and based on a national standardised needs assessment. Care needs assessments should be available on a timely, consistent, equitable and regionally balanced basis. The use of community and home-based care should be maximised and should support the important role of the family and informal care. When community and home-based care is not appropriate, quality residential care should be available. In addition, there should be appropriate and equitable levels of co-payment by care recipients based on a national standardised financial assessment. The level of

State support for residential care should be indifferent as to whether that care is in a public or private facility and no current resident of a nursing home, public or private, should be put at a disadvantage by whatever new co-payment arrangements for residential care are introduced.

The proposed nursing homes support scheme, a fair deal, is consistent with the aforementioned principles. It will put in place one transparent system of support towards the cost of nursing home care. For the first time, there will be a uniform system of financial support for individuals in public and private nursing home beds. In short, its key objectives are to equalise State support for public and private long-term care recipients, to render private long-term care affordable and anxiety-free and to ensure that no one must sell his or her home during his or her lifetime to pay for care. These objectives have informed the approach taken throughout the Bill.

The Government announced the fair deal in December 2006. At the time, it gave a number of basic commitments regarding the new scheme, which I will outline. Individuals will contribute towards their cost of care based on their income and assets. The HSE will meet the balance of cost in nursing homes approved for the purpose. Individuals will not be obliged to sell or mortgage their house or borrow to pay for their care. Individuals will not experience unaffordable care costs. An individual's family will not have to find money for his or her care. As with the overall objectives, these commitments remain in place and underpin the provisions in the Bill.

I propose to briefly outline the main provisions of the Bill. Section 3, which sets out the scope of the scheme, defines certain terms used in the Bill. I draw the attention of the House to the definitions of “long-term residential care services” and “approved nursing home”, which essentially circumscribe the scope of the scheme. “Long-term residential care services” are defined as maintenance, health and personal care services provided in designated public and voluntary facilities and approved private nursing homes. Services must be provided for not less than 30 consecutive days, or periods aggregating not less than 30 days, within a period of 12 consecutive months. For the sake of clarity, the definition explicitly excludes certain services, such as respite care services. To qualify as a designated facility, a public or voluntary facility will have to be designated in writing by the HSE as being a facility that is predominantly for the care of older people and will have to provide 24-hour rostered nursing care. To qualify as an approved nursing home, a private facility will have to do the following: be registered under the appropriate legislation, reach an agreement with the National Treatment Purchase Fund on the maximum prices to be charged for care under the scheme, be tax compliant and provide 24-hour rostered nursing care. Another key term used in the Bill is “financial support”. This encompasses straightforward financial assistance towards nursing home costs — such assistance is referred to as “State support”. It also encompasses the option to defer payment of certain contributions during one's lifetime — this is referred to as “ancillary State support”.

Section 4 of the Bill defines a “couple” for the purposes of the scheme. A couple is defined as a married couple or as a heterosexual or same sex couple who have been cohabiting as husband and wife for at least three years. In each case, the couple must have been habitually living together at the date of applying for State support or at the date of beginning to receive care services. Section 5 establishes the nursing homes support scheme and stipulates that the scheme is resource-capped. Therefore, the scheme is premised on the principle of eligibility rather than entitlement. Section 6 provides that eligibility for the scheme extends to those who are ordinarily resident in the State. In other words, the scheme is not limited to older people. Section 5 also enshrines the principle of patient choice in the legislation. Applicants who are deemed to require long-term residential care shall be informed of the names of all public and approved private nursing homes. They may select their home subject to its suitability to meet their needs and the availability of a bed at the home.

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Sections 7 and 8 provide for the arrangements for care needs assessments. Section 7 provides for a care needs assessment to be conducted to ascertain whether a person needs to be provided with long-term residential care services. It stipulates who may carry out such an assessment and what factors may be taken into account in the assessment. These factors include the person's ability to carry out the various activities of daily living and the medical and social supports that are available to the person. Section 8 sets out the basis for unsuccessful applicants to seek a review of care needs.

The regulations governing financial assessments are set out in sections 9 and 10 and Schedule 1. Sections 9 and 10 provide for an application for State support and a subsequent financial assessment of means to establish the contribution an individual may have to pay towards the cost of his or her care. Section 10 stipulates that the assessment shall be carried out in accordance with Schedule 1. Parts 1 and 3 of Schedule 1 set out the rules for calculating the contribution payable by a single applicant. In summary, a person will make a contribution of up to 80% of his or her income and up to 5% of the value of his or her assets, after deductions and safeguards have been applied. Parts 2 and 3 of Schedule 1 outline the rules governing the contribution to be paid by a member of a couple. In this case, the assessment is based on the principle that each member of the couple owns 50% of the couple's combined means. Therefore, a person who is a member of a couple has an annual assessed contribution of 40% of the couple's combined income, or 80% of half the combined income; and 2.5% of the couple's combined assets, or 5% of half the combined assets.

The Bill contains a number of safeguards to protect the income and assets of care recipients and their spouses or partners, as well as the residual value of the principal residence. The use of the "minimum retained income threshold" will ensure that a person entering care will retain at least 20% of the maximum rate of the State non-contributory pension, while his or her spouse or partner who remains at home will retain at least the maximum rate of the State non-contributory pension. The "general assets deductible amount", or asset disregard, will stand at €36,000 for an individual or €72,000 for a couple. The cap on the principal private residence will ensure that contributions based on the residence will be payable for the first three years of care only. This is often referred to as the 15% cap. A new provision that was inserted on Report Stage in the Dáil will extend the three-year cap to farms and businesses in certain circumstances. This will apply to a person who has suffered a sudden illness or disability that caused them to require long-term residential care; if the person or their partner was actively engaged in the daily management of the farm or relevant business, as the case may be, until the time of the sudden illness or disability; and if a family successor certifies that he or she will continue the management of the farm or relevant business, as the case may be.

Sections 11 to 14, inclusive, set out the basis for determining applications and paying State support. They provide that, subject to resources, the State will pay the full difference between the total cost of care services and a person's contribution. This State support will be paid directly to the relevant nursing home on behalf of the person. In the case of existing residents whose nursing homes are approved under the scheme, State support will be paid from the date of full commencement of the legislation.

Sections 15 to 18, inclusive, and 28 provide for ancillary State support, which is another important feature of the scheme. Ancillary State support is an additional support that is designed to ensure that people do not have to sell assets, such as their homes, to meet their care costs. It enables people to defer contributions payable on Irish land-based assets for the duration of their lifetimes. It may be thought of as a loan advanced by the HSE and recouped at the settlement of the person's estate. The payment of ancillary State support is subject to a charging order being placed against the assets of the person to secure the amounts advanced.

The HSE will register the charging order in the Registry of Deeds or the Land Registry, as appropriate. Section 28 provides for the discharge of such charging orders as soon as the amount advanced as ancillary State support has been repaid. The Bill provides that ancillary State support will be paid directly to the relevant nursing home on behalf of the person and that it may be paid to a person even though that person does not qualify for State support.

Sections 19, 20 and 26 relate to repayment. Section 19 of the Bill stipulates the events which trigger the repayment of ancillary State support. These are termed “relevant events” and principally include the death of the person or the sale or transfer of the asset concerned. Section 20 provides for a further deferral of the repayment of ancillary State support in the case of the principal private residence. Those who can avail of such a deferral are the spouse or partner of the original applicant and, in specified circumstances, certain relatives referred to as “connected persons”. People in the latter group can avail of a deferral if the asset in question is their only residence; if they have lived there for not less than three years preceding the original application for ancillary State support; and if they do not have an interest in any other property. Those classified as “connected persons” include the following: a child of the original applicant, or their spouse or partner, who is under the age of 21 or whose assets do not exceed the asset disregard; a sibling of the original applicant whose assets do not exceed the asset disregard; relatives in receipt of certain State payments or with income below the State non-contributory pension; and any person who cared for the applicant prior to the latter entering the nursing home. This is defined by reference to relevant caring-related State payments. Where a person avails of section 20, repayment will be deferred for the duration of his or her lifetime, unless he or she ceases to qualify as a connected person or the asset in question ceases to be his or her principal residence. Section 26 provides that the Revenue Commissioners will be the collection agents for the repayment of ancillary State support.

Part 4 of the Bill provides for an innovative new feature within the scheme. It provides that a person may apply to the Circuit Court to be appointed as a care representative of a particular person. The appointment of a care representative is only necessary where a person does not have full capacity and wishes to avail of ancillary State support. However, a person appointed as a care representative may assist with any matter relating to the scheme.

The Bill adopts a function-based approach to determining capacity which is consistent with the recommendations of the Law Reform Commission. Under section 21, a person is considered to lack the capacity to make a relevant decision if he or she is unable to understand the information relevant to the decision, retain that information, use or weigh that information as part of the process of making a decision, or communicate his or her decision by any means. A person must be certified by at least two registered medical practitioners as lacking the capacity to make a relevant decision in order for a care representative to be appointed. The individuals who may apply to be appointed, either singly or jointly, as a care representative are the spouse or partner of the person; a parent, child, brother or sister of the person; a niece, nephew, grandchild, grandparent, aunt or uncle of the person; a person appearing to the court to have a good and sufficient interest in the welfare of the person, other than the proprietor of a nursing home in which the relevant person resides or is likely to reside.

Section 22 is a technical provision. It amends the Courts and Court Officers Act 1995 to allow for the appointment of care representatives by county registrars in uncontested cases. Sections 23 to 25 provide for the notification of certain specified matters, including the death or discharge of a nursing home resident, the death of a resident's partner or a connected person or a material change in the circumstances of a resident, his or her partner or connected person.

Section 27, concerning the schedule of assets, applies to a deceased person to whom financial support was provided or to whose partner financial support was provided. The personal rep-

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representative of such a deceased person must provide the HSE with a written notice of his or her intention to distribute the deceased's assets and a schedule of such assets at least three months before beginning to distribute the assets. The HSE has the authority to request that sufficient assets be retained to repay any amount due to it. This is consistent with social welfare legislation.

Section 29, on joint ownership, is a technical provision that ensures a charging order in respect of ancillary State support shall not cause the severance of a joint tenancy or be rendered void due to the absence of the prior consent of the other joint tenant or tenants. The section seeks to protect both the interest of the HSE and the other joint tenants.

Sections 30 to 32 concern reviews and appeals. A person or the HSE may seek a review of the person's care needs, financial assessment or the amount of ancillary State support payable. In addition, a person may appeal certain decisions of the HSE, including decisions taken in relation to his or her care needs and application for State support. A person may also appeal the inclusion of income and assets transferred prior to 9 October 2008 in the financial assessment on grounds of hardship.

Section 33 is essentially a technical provision ensuring the existing legal basis for charges, including the exclusion of certain care groups from charges, is maintained. An amendment made to this section on Report Stage in the Dáil ensures the basis for public bed costs and, by extension, charges will be laid before the Houses. This underscores commitments already given in the context of the scheme in regard to transparency.

Section 34 is essentially a technical provision. In line with the Government's commitment, it ensures existing public residents will not be made worse off as a result of the new scheme. It also provides that a person in an acute hospital bed who has finished his or her acute phase of care and his or her care needs assessment may be charged as if he or she were receiving long-term residential care services. This provision is necessary to ensure there is not a legal incentive to remain in an acute hospital bed following discharge.

Part 9, including sections 35 to 48, contains a number of miscellaneous provisions. These include technical and standard provisions concerning the making of regulations, the maintenance of records etc. They also include transitional provisions providing that the nursing home subvention scheme will cease for new applicants from the full commencement of the legislation but that existing private nursing home residents can remain on subvention rather than transferring to the new scheme, if they so wish.

I draw attention to sections 40 and 41 which empower the National Treatment Purchase Fund to negotiate prices with private nursing home providers for the purpose of the scheme. Section 43 renders explicit the common law principle that a person providing necessary services for a person of diminished capacity for the latter's benefit may expect to be paid for such services.

I have detailed the key provisions contained in Schedule 1 and will conclude by clarifying the final part of the Bill, Schedule 2. Schedule 2 sets out the procedure for adjusting the amounts repayable in respect of ancillary State support. This adjustment will reflect the level of inflation, as measured by the consumer price index, between each year in which contributions were deferred and the year in which the debt falls due. In other words, the State will take account of the time value of money.

The Bill is fundamental to meeting the commitment given in Towards 2016 that State support should be equal for public and private care recipients. Critically, it offers assurance to the most vulnerable of groups in society — those in need of long-term nursing home care — that such

care will be affordable and will remain affordable for as long as they need it. I commend the Bill to the House and look forward to hearing the views of Senators.

Senator Frances Fitzgerald: I welcome the Minister of State. This legislation is very important because there will be more than 800,000 people over the age of 65 years by 2025. Thus, many elderly people will need care at various levels, be it in the community or a nursing home. We spend 0.6% of GDP on the elderly. The current spend in the United Kingdom is 1.9%. There is no doubt but that this area will require further investment in the years to come. It is very clear that many families are stressed and under considerable pressure because of the lack of supports, be it in the community or residential care.

I want to raise a range of issues associated with the legislation about which Fine Gael has concerns. Will the Minister of State review the points made in the Dáil and on Committee Stage by Deputy Reilly and determine whether it will be possible to address some of them by way of amendment on Committee Stage in the Seanad? It is clear that this legislation will require more amendments before we will be in a position to support it. In principle, if people cannot make a contribution towards the cost of their care, we must accept it as reasonable. However, the devil is in the detail.

There are many matters I want to raise with the Minister of State. Let me begin by considering the community care packages available. The Bill caters primarily for those who require high dependency care. Traditionally, nursing homes dealt with persons with a range of needs, but increasingly they are dealing with patients who need high dependency care.

3 o'clock

However, there may be people who, for a variety of reasons, might not be classified as having high-dependency care needs but who may need some form of residential care. Will the Minister of State outline the degree to which the assessments will take social factors into account? There are big questions about community care packages. The issue of standards will increasingly come to the fore. We hear about standards in nursing homes but no public nursing home has been inspected. That will come in on 1 July and I welcome that move. We have all just come from the solidarity march for victims of abuse today. There were no inspections in the homes discussed in the Ryan report. Inspection is a critical issue and whether the Health Information and Quality Authority, HIQA, will have the appropriate resources to carry out the necessary inspection is a key question.

Standards will be a question of the future because people will depend on quality community care packages in which there is huge variation. We all want older people to receive support that enables them to stay in the community. The level, quality and quantity of community care packages will be critical to that support. People do not yet get the kind of support they need to stay in the community. Many who have fairly high needs do not get the wide range of care necessary to remain in the community. There are approximately 750 people in acute hospitals who need placement in nursing homes. I am somewhat concerned about that because there are vacancies in nursing homes. Will the Minister of State and her Department say what the barrier is to placing those people appropriately in nursing homes?

The most important question is what resources will be allocated for the implementation of this legislation. What will happen if, for example, €55 million is allocated in a current year and that money runs out? Will we put pressure on people to go into a nursing home early before the money runs out? How will we deal with that difficult issue? What is the Government approach to the key issue of funding?

A total of 62% of nursing home costs goes on staffing yet there are no criteria for the ratio of nurses and care assistants and so on for public or private nursing homes. The Government needs to address that if this legislation is to be successful. Other issues arise about the detail in the Bill on how assessments will be made. What is the future of public nursing homes? This

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legislation does away with universal provision. What do the Minister of State and the Government envisage as the future of public nursing homes? Section 5(5) refers to (a) relevant facilities and (b) approved nursing homes. Why is it necessary to separate the two? Section 5(4) raises questions about the criteria for rationing and who will do it.

Under this Bill everything is done within the Health Service Executive, including the appeals mechanism and the care assessment. Surely we need to bring independence into the procedures whether in respect of an appeal or having a second assessment of need or the setting of nursing home fees. Is there not room for a more independent procedure in the various arenas that the Bill addresses?

Section 7 of the Bill “enables specified individuals to apply to the HSE for a care needs assessment and allows the HSE to make arrangements for care needs assessments to be carried out”. Obviously the goal of this is to ensure that quality care is provided to the older person. Section 7(5) of the Bill, however, allows the HSE as the service provider to operate also as the body which determines whether the person is in need of a service. Surely some assessment should be conducted by a multidisciplinary group of professionals, independent of the HSE and the Department of Health and Children. There is no guarantee that once needs are identified the resources will be put in place to ensure they are met. Will the Minister of State consider that point?

Will the Minister of State define what is included and excluded? What does “specified services” mean? What does one get in return for 15% of one’s income and a proportion of one’s assets? Does one get a basic service or access to the other services that an elderly person might need, such as occupational therapy and various ancillary services? It is very important to spell that out. The Minister indicated on Committee Stage that she would introduce regulations to outline to some degree what would be included. Will the Minister of State say in her response to this Second Stage debate how it is intended to address that issue? Otherwise people will have fewer services than they have now. Provision in this area is inadequate.

Many involved in farming and in small businesses are extremely concerned with the implications of this Bill for their livelihood. They are particularly concerned that there is no cap on the deferred charge and other fixed assets such as land, farm buildings, commercial and investment property and small businesses that may not be highly profitable. This situation is not fair because a person with a very valuable residence would relatively speaking be undercharged but the Bill does not take account of the sustainability of farms and small businesses in rural areas and gives preferential status to principal private residences. The Bill does not address this and the Minister of State needs to outline how she intends to deal with it. She needs to deal with the absence of a ceiling on farms as a priority.

I welcome the changes made in the repayment of ancillary State support but I would appreciate clarification from the Minister of State on amendments made to the definition in section 20(4)(a)(ii) whereby a child who remains in the home and is over the age of 21 will be eligible for a further deferral if the aggregate of his or her cash assets is not greater than the general assets deductible amount. Will the Minister of State give information on the general assets deductible amount, how it is calculated and what it amounts to? If a sibling over the age of 21 has inherited the assets, cash or land will the Minister of State clarify how this will impact on the ability to apply for deferred payment? These are important issues. This is in many ways a technical Bill but it will have a serious impact on individuals, their futures and their ability to continue in business or stay on their farms.

The role of the National Treatment Purchase Fund, NTPF, also needs to be addressed. Will people be able to choose a nursing home that is close to their home or will the NTPF choose

a nursing home at a certain cost that is 100 or 200 miles from their homes? We must build in criteria for the community that enable elderly persons to have access to a nursing home that is close to his or her home and family.

The HSE used to deal with this but it now appears the hospitals make the payments under the delayed discharge initiative. To minimise the cost to the hospitals, older people are being offered places in nursing homes which are at a distance from their family homes and communities. That needs to be addressed. Many people are being placed in nursing homes far away from their homes, as is happening in Dublin where there is a shortage of such accommodation. One understands why this is happening but in terms of the development of this scheme, this issue needs to be given further thought.

The National Treatment Purchase Fund will be given responsibility for contracting beds in nursing homes and agreeing fees. Nursing homes, both public and private, will be required to negotiate fees with the NTPF if they wish to be approved providers under the scheme. There are some contradictions in this respect. The NTPF is being given the challenge of keeping the cost of care down while the HSE wants to ensure high standards are met. Quality should not be determined by the prices that are set by the NTPF. We must ensure quality is maintained in residential nursing homes and that there is not a drive down by nursing homes to the lowest standards to ensure they become approved nursing homes. How will that be ensured?

The means assessment aspect is dealt with in section 10. Under the terms of the Bill, the HSE is entitled to seek an assessment of means, which will be conducted by a suitable person of its choice. From the legislation it is not clear what is meant by a suitable person or who will conduct the assessment of means. Will the means test be carried out by the HSE, State officials or an independent third party? We believe the financial review should be conducted by an independent third party in order that a fair and reliable estimate can be established in which both the applicant and the HSE can have faith. A person's right to avail of care through this scheme should not be jeopardised by obstacles in seeking a financial review and such people are entitled to seek a financial review if and when they need to. The Minister of State might consider this issue on Committee Stage.

We have seen in recent months how the values of assets can change very quickly. In terms of an allowable deduction, will the Minister of State take into account in the development of this scheme the changing value of assets when somebody has been assessed? Is there a review mechanism in this respect?

I also raise the question of extending the nursing homes support scheme to private care in the community. That is a matter the Minister of State may want to examine.

This is an area that deserves the highest attention and the highest investment because it determines the quality of people's lives in their later years. It is critical that we get this legislation right. I commend the Government's attempts to move in this direction but there are many serious questions in this area. I urge the Minister of State to take note of the points that have been made on Committee Stage in the Dáil and the points I have made. I will communicate with her privately on a range of other concerns we have which I have not had the opportunity to put on the record because of time constraints.

Senator Larry Butler: I wish to share time with Senator Ó Murchú.

An Cathaoirleach: That is agreed.

Senator Larry Butler: I welcome the Bill. It is important given that people are living much longer. We need to provide for people in their old age. When it comes to the time that a person will require care 24 hours a day, seven days a week, this Bill will come into play.

[Senator Larry Butler.]

An important point is that older people who are healthy and living in the community do not need care 24 hours a day, seven days a week such as that provided in a nursing home. Older people should be encouraged and supported to live in their communities for as long as possible. The health benefits of day care centres, which provide various activities for older people to enjoy life, their community and surroundings, are evident. This Bill provides the security, dignity and stability that older people require.

The standards required to be maintained in nursing homes is a vital aspect of the Bill but standards are only as good as the people who manage these provisions and those who carry out inspections provided for in the legislation for the benefit of the elderly. It is also fair to note that people like to make a contribution towards the cost of their care. It has always been the way that older people residing in nursing homes made a contribution, through their pension, savings or some other means, towards their care. That brings dignity to the care that is being given and it gives the person receiving the care a sense of independence. It is important we maintain that type of service for older people.

The purpose of the Bill is to equalise the State support for public and private long-term care recipients, render private long-term care affordable and remove the anxiety of obtaining such care for people. Many old people probably did not think about what would happen when they required nursing care 24 hours a day, seven days a week. It is fine in cases where the family and home care help is *in situ* but often that can be too great a burden for the family and the next step is for the person to be well looked after in a nursing home but a home is the last place I would recommend any older person to be sent. Community care is vital. We must ensure such care does not become part of community care. The care provided for in this Bill is a secondary level of care and a last resort for people who cannot manage on their own.

I would like to deal with the part of the Bill that deals with property. The approach taken has sought to be as fair as possible when it comes to dealing with a property and a contribution. It is fair that 85% of the property value will continue to be available to the siblings or the family who is left behind. The cut-off thresholds of €72,000 for a couple or €36,000 for a single person are correct, but the Minister might examine those levels in terms of inflation because they may need to be adjusted. The same may apply to the property aspect in that an adjustment might also be required. The Minister of State might examine the Bill in terms of those two issues which, on the one hand, would protect the home owner and, on the other, would protect the State. Those in this House have an obligation to ensure that when legislation is passed it is fair and is seen to be fair. That is the reason it is important for us to get this legislation right.

The main provision of the Bill is the assessment of individuals to ascertain whether they need to be provided with long-term or residential care. That is an important point, namely, the evaluation of a person who is to receive long-term care and whether that is done in a correct way. I am not sure how that will work. However, it is important that this Bill is not used to put people into such facilities before their time. This is something about which we should be careful. It is down to management and assessment. Those who are dealing with older people — doctors and so forth — must ensure they are protected in this regard. We all know that the last place a person in his or her final years would wish to go is a nursing home. He or she would rather stay in the community for as long as possible.

I thank the Minister of State for her hard work on the legislation and welcome her to her new portfolio. I am delighted to see her here today.

Senator Labhrás Ó Murchú: Is mian liom fáilte a chur roimh an Aire Stáit agus buíochas a ghabháil léi as ucht an cur i láthair a thug sí dúinn ar an mBille. Bhí sé an-chabhrach ar fad. I

welcome the Minister of State and thank her for her presentation of the Bill, which I found helpful. I also thank Senator Butler for sharing time with me.

I welcome the Bill, which is visionary and exceptional legislation. It has all the hallmarks of compassion, which is exactly as it should be with a caring Government. Anybody who has a loved one in a nursing home would have no difficulty in identifying with many of the issues the Minister has raised today. Anybody who has visited a nursing home and taken the opportunity to observe the difficulties for people, many of whom have found themselves there very suddenly, perhaps as a result of a stroke, Parkinson's disease or some other ailment, will realise how it changes the lives of not only those in the nursing home but also their families.

One phrase the Minister of State used which struck home to me was the effort that should be made to avoid anxiety for people at a time such as this. When one is in full health it is amazing how one can respond to difficulties and challenges, no matter how they may come at one, but if one is helpless and vulnerable one's attitude to life changes so that every problem results in excessive anxiety, which adds to the suffering already being experienced. It is evident in this Bill that ears were kept to the ground over a long period by many people, professional and otherwise, to discover what was required to improve the situation of people who find themselves in long-term nursing home care.

One thing about which a person is always particularly conscious, whether sick or otherwise, is his or her house. It is difficult to explain the trauma that results from having to give up one's house while one is still living. A few years ago there were not many people who could have foreseen a solution to this problem. That is why I say the legislation is exceptional and visionary. I compliment those who are responsible for introducing it, for a number of reasons. If one owns a house it is obviously as a result of one's own efforts through work, thrift and so on to ensure one had a roof over one's head. I see no reason, if a person needs to avail of that asset, that they should not have the opportunity of doing so. This is important and it must be the bedrock of our approach to a socialist Ireland. It is very well put in Bill.

When one reads further into the Bill, one considers the difficulties that can sometimes arise from the necessary bureaucracy which exists due to exceptional legislation. Those create anxiety in their own right. I refer, for example, to the identification of people who can act on behalf of those who are not capable of acting on their own authority. These are listed in the Bill. The legislation is comprehensive and, in alleviating one source of anxiety, avoids creating further anxiety. With regard to the level of contribution, that is, 80% of net income, it is true that if people have full services in long-term residential care they do not require the same amount of disposable income as they might if they were out in the real world. However, it is important that some percentage remains. The issue of dignity is vital in this legislation and the fact that a person retains 20% of his or her net income is important.

The allocation of 5% of the value of a person's house seems very reasonable. Nobody will feel hurt by this. It is important to defend the State also. That has been done well by providing specifically for the manner in which registration will take place, where it will take place and who will be responsible for its implementation. It is provided that the institution will be notified when the time comes that there is a three-month period to allow those who have a claim, from the State's point of view, to respond. I am not speaking from the point of view of those who might benefit from a legacy or similar, but it is important that these matters are provided for in the Bill and that they do not undermine the requirements of looking after the individual concerned.

Another thing we should bear in mind is that not only are we looking after the rights and dignity of the individual, but we are also helping the family, who are subject to considerable anxiety at such times. They want to do what is right for a loved one but they feel guilty when

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they cannot do enough for him or her. Enshrined in this legislation is the possibility that they can feel protected and insulated. There is no reason for them to feel guilty because they know the property of the person is being used to provide them with what is required, whether it is in their twilight years or as a young person.

There are many things I could say about the specifics of the Bill, but I do not have any great difficulty with these, although there are a few issues to be teased out. The Bill is comprehensively thought out and protects everybody concerned. I compliment the Minister, the Parliamentary Counsel and the Government on the Bill. It is exceptional, visionary and compassionate. Such qualities are needed more than anything else in this area.

Senator Joe O'Toole: Cuirim fáilte roimh an Aire Stáit ar an chéad uair dom a bheith ag déileáil léi sa Teach seo — go n-éirí léi sa job nua.

I welcome the Bill wholeheartedly. During the years many of us as public representatives have come across examples of the strains and pressures exerted on families when their elderly loved ones are no longer able to look after themselves. It was easier in the old days when the extended family lived in the same area. A person with mild dementia could live within the family home securely and one would know if he or she was acting a little strangely. The world has changed since and there are now places where people live on their own in farmhouses with no family nearby.

I compliment the Minister of State on the use of the words “dignity and respect” throughout her speech. That is welcome. At a time when people talk about politicians being uncaring, we can leave party politics aside to say this is an objective we all share.

When the then Minister for Health and Children, Deputy Harney, announced this idea some years ago, the original response included significant opposition that I always considered emanated from people who never had to cope in these circumstances. We are talking about an elderly parent who may be suffering from Alzheimer's disease for whom it is unsafe to live on his or her own. No one wants to talk about the option of that person going into institutional care as it causes families huge trauma. Children feel they are betraying their parent, even if they know it is the most logical and correct thing to do to place him or her in a safe environment in a nursing home. However, I have yet to meet someone who had a parent in a nursing home and did not have a trace of guilt. All of us — I include myself in this — have been there.

The cost of nursing home care is around €3,500 to €4,000 a month, a huge amount. I know of cases where a single child is trying to meet the cost of having a parent in a nursing home and do not know how they can do it. Until recently, if money was paid for care, it could be claimed back at the marginal rate of income tax. In recent years that was reduced to the standard rate, a huge hindrance. If there are six, seven or eight people in a family, it becomes easier, but it is still not cheap. People often have no option but to liquidate an asset, often the family home or family farm. The first trauma is placing someone in a nursing home, the second is finding the money to do so and the third is selling the family home. It would be difficult to design a better way to hurt a family.

I welcome the Bill wholeheartedly, it is legislation all parties should support. I have some questions to ask about it, but the general principle is to be greeted.

The Minister of State referred to the first three years in care. When the legislation is commenced, there will be those who will have been in care for some time. I presume the first three years referred to are the first three years of paying 5% and that if someone is already in care and happens to be in his or her fourth year in a nursing home, the three year period will commence when the Bill becomes law. We should make this clear.

The maximum to be taken from the estate or assets of the person in care is 15% of the principal private residence as described in the Bill. When it comes into operation, there will be sighs of relief from families all over the country. People are living longer in better health, but that leads to other difficulties with people of advanced age suffering from associated problems.

I welcome the emphasis on the registration of nursing homes. We have long discussed this idea and the importance of health and safety inspections, medical standards and care issues. I never supported the idea of having a nursing home inspectorate; I thought the local doctor should be responsible for dealing with his area of care, while the local fire brigade should look after fire safety and so on. No one can be an expert in all the areas to be covered by inspections, from dispensing medicines to health and safety. If each of the local agencies picked up these issues one at a time, it would be better.

Perhaps Fianna Fáil is becoming socialist, but it is was great to hear the Minister of State talk about a system which would be indifferent as to whether care was public or private. I have waited for a long time to hear such phrases coming from the Government. I hope the alternative Government is listening carefully and will buy into this when it gets the chance.

Senator Liam Twomey: The Senator should read the small print.

Senator Rónán Mullen: Cuirim fáilte roimh an Aire Stáit. Is as mo pharóiste féin di agus is é seo an chéad uair dom a bheith ag déileáil léi chomh maith.

While I welcome the Bill in parts, I do not believe everything is rosy either. There are fundamental questions that remain to be answered. I knew of a lady who had been worrying for some time because she did not know if she had the resources to pay for her nursing care. Thankfully, someone in the family realised this and relations who had done well in life gave a guarantee to let her enjoy peace of mind that had been missing for some time. It brought home to me that we should not be slow to emphasise that while many of our older citizens are active and fit to deal with the tasks life presents, there are others who experience great vulnerability and fear and we should have them in our minds when we consider this legislation.

I draw attention to an extraordinary scandal from the time of the first nursing homes fees scandal. The Supreme Court in its judgment in February 2005 established eligibility to publicly funded long-term care, whether in publicly funded institutions or HSE funded places in private nursing homes. That was put in place for those who needed it at a cost of 80% of the non-contributory pension. Since that time there has been a conspiracy of silence that the only possible way of exercising this eligibility has been through admission to hospital with a critical illness. The provision of such publicly funded beds is often described as delayed discharge initiative beds in what seems to be an effort to avoid clarifying the eligibility of patients to publicly funded long-term care. In some cases, efforts are made to clarify, to all those who wish to use the subvention route which usually covers a minority of the full cost, that the form will only be signed on the basis the patient and-or family have been made aware of their eligibility for a fully funded bed as per the Supreme Court decision.

Senior HSE officials have criticised the practice of geriatricians clarifying this eligibility to patients and families as a factor in the delayed discharges. When it was pointed out to the HSE officials that this eligibility was the law of the land and that there would be no problem at all if they wished to provide written guidance on any alternative interpretation of the situation, the answer received was that the geriatricians should know the score. It seems there are chilling echoes there of certain aspects of the Ryan report.

Some of the worst suffering occurring in the context of nursing homes has been in the case of families who have not been given access to the information about their entitlements and who have crippled themselves with second mortgages etc. to support an older patient in a

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nursing home. To add insult to injury, they find their tax relief has been reduced. A further degree of suffering is caused to those who await their eligibility in a general hospital and who may come under the moral pressure of being labelled as bed blockers.

The HSE seems to be petrified by the moral hazard of people's eligibility being made clear to them. The geriatrician or old age psychiatry assessment which, to date, is not standard throughout the HSE converts many requests for long-term to enhanced care in the community. A natural break on the use of nursing home beds is the unwillingness of older people to enter long-term care. If properly assessed and supported, people will choose life at home if that is possible.

The real failure of the Department of Health and Children and the HSE has been the failure to provide for nursing home care in major urban areas, in particular in Dublin. The Prospectus report highlights that although the national average is approximately five per 1,000 older people, it is down to 1.9 or 2.5 per 1,000 older people in parts of Dublin — one third to one half of what is required.

The so-called fair deal draws on a politics of the aggrieved, the increasing numbers who largely through ignorance of their eligibility are crushed by fully funding or part funding with subvention nursing home care and to whom the terms of the new arrangement are presented as an improvement. One must remember the rights people already have. Their rights stem from the Supreme Court ruling. It would appear there are tens of thousands of older people and families suffering seriously as a result of the failure to clarify their eligibility.

The Irish Gerontological Society outlined concerns about this as far back as December 2006 when in *The Irish Times*, Dr. Cillian Twomey and Professor Desmond O'Neill wrote that no older person objects to a proportion of their pension being used for the board and lodging aspect of this usually reluctant change to a new home where the person's health and social care needs, which are not easy to disentangle, should be met. It now seems older people who can avail of a publicly funded bed will be asked to provide funding for this care over and above their lifetime of taxation and pension contribution. The contrast with cardiac and cancer treatment could not be more stark. In the case of certain cardiac and cancer treatments, tens and even hundreds of thousands of euro are spent without anybody imagining that the patient should hand 15% of their principal private residence to the State after their death.

The debate on funding is also marked by an inappropriate alarmism — a false demographic catastrophism. In fact, older people are fitter and healthier now. Disability is dropping among older Americans at a rate of 1.5% per year. In tandem, nursing home use is not increasing with the increasing numbers of older people, although there are some regional differences. Going back to 2004 figures, the number of publicly funded nursing home beds in the Republic has remained constant at approximately 15,000. Are we dealing with another example of what Theodor Adorno called the cold indifference of the middle classes?

Both the Leas Cross report and the Irish National Audit of Stroke Care indicated grave confusion regarding who provides therapeutic support for people in nursing homes, such as speech and language therapy, occupational therapy etc.

I wish to make an observation in regard to the appointment of a care representative as per Part 4, section 21(11). This is a sad state of affairs appointing a care representative who has only one job, that is, that of deciding whether the incapacitated older person should hand over a proportion of his or her assets to the State but who has no other care or welfare role. The suggestion that it should be a registered medical practitioner or other such health practitioner as appears to the court to be a fit and proper person to make the application should be altered to ensure this care representative is separate from the team treating the person in hospital.

There is huge pressure on teams in hospitals to discharge people rapidly and, therefore, there is a conflict of interest which may not allow for a reasoned advocacy role for a very significant decision which must be made.

Senator Ó Murchú rightly used the word “dignity”. As we consider this legislation, we need to test it against the question of dignity. I have pointed out some issues which are of major concern. I recall during our debate on the Broadcasting Bill that I proposed we have a heritage channel as part of our suite of television channels to be provided in the new digital set up. I know from my experience of nursing homes and encountering people that thousands of people do not have access to television or radio services which are addressed to their specific needs. Not every older person needs that but there was an opportunity to make a change in favour of older persons who might be in a vulnerable situation. It is too easy to forget sections of the community who are not vocal or particularly influential politically. I hope the sincere concern about the dignity of persons who use nursing home care and their families will guide our consideration of this Bill.

Senator Dan Boyle: This Bill is undoubtedly a major improvement on what obtained heretofore. It has had a very difficult gestation. The preceding Bill was rightly found to have legal flaws and the subsequent court decision informed what is a better Bill. That said, it is not widely accepted and Age Action, the umbrella organisation for groups representing older people, has said it remains opposed to the concept in the Bill and is seeking support for a number of amendments to improve it. Consideration should be given to some of these amendments but I support what is proposed in the Bill and recognise it as a vast improvement.

The Bill cannot be taken out of context in terms of how we, as a society, deal with the care needs of our older people. As in the case of most aspects of public policy, the fact we are dealing with it with this sense of priority, while not giving equal priority to other elements of what could be called the care hierarchy, means we are still sadly deficient in meeting many of the care needs of older members of our society.

I categorise the care hierarchy by ensuring as much support can be given to older people in their homes by means of independent living. There is no doubt sufficient resources are not being given. Support should be given to families, communities and care organisations to allow such care needs to be met. Only then should hospitals, health agencies and nursing homes become involved in the long-term care of older people.

The fact we are still failing to adopt a holistic approach is to no one's credit not only on the Government side but on the part of the political system in general. This is an ageing society and we need to adopt a more comprehensive approach to the care needs of older people.

The programme for Government cites a very good example of meeting care needs. The Westgate foundation in Ballincollig in Cork tries to ally day care needs, including services such as physiotherapy and chiropody, with a social outlet. It takes a village approach to meeting the residential needs of a number of elderly people. If we continue to take a segregated approach by dividing up and categorising the care needs of the older section of our population, we will fall short on a constant basis.

There are arguments as to whether the current provision of certain services is cost effective. In the recent European election campaign, I was made aware of the situation at St. Patrick's Hospital in Waterford where the Health Service Executive is closing a ward currently designated for the care of elderly patients. The long-term care needs of these patients will be accommodated either by moving them to a different ward in the same hospital or to a nursing home. Either approach will negate any potential savings the Health Service Executive expects to make. Those patients remaining in the hospital will face cramped accommodation while the

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original ward remains empty. Moving these patients into private nursing home care will incur a cost either equal to or in excess of the cost of caring for them in the closed hospital ward. When these types of inconsistencies arise, questions must be asked as to why this Bill is being adopted in this form and why we are not looking at the broader picture. Given the demographic realities, such decisions will inevitably come back to haunt us. Although our population is young when compared with those of other European countries, it is undeniably aging. In the context of the extent to which our elderly population is predicted to grow as a proportion of the general population, we are not providing sufficient resources to meet future needs.

As I understand it, Government policy is cognisant that there will be larger numbers of older people who will require long-term care needs in the future, that the numbers requiring private nursing home care will more or less remain at current levels until 2020 and that additional supports will be provided by way of increased supports to elderly people in the home, carers and community organisations and dedicated health agencies. However, the lacuna that exists in terms of the failure to date to introduce a national carers strategy is unacceptable. The process that accompanied the national carers strategy did not produce a clear articulation of how future policy would effectively meet the needs of carers as they themselves have articulated them. The need for such clear articulation is as strong as ever. There is an onus on the Government to produce that strategy in the shortest possible timeframe. My party will continue to argue for this.

In terms of the narrowest confines of what this Bill seeks to achieve, namely, meeting the care needs of a certain sector of our older population, it does so in the fairest way possible. The formulae take account of people's differing financial resources and of the fact that the cost, while never fully met under any particular system, should be contributed to appropriately by the State on the basis of means and the circumstances of the individual. I am pleased to support the Bill. However, I hope it can be tweaked to improve it in terms of its acceptability to those advocating on behalf of older people. I also look forward to a more coherent, cohesive and holistic strategy for the care of older people, of which this Bill can only be considered a small part.

Senator Phil Prendergast: I welcome the Minister of State, Deputy Áine Brady, to the House. As the Labour Party spokesperson on issues affecting older people, I particularly welcome the measures in the legislation for the provision of simple electronic forms of charging, order and discharge application. However, I do so guardedly given the Health Service Executive's track record in regard to technology. Given the current state of transitional uncertainty as the executive restructures and reconfigures, I have serious concerns about any aspect of change. The great ongoing transition in the delivery of services makes me fearful for the vulnerable in our society, including older people.

The Minister of State claims these provisions will ensure a speedy, standardised and extremely cost effective approach to the processing of charging orders. She said in the Dáil last month that these new provisions would ensure families are not unduly delayed in selling or transferring property. I hope this does not mean the process can commence without the family's consent. Some clarity in this regard would be welcome because the issue of property value is sure to be problematic. Wills are often written on the basis of distributing assets according to their financial value. With house prices in such a precarious and unpredictable state, the contribution to the Health Service Executive based on the value of the home may become a cause of dispute for beneficiaries of the will. That must be clarified.

I particularly welcome the decision to accede to the request of my colleague, Deputy Jan O'Sullivan, that the applicant's family be informed of the details of all available facilities and

be allowed to choose a particular nursing home. Geography is a relevant factor and it is important that, where possible, people receive the care they require locally. I am aware of instances in south Tipperary where people have had no option but to take a nursing home bed in south Kilkenny. There is nothing wrong with Kilkenny — it is where I am from — but this creates problems for people in view of the lack of public transport. This is a matter of basic rights and dignity as well as a practical concern. Not everybody's needs are the same and facilities must be tailored to individual requirements.

The Government has gone some way to addressing the concerns of the Labour Party in respect of the fair deal scheme, but there remain matters of significant and legitimate concern. For instance, the Government has a long track record of implementing schemes which are so poorly funded that few can avail of them. That must not be allowed to happen in this case. The Minister of State was asked about this last month and her answer was not acceptable, offering no assurance about the ongoing funding of the scheme. There is a danger that as demand increases, access will decrease. When the Bill was published, the Minister, Deputy Harney, said:

I am very pleased to publish this draft legislation. For the first time it will make the arrangements for financial support for people who need long-term care comprehensive, clear and coherent. It is totally fair. It is clear, sustainable and affordable.

I understand funds have been set aside for the scheme this year, but this signifies little given that it is not due to come into operation until the last quarter. The scheme will be little more than another fig leaf for the Government if we cannot obtain an absolute commitment on funding into the future. There is a concern that funding may become unavailable or may be sidelined into some other programme that is considered more urgent. Particular sections of the population will always consider their needs greater than those of anybody else.

There are various examples of where funding has been cut for particular services. I have just come from the launch of a report by the Sub-Committee on the High Level of Suicide in Irish Society which reviewed the Government's mental health strategy, *A Vision for Change*, and other issues. Funding for mental health services has been reduced by 12.5% this year at a time when the suicide rate has never been higher, causing horrendous grief to many people. We have all been touched by the issue. As a midwife for many years, I am gravely concerned that €10 million could not be found for the cervical cancer vaccine programme. It is likely that the cost of the scheme may have reduced since the announcement not to proceed with it. This issue must be reviewed. I am aware this does not come under the remit of the Minister of State. However, as a woman, she will appreciate what I have been hearing on the doorsteps. I retain a deep sense of disquiet that so many young women are being caused worry and distress in the absence of a vital preventative service. I have strayed from the point somewhat but this is an issue about which I feel very strongly. It will have to be brought back on to the agenda. It is gravely flawed to have reneged on a commitment which brought hope to so many people. That was not the correct course.

I reiterate the importance of commitments in regard to funding into the future. There cannot be a situation where a person who qualifies for the scheme cannot avail of it as a result of inadequate funding. This could place an intolerable strain on older people and their families. The intention behind the Bill is to provide assurance and certainty to families and to the many people who, on the basis of the scheme, will plan years in advance. It is entirely unacceptable, therefore, that this matter has not been firmly nailed down.

The Minister of State's reply in the Dáil was far too cagey and evasive, particularly in respect of a matter of this importance. What she said suggests that the Labour Party's concerns in this

[Senator Phil Prendergast.]

regard are well founded. In that context, my party has already proposed a simple solution. Will the Minister of State clarify the position with regard to her comments, “On the care needs, we do not accept that the benchmark for dependency will be moved upwards, particularly because it will be subject to a multidisciplinary panel of professionals and their codes of ethics”? What will be the benchmark for dependency? The Minister of State also indicated in the Dáil that:

This will equalise access for both public and private patients because, as must be acknowledged, the majority of provision in nursing homes is in the private sector. By law, the care needs assessment, which is holistic in nature, must take family, social and community circumstances into account.

I am concerned in this regard and perhaps the Minister of State will clarify the position.

During her contribution to this debate, the Minister of State indicated:

That agreement reaffirms Government policy to support older people to live with dignity and independence in their homes and communities and to support access to quality residential care when needed. [I am in complete agreement in this regard] It also contained the following principles to guide the development of future policy on long-term care for older people. All relevant public services should be designed [Again, I agree with this] and delivered in an integrated manner ... Care needs assessments should be available on a timely, consistent, equitable and regionally balanced basis.

I am interested in the fact that it will be regionally balanced. On what basis has the Minister of State decided what constitutes something being regionally balanced? I take particular cognisance of the fact that acute services will be cited in one particular area in Cork. The Teamwork report, which was published yesterday, has given cause for a great deal of concern in this regard.

I was actively involved in nursing up to two years ago and there was always the concept of a “golden hour” whereby people with acute myocardial infarctions or serious disorders or diseases had to receive treatment within the first hour of being admitted to hospital. Surveys were carried out at the hospital in which I worked in respect of how quickly people received treatment and the long-term outcomes that resulted. I accept that the position varies from individual to individual but the research heavily supports the fact that people who received immediate treatment did far better than those who did not. Some of the latter actually passed away. What does the Minister of State mean by a regionally balanced basis?

The Minister of State also indicated that: “The use of community and home-based care should be maximised and should support the important role of the family and informal care.” There is not enough time for me to discuss the entire matter of carers in the home and those who provide a home care service. These people are responsible for providing millions of hours of care each year. They are under-resourced and underfunded but they provide the most excellent service to people in their own homes. Providing such care represents the optimum and it is what we all want. I have met those in the Carers Association who provide a service to their own families and loved ones and who also provide such a service to others on a community basis. I am aware the country is in a bad position financially. However, let us consider the case of a person who is content and well enough to live at home and whose confidence is strengthened by the fact that he or she will be visited by a carer for two or three hours per day. Where his or her care is cut to two, three or four hours per week, his or her confidence will be sapped.

Last week I was lucky enough to visit the Marian Court in Clonmel, a sheltered housing facility for the elderly. I met some wonderful people there who have a great sense of fun and youth. Marian Court is a fabulous facility and the services on offer there cost €100 per week.

People can obtain a four-course hot meal during the day and have access to beautiful gardens. The facility is situated adjacent to the local church, which means that the needs of everyone living there are likely to be met. This is a fantastic care-taking facility where assistance is available to local elderly people. I cannot praise Marian Court highly enough.

The dignity of older people must be maintained and they should not be obliged to worry. Unfortunately, however, they are concerned in light of the sensational reports that appear in the media every day regarding the recession. I met some people at Marian Court who are in their 70s and 80s and who read the newspaper on the Internet each day. I admire them because it was recently enough that I began to do so. These people are worried as a result of what they are reading. Financial concerns can give rise to high blood pressure and create a lack of confidence, which in turn can cause many problems.

My area of expertise in nursing was midwifery and I found that a woman who was confident when commencing the process of childbirth had a much shorter and easier labour than someone who was frightened and who did not have someone to attend to her needs. I am of the view that I have a depth of personal experience which allows me to speak on this subject.

I thank the Minister of State for coming to the House. I hope she will be able to address some of the concerns I have expressed.

Senator Mary M. White: I welcome the Minister of State, Deputy Áine Brady, and wish her the best of luck with her portfolio. I compliment Senator Phil Prendergast on her contribution. It was a pleasure to listen to what she had to say.

The Bill is aimed at transforming the current system of residential nursing home care in Ireland to one that is accessible, affordable and anxiety-free. In line with recommendation 18 of my policy document, *A New Approach to Ageing and Ageism*, the Bill will provide much needed clarity regarding the State arrangements for financial support for all people who require long-term care in both public and private nursing homes.

The enactment of the Nursing Homes Support Scheme Bill, or the fair deal legislation as it is also called, will give rise to significant changes. It is worth noting that a fundamental principle of the scheme is that no person currently in care will be disadvantaged in any way by these changes.

People face very different costs depending on whether they are in public or private nursing homes. Some private homes cost approximately €50,000 per year. Certain individuals do not receive support from the State. Many of those who do receive financial support from the State still cannot afford to pay the remainder of their costs. Consequently, people are sometimes obliged to sell or mortgage their homes to pay for their care and must often rely on contributions from their families or friends.

The nursing homes support scheme will benefit everyone because individuals will, based on their means, make contributions to their care costs and the State will then pay the balance. This will apply in respect of both public and private nursing homes. As a result, people, their spouses or dependent children will never be obliged to sell or mortgage their homes to pay for nursing home care. Family members will not have to provide cash from their own incomes to pay for care and the State will continue to pay the majority of overall care costs. The benefits of the scheme are that the State will fund the largest part of people's care costs, the basis for contributions will be equitable and will be based on the income and assets of the person who requires care, individual contributions will be affordable, people will not be obliged to sell or mortgage their homes to meet their contributions, and the deferred contribution from the principal private residence will be capped at a maximum of 15%.

[Senator Mary M. White.]

This scheme is not just for those over the age of 65. The current subvention scheme does not make a distinction on age grounds, nor will the new arrangements. The service and the population for which the scheme will be provided is defined in legislation. The scheme covers long-term residential care only, not respite or day care, although these services may be provided in a particular nursing home.

The definition of a couple is a critical point and a landmark in the Oireachtas. Section 4(1) states:

In this Act, “couple” means—

(a) two persons married to each other,

(b) a man and woman who are not married to each other but are cohabiting as husband and wife, or

(c) two persons of the same sex who are cohabiting in domestic circumstances comparable to that of a man and woman who are not married to each other but are cohabiting as husband and wife,

who are habitually living together at the date of the making of an application for State support by either or both of them or at the date of the commencement of the provision of care services to either or both of them.

This is far-sighted and it is about time that couples devoted to each other but not married are entitled to the same legislative provisions as married couples.

Senator Liam Twomey: Senator O’Toole praised the Government for introducing this legislation but he should be wary of Fianna Fáil bringing in legislation such as this, which may have been drawn up two years ago and based on a time when property was worth more, people had more assets such as shares and the criteria used here would have excluded most elderly people from being eligible for assessment. The sum of €36,000 and one’s home keeps one within this system. If one has more than that, one is excluded. Elderly people with significant amounts of shares and businesses would have been excluded from the financial point of view. Now that the Government has wrecked the economy, those shares and properties are no longer worth the same and a far greater number of people will become eligible for this scheme.

We must be concerned at the assessment of health needs carried out by the Government. The NEPS decides if one is eligible for education services and we see major delays of up to nine months, with obstacles placed before parents who seek these services. This will happen in this case as well. We saw this happen in the good times. Disability grants and care packages for elderly people were restricted to an unbelievable degree over the past few years. This is a Progressive Democrats way of thinking that still infects Fianna Fáil. Patients will not get access to these services, no matter how good this reads in principle, based on the history of this Government, which has restricted services to an unbelievable degree. If they were not available in the good times, the Government certainly will not make them available in the bad times. I would like the Minister of State to tell us when the legislation will come into force once it is passed. What will happen to the two public nursing homes that provide services to people in Wexford, St. John’s in Enniscorthy and the New Haughton hospital in New Ross? They provide excellent services but it may cost up to €1,700 per week to care for a patient there. Private nursing homes that do not need to provide the same level of services charge between €800 and €1,100. Will the National Treatment Purchase Fund, which is the Minister’s responsibility, reduce the quality of care provided at St. John’s in Enniscorthy and the New Haughton hospital

to reduce the cost per bed? These are the questions that must be answered. Will these facilities be closed? The Minister of State must make clear whether that will be the end result of the legislation. If public beds could not be provided in the good times and this problem developed while the Celtic tiger was roaring for the past ten years, how can we trust the Government to get this right in more difficult times?

What will the Minister of State do with the public nursing facilities where I send my patients in County Wexford? Will they be forced to cut the number of nursing and care attendant staff or will the remuneration of private nursing homes be improved so that the facilities provided will improve? These are the real questions Senator O'Toole, who supports this legislation, should be asking.

I am worried about the assessment because I can see it being used to make those with dementia, Alzheimer's disease and strokes the only ones eligible for services. I see people with leg ulcers, heart failure and significant breathing problems being given all sorts of cobbled together home care packages to keep them in their homes. This is not because the Government wants to keep elderly people at home but because it is cheaper.

The Minister of State referred to the majority of elderly people wanting to remain in their homes rather than going into nursing homes. If the majority of people prefer this, why is this legislation not rights-based? Why does it hark back to what the Progressive Democrats used to do with human rights? They used to put a cost on it, as the Minister of State is doing. If she says it is resource dependent, she must know how much she can put into this service for the next three years the minute the legislation is signed. If the Department has carried out a financial needs assessment on how much will be spent in the coming years, how much is the multi-annual budget? How many patients can be cared for using that budget? If the National Treatment Purchase Fund has completed its assessment to this degree, it should be able to tell how many patients it will look after and the Minister of State should be able to tell us. From that, the organisations representing elderly people and the Opposition may be able to work out the commitment of the Minister of State to elderly people. There is a major restriction on services for elderly people in the community at present. Home help and care packages are restricted and there are not enough public health nurses. At the same time, it is almost impossible to get people into public nursing homes.

The Minister of State has the figures and understands the problems. I would like her to indicate how many beds she envisages in the coming years. Anything else is only a sham, the same as when the Minister for Health and Children, Deputy Harney, announced the home care packages that would sort out problems for elderly people in the community. A recent report stated that it is almost impossible to work out whether one is entitled to a home care package. Even if one is entitled to it, it is impossible to get the full range of services promised. If the home care packages cannot be provided, how can this be right?

This is legislation and it must be better defined. This is not like one of Senator Mary White's policies announced today. Legislation must be accurate, not full of high, noble ideas and fancy words. It must be cut and dried, explaining what the people of Ireland are entitled to. Every one of us respects the dignity of older people and would love to see older people remain in their homes. If that is not available to them, I want to know how far the Government will go in looking after those people. The record of the Government up to this point has been measly. This type of legislation, which deals with the protection of people in the last years of their lives at a time when they are most vulnerable, should be rights-based.

If we look across the European Union or even the UK and Northern Ireland, they are able to provide far greater services on a rights basis than this Government is able to in this country. The Government was not even able to provide these services in the good times and I have my

[Senator Liam Twomey.]

doubts whether it has the commitment or will to provide such services in these difficult times. The comparison can be made with other European countries and one can see the deficits. That is the reason this legislation should have been rights-based. It would have given confidence to families and elderly people that the Government means what it says in putting this type of legislation through the House. I do not see that currently.

I will look for the Minister of State to return to this House at a later stage to answer a few simple questions. When will the legislation come into force, has the needs assessment been done and may we have access to those figures with regard to the financial impact? What could happen to St. John's Hospital in Enniscorthy, New Haughton in New Ross, the Ely Hospital in Wexford town or the district hospital in Gorey when this legislation is introduced? They provide a significant range of services and would not be able to compete on the cost basis that the National Treatment Purchase Fund will use.

Senator Maria Corrigan: I welcome the Minister of State and I welcome the opportunity to discuss this Bill. I also welcome that where people will require long-term nursing care, the three main aims of this Bill will ensure such care will be accessible, affordable and anxiety free.

As colleagues have noted, the current position is one which causes considerable anxiety for people, their spouses and their families. The costs of nursing fees are escalating and they appear to be the only costs not being reduced. Depending on where one lives, prices and costs can vary but there are very few nursing homes that are not charging the guts of €1,000 per week per person, which is quite a substantial cost for people to bear.

This also comes at a time which is upsetting and distressing for a family or spouse, if a member of a family can no longer live in the family home and where it is necessary to identify a place in which the family must have the peace of mind that those in care will be safe, secure and in receipt of the care needed. The family would also know that there will be long periods when those being cared for will be out of the family's sight. It is a significant leap of trust and faith to take and to combine that with financial worry as to how that care will be paid for should be unnecessary as it exacerbates an already very difficult position.

I have met constituents, as I am sure other colleagues have, who fear that as they try to meet costs, they will see life savings depleted at an alarming rate. They are aware that they may live longer and require such savings which may become fully depleted. If one is paying approximately €1,000 per week, a year of nursing home care would come to approximately €50,000. If a person has limited savings, his or her concern will be what happens to a loved one in a nursing home when the money runs out. There is anecdotal evidence of people being asked to leave nursing homes because their families are no longer in a position to pay those fees, which would be particularly distressing. This Bill will provide comfort and relief for family members and spouses feeling the pressure of those mounting nursing home costs.

I apologise if the Minister of State has answered the following question. With regard to how the contribution is to be calculated, where it is reckoned at the time of care and the family opts to defer payment until after the death of the person or spouse, how would a change in asset value be reflected in the reckonable amount? Will the amount be specified in value rather than as a percentage at the time of care? If assets subsequently decrease in value and money is not available, what will be the position? If the individual or couple have other financial commitments — they may have undertaken an action on behalf of a son or daughter, owe money or be discharging other financial commitments — will the amount of disposable income available to them be calculated on a net or gross basis for the purposes of determining the 80% amount?

While the Minister of State is present, I take the opportunity to address a number of aspects specifically relating to the Bill, although I do not wish to repeat what colleagues have raised. I apologise if the issues have been mentioned. I will address specifically the issue of capacity within the Bill. I am aware that there is a concern from advocates, including Age Action Ireland, in this regard. What regard will there be for the individual's personal opinion? I welcome the functional approach to capacity but I am very conscious that such an approach recognises that capacity can vary over time and be issue specific.

I note that on how we will determine capacity, there is a specific reference to two medical practitioners. What is the definition of a medical practitioner and will it include psychologists, for example, where the profession has established competence in the determination of capacity? It is the only profession that has established competence in the diagnosis and assessment of cognitive functioning and, arising from that, there are a number of questions.

Is there a mechanism to reflect a variation in capacity over time? For example, in the case of the onset of dementia, there can be occasions where a person would have very lucid periods and the definition we have provided within the Bill could be met. There would be other occasions when it would not be possible to meet that definition. A functional approach to capacity is such that we recognise it can vary over time and be time and issue specific.

I welcome the commitment within the Bill given to individual choice and recognise in regard to functional capacity that we could very well have a position where an individual will not have capacity in the decision around the financial arrangements. The person could very well have capacity with regard to which nursing home would be used. Will there be a provision for that?

Where capacity is determined not to be present for an individual, what measures will be put in place to monitor formally resident satisfaction with the nursing home that is to become a person's permanent home? Where capacity is determined not to be present, a very strong case is to be made for the adult to be designated a vulnerable adult, and particular regard should be given to such a person's circumstances in the context of an audit by the inspectorate. I welcome the commitment to inspections and ensuring all nursing homes will be registered and audited. In cases where individuals are determined not to have capacity, particular regard must be paid to them in these audits and that their families or carers be included.

Will there be a specific process for the care needs assessment? Some concerns have been expressed as to who will conduct them. Will there be an appeals process? What is the timeframe for implementing the legislation's proposals? Is it planned to apply this legislation to the numbers occupying acute hospital beds? That does not provide them with a good quality of life, wondering if they will keep the acute bed or be moved somewhere different. It is also not a good use of public moneys.

Senator David Norris: I welcome the Minister of State, Deputy Áine Brady, and this necessary Bill. While I have some reservations and questions about it, generally it is improving legislation. These are difficult economic times in which to cope with vulnerable and elderly people.

Yesterday, I received a communication from a very fine young graduate on the situation faced by him in the care of his elderly mother, one faced by many others. Although she is residing in a care home in the countryside, it comes to €3,000 a month. When her savings run out, this young graduate and his sister will find it impossible. That is why he welcomes the Bill's aim to provide some alleviation in paying for the care of his elderly mother, to whom he and his sister are devoted. He informed me he would be grateful of my support for the Bill and, although it is not a perfect solution, he feels it goes a long way to removing the current financial stress facing many families across the country.

[Senator David Norris.]

I am concerned about the whole area of care for the elderly, having had some experience of it myself. I recall an aunt, whom I adored, when she reached her 90s but, even with her indomitable spirit felt she had to go to some home. We examined some places which were pretty grim but eventually found a marvellous home, the Alexandra Guild House. The personal touch there, respect for the individuality of the person—my aunt could even have some of her own paintings and furniture in her room — home cooking and so forth made it wonderful. Unfortunately, it ran into trouble. With the assistance of Anne Byrne, programme manager to the then Minister for Health, Deputy Howlin, we managed to rescue the place. I am very proud this was done through the political system.

I am less proud of the treatment of people in several other nursing homes. I, along with my colleague and friend Senator John Paul Phelan, have raised the matter of Bethany House in Carlow. Both of us were seriously misled on the closure of this home. People were forcibly lifted out of the home against their will and the instructions of their relatives. It was shameful. People were bundled into ambulances against their will. In some cases that amounts to a death sentence. They were taken to a hospital where they will be confined to bed most of the day or forced to stay on lounges for long periods, taking away their independence which will kill them. I knew of someone who got bedsores because of this kind of treatment which eventually killed her. With proper nursing that should not happen. I appeal again to the Minister of State to reopen the file on Bethany House. For a time it was a unique case but I have discovered it has happened in other homes in Cavan and elsewhere. This is brutalisation and abuse of the elderly. We could have another scandal on our hands.

The nuclear family model has to a large extent broken down and for various reasons one can no longer expect an extended family automatically to be in a position to look after elderly relatives. It is necessary, therefore, the State takes some responsibility in their care. In her clear and positive speech, I appreciated the Minister of State saying, “It is deeply unfair that one person and their family with modest means could face very high bills to pay for care, while another might pay relatively little even though they had substantial means and assets”. I am glad a mechanism will be established in the Bill to achieve some degree of equalisation.

I also approve of the move towards community and home-based care solutions where it is appropriate — that is the key. Such care is the best. To my mind, hell would be to be stuck on one of these stretchers surrounded by other old half-corpses, drooling and moaning, with the blasted television on at full volume. Imagine the torture that must be for those who are locked into this state even though they are intelligent. I appreciate the Minister’s speech in its interest in the humane treatment of elderly people.

I also discovered a little nugget in her speech on which I want to celebrate and congratulate her. One of her ministerial colleagues, a female, did a disservice some years ago to democracy in this House in a Social Welfare Bill. Under equality legislation a case had been brought where a same-sex couple were denied transport facilities and they won. Instead of addressing it, the Minister in question opted to redefine the term “spouse” to do gay people out of their rights. It was most horrendous.

It was a source of real pleasure to me today, however, when I noted in the Minister of State’s script:

Section 4 defines couples for the purposes of the scheme. A couple is defined as (i) a married couple or as (ii) a heterosexual or same sex couple who are cohabiting as husband and wife for at least three years.

Well done to the Minister. I am not sure whether anyone else spotted this or said how historic it is. I am almost persuaded to believe the Government is serious about introducing a civil partnership Bill. This is the first little step. In the old days in Dublin 4, little brats like myself played a game called Relieveo which had various classes of penalties such as scissors steps, giant steps and baby steps. While this provision is just a baby step, it is in the right direction, of which I am heartily glad. I thank the Minister of State from the bottom of my heart for recognising a real human situation.

The care needs assessment is a good provision as long as it is serious and not used as a means to avoid confronting the difficulties in care for the elderly. There will always be financial implications in this area. The danger is these mechanisms may be used by the State to avoid having to cough up. However, I understand the great strains under which the State is operating at present.

I wish to ask questions about a number of other areas that are of interest. I refer to sections 9 and 10 and Schedule 1. The Minister of State stated:

Parts 1 and 3 of Schedule 1 set out the rules for calculating the contribution payable by a single applicant. In summary, a person will make a contribution of up to 80% of his or her income and up to 5% of the value of his or her assets, after deductions and safeguards have been applied.

In an uninformed view from the outside, this seems to be reasonable. How was this formula arrived at and what method was used to calculate it? It appears appropriate because if one is in a place permanently, what capacity has one to spend money anyway? It is not as though one will go off on a cruise. Moreover, one will have 20% left, which is a hell of a lot better than when such people were being given sixpence as pocket money. The phrase "pocket money" actually was used and I shuddered when I heard we were treating elderly people as though they were children.

My final question pertains to Parts 2 and 3 of the Schedule, which contain the rules on the contribution payable by a member of a couple. While I will not go into the whole matter, in this case the assessment is based on the principle of each member of the couple owning 50% of the couple's combined means and so on. I refer to the healthier member of the couple, that is, the person who remains in the community. Could this assessment render vulnerable his or her ownership of the home or his or her capacity to continue to reside there? That would worry me. In other words, if such people, who are expected to pay up to 50%, are assessed on the home and have a small income, they may find it difficult to make a contribution. Consequently, I am concerned they might be vulnerable in the enjoyment of their principal residence simply because their spouses were in nursing homes. I hope this is not the case and I may have misinterpreted it. I thank the Minister of State for this good day's work on which I applaud her. I again ask her to consider the question of Bethany Home and the other associated homes. This is not a partisan issue because there also was strong support on the Government side.

Senator Nicky McFadden: I welcome the Minister of State. This has been an interesting debate and I believe that all Members are singing from the same hymn sheet, that is, they unanimously seek the best for elderly people. While this Bill goes a long way it does not go far enough and, as Senator Twomey stated, the devil is in the detail. I have concerns with the present position with regard to eligibility and with, as some of my colleagues have noted, the availability of beds. The question of who decides on priorities as to who should get a bed in a particular area is a major issue. The local care hospital in Athlone has a waiting list that is as long as one's arm and it is the same for the local public nursing home. How people gain entry

[Senator Nicky McFadden.]

to them beggars belief. If possible, I seek clarity from the Minister of State as to how this will be defined in the new system.

I welcome this Bill's policy content in respect of home care support. From my experience, the optimum is to enable people to live in their own homes. However, there have been serious cuts, to which Senator Prendergast referred, regarding home help hours. While Senator Corrigan made the point that money has been put into this area, it is a case of being penny wise and pound foolish to fail to continue to invest in keeping people at home and enabling them to live with dignity there, rather than having them enter nursing homes or ending up in hospital, because that is what will happen eventually. Unless people are cared for properly and sufficiently, they will end up becoming ill and being obliged to enter hospital. In the long run, this costs a lot more money. Having worked in this field, I am familiar with how important it is to have proper therapists and enough public health nurses to deal with people, to spend time with them in their own homes and to provide the tailored individual needs for those concerned. As for the local authority systems, there must be more joined-up thinking to provide comfortable and accessible bathroom and bedroom facilities for people to allow them to remain in their own homes. In the long run, doing so also will keep people happy and at home.

Other Members commented on our society's changing demographics. One statistic I noticed pertained to a 138% increase over a 30 year period in the number of people over 35. Consequently, we must make provision for the elderly now. One should remember these are the people who contributed to the taxation system, who worked all their lives and who deserve to be cared for properly and with dignity. It is a no-brainer to state that proper home care is the proper alternative to residential care.

While I do not wish to repeat everything, another issue on which colleagues have touched pertains to nursing home standards, about which this Bill is to be commended. I welcome the fact that public facilities will be checked upon and overseen. I visited a number of nursing homes during the recent election campaign, some of which were clean and clinical but not very homely. Other nursing homes were fantastically homely and provided services such as entertainment and quality of life facilities. It is not all about therapeutics, it is about people living with dignity and respect, and such considerations should form part of the entire package.

I have very serious difficulties regarding the definition of a couple — other Members addressed this issue. I too welcome the Minister of State's intervention on same-sex cohabiting couples. However, Age Action Ireland referred to another category of people, namely, siblings. Senator Cassidy will identify with the point that there are many elderly brothers and sisters throughout the country who have not been identified in this Bill. Age Action Ireland's suggestion is that two persons living in a shared economic and social relationship should be categorised.

The other amendment I suggest is that the multidisciplinary team of health care professionals should be closely linked to the individual. The Minister of State previously expressed her belief that it should be a multidisciplinary team and this must be guaranteed by the legislation because it is crucial. Another suggestion is that social workers should form part of such a multidisciplinary team. I agree with Age Action Ireland in this regard because social circumstances also have a bearing on the manner in which people end up in nursing homes.

Senator Corrigan touched on the issue of house valuations. What will happen if there is a change in the valuation of a house? How will the 15% be calculated in such circumstances? I suppose the bottom line is that the amount of money charged should never exceed 15%. I would like the Minister of State to comment on that. I commend the Minister, Deputy Harney, and the Minister of State on introducing the initiatives contained in this Bill. I remind the

House that a great deal of detail remains to be teased out. However, it is a step in the right direction.

Senator Paul Bradford: I am glad to have an opportunity to say a few words on this legislation. I have raised this matter on the Order of Business on many occasions over the past two years. Senators have eagerly awaited this opportunity to have their say. I understand the Bill was given a reasonably thorough airing in the other House and I hope the Seanad will prove its worth once again when it offers its views and opinions on this important social legislation. I am happy to avail of this opportunity to say a few words on the record. Over 25 years have passed since Ireland was greatly divided when the people were asked to vote on a famous constitutional amendment. I refer to the pro-life amendment, which was designed to give constitutional protection to the unborn. I suggest to the Minister of State, Deputy Áine Brady, that it is about time we reflected on the possibility of introducing a constitutional amendment to enshrine the housing and health rights of the elderly in our community, including in our nursing homes.

Senator Nicky McFadden: Hear, hear.

Senator Paul Bradford: In that regard, the Bill before the House can be deemed to be a step in the right direction. I am worried about much of the content of the legislation. I refer to some of the definitions in the Bill, for example. Above all, I am worried about what the philosophy underpinning this legislation means for the future provision of services for elderly people. It used to be said that “children should be seen and not heard”, but that phrase has been removed from the lexicon, thankfully. Sadly, society now seems to have decided that the elderly should be neither seen nor heard. There is a view that the State should be satisfied as long as proper nursing home care is being provided and can be afforded. In other words, many people believe our only political and social aspiration for the elderly should be to ensure nursing home beds are available for them. That is not just inadequate but inappropriate and very sad. I see this legislation not as a major part of the jigsaw of measures that need to be put in place to assist our maturing citizens, but as a tiny part of the jigsaw.

We must recognise that the demographic profile of Irish society is of a greater number of elderly people. Many people will be concerned about long-term residential care. We have to put in place the supports and mechanisms they require. I appeal to the Minister of State to ensure that residential nursing home care is not at the core of her thinking and philosophy. It should be the final part of the equation, when all other options have been ruled out. Over the past two years, this House has had a number of discussions on this issue on the Order of Business. As I see it, the strong view of all sides of the House is that we should ensure that suitable policies and procedures are in place to allow the maximum number of people to remain in their homes, with their families and in their communities. It would be interesting to survey those who are currently in nursing homes and long-stay institutions to see what they think of their present whereabouts. We should ascertain what alternatives they would like to have offered to them. I suggest that the majority of respondents would prefer to be cared for in their own communities.

I am a realist. As Senator Norris said, society has changed. The current economic and social conditions dictate that suitable long-stay facilities have to be made available for people whose families cannot provide for them. It is for that reason that there is a place on the Statute Book for legislation of this nature. We cannot ignore the fact that the majority of people would prefer to be looked after in their own homes, families and communities. It costs much more to provide public beds than it does to meet the meagre cost of the carer's allowance payment. Thousands of HSE staff work in public nursing homes and district hospitals. The number of

[Senator Paul Bradford.]

people who work in the health sector in our communities — I refer to our hard-working district health nurses, for example — is much smaller. We need to re-examine that equation as a matter of urgency.

The former Minister for Social and Family Affairs, the late Séamus Brennan, had an outstanding vision for the future of this sector. He made tremendous strides when he reformed the carer's allowance system. He introduced the carer's benefit scheme. Some time ago, he gave me a strong commitment in this House that he was willing to reflect on the possibility of removing the means test for carer's allowance. I was hugely surprised and bitterly disappointed when the current Minister for Social and Family Affairs absolutely dismissed any prospect of a genuine relaxation of the rules in relation to carer's allowance and carer's benefit. I hope the Minister of State will discuss the need to re-examine those rules with the Minister, Deputy Hanafin, and her Cabinet colleagues. At a time when hundreds of thousands of people are, unfortunately, out of work, many people are willing to support and care for their relatives or neighbours, thereby allowing such people to remain in the community. If we were to help them to do so, that would be the answer to many people's prayers. We need a holistic debate on the much greater question of long-stay care.

At a time when many people are in nursing homes and many more are about to go into nursing homes, it is important that this Bill is before the House and that we are debating the need to put in place a financial system or package to provide for such people. While I did not hear the Minister of State's speech, I read it with great interest. I am glad that some of the anomalies in this legislation appear to have been tidied up during the Dáil debate. That is certainly welcome. As many people with a cottage or an acre of land were worried that the 5% annual charge might be imposed on them *ad infinitum*, it is right that a three-year cap has been put on the charge. I am sure that positive measure resulted from the debate in the other House. I hope this debate will lead to similar positive developments.

I acknowledge that this legislation is necessary because public or private nursing home beds are needed by many people. The nursing home system needs to be underpinned with a secure system of financial support. It is very important, in the interests of elderly people and their families, that the highest standards apply in our nursing homes.

I listened with interest to what Senator Norris said about the low standards in one or two nursing homes — I will not call them institutions. I accept that standards in the public system of nursing home care can sometimes be far from sufficient. One of society's strong aspirations must be to raise the bar in this respect. The decisions we take now on the future of elderly people will affect our lives as we get older. We need to make it clear that we are prepared to support our elderly people fully. We will do that as a gesture of thanks for what they have done for Irish society and as a marker for where we want society to go. I hope we can scrutinise the relevant sections of this Bill during the Committee Stage debate. I hope the Minister of State will look beyond the question of nursing home care and recognise and respect the fact that a much broader jigsaw of measures needs to be put in place to support our elderly people.

Debate adjourned.

Business of Seanad.

Senator Donie Cassidy: I propose an amendment to the Order of Business, that we take Private Members' business from 6 p.m. until 8 p.m., because Ministers must be allowed to vote on the motion of confidence in the Government in the Dáil from 5.30 p.m. to 6 p.m., and that the deliberations on the Nursing Homes Support Scheme Bill 2008 be allowed to continue until 5.30 p.m. The Minister of State wants time to respond to the Bill.

Acting Chairman (Senator Paul Coghlan): Is that agreed?

Senator Paul Bradford: We will make it up as we go along and say “Agreed”.

Acting Chairman: Agreed.

Nursing Homes Support Scheme Bill 2008: Second Stage (Resumed).

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

Minister of State at the Department of the Health and Children (Deputy Áine Brady): I thank Senators for their participation in this debate. As mentioned at the outset, the purpose of the Bill is to establish a new scheme that will equalise State support for public and private nursing home residents, ensure long-term care is affordable and anxiety free and that no one must sell his or her home during their lifetime to pay for their care.

The Bill addresses the reality that two thirds of all nursing home beds are in the private sector and puts in place for the first time a uniform system of financial support for individuals in public and private nursing home beds. We have worked hard to ensure this system contains strong safeguards, not only for the care recipient but also for his or her spouse or partner.

The new nursing homes support scheme, however, is only one component of the overall Government commitment to ensuring access to quality nursing home care for all who need it. While the new scheme addresses the issues of access and affordability, the new draft standards will address the fundamental issue of quality and safety.

A core principle of the health service reform programme is to put the users of health and personal social services at the centre of the services. We must ensure the protection of residents, safeguard and promote their health, welfare and quality of life, and ensure there is a focus on the dignity and autonomy of older people. These are the core objectives behind the draft national quality standards for residential care settings that were launched formally by the Minister on 9 March. Regulations will be required to underpin the standards. They are being drafted at present and are at an advanced stage. It is intended to have the relevant parts of the Health Act 2007 commenced on 1 July 2009 to allow the chief inspector inspect all centres against the regulations governing these centres, together with these approved standards.

As is evident, this is a time of great change within the nursing home sector. This year, for the first time, there will be a single comprehensive system of registration and inspection for all nursing homes, public, private and voluntary, and a single comprehensive system of financial support covering all nursing homes, public, private and voluntary. Moreover, both systems have the nursing home resident firmly at the heart of their service.

This is a time of great change within our population. Life expectancy in Ireland is increasing. This longevity is something to be celebrated, but it also presents policy challenges we must recognise. The latest statistics tell us that today 11% of people living in Ireland are aged 65 years or over. It has been estimated that this figure will rise to 20% by 2036, and to 29% by 2056. Thus, over the years ahead, our nation’s age profile will change. It is now, while our nation is still young, that we must consider the long-term care services needed to support us over the next half century and the funding model that, by virtue of financial sustainability, might ensure the long-term provision of such supports.

The fair deal represents a response to the immediate situation faced by private nursing home residents. However, the Government is also committed to further analysis to identify a financially sustainable funding model which will support the future infrastructure of all long-term care services, both community and residential. This work is critical to all our futures, both as the recipients of care services and as taxpayers.

[Deputy Áine Brady.]

I will address some of the specific issues raised by Senators. The care needs assessment allows for social, family and community support to be considered in addition to medical factors. It will not encompass arbitrary levels of dependancy, such as moderate dependancy or high dependancy; rather, it will examine whether a person needs long-term residential care. The assessment is holistic in nature. In addition to addressing medical needs, it provides for a person's family and community supports to be taken into account, thus allowing for social factors to be considered. For example, a person who may once have been classed as being of medium dependancy but who lives in an isolated area may be assessed as requiring long-term residential care.

Concerns were expressed over the absence of any ceiling on contributions from those with farms or business assets. I am happy to confirm that an important measure was introduced on Report Stage in the Dáil that addresses this concern. The measure provides that the three-year cap will apply to farms and relevant businesses in certain specified circumstances. These include circumstances where the person has suffered a sudden illness or disability that caused him or her to require long-term residential care, the person or their partner was involved in running the farm or business until the time of the illness or disability, or a family successor certifies that he or she will continue running the farm or business.

Some concerns were expressed regarding the changes in asset values and how these changes might affect applicants under the scheme. A person can seek a financial review under the scheme and this can take account of changes in income or in the value of a person's assets.

Senator O'Toole asked about the definition of "first three years" in regard to those already in care. The three-year period relates to the time a person has spent in a nursing home. As such, a person who has already been in a nursing home for three years prior to the introduction of the scheme will benefit from the three-year cap and will not have the principal residence taken into account. The only qualification is that the nursing home must be an approved institution that is registered, tax compliant and honouring the price agreement with the National Treatment Purchase Fund.

The care representative must be a specified relative or a fit and proper person approved by the court. This should address potential conflicts of interest that would arise if a health care professional were appointed as a care representative. The court would have to be satisfied the person is a fit and proper person, will act in the best interest of the applicant and does not have a conflict of interest.

Many Senators raised the issue of support for community-based services, bearing in mind that this Bill provides support for residential services. The Government is committed to community-based supports for older people and has allocated an additional €200 million towards the provision of community-based services over the past three years. The Government is committed to continuing to emphasise community-based care.

With regard to the benchmark on dependency, which I have already addressed, there is no level of dependency or cut-off point at which a person will fail to qualify under the care needs assessment.

The date on which the legislation will come into force will depend on the Bill's passage through the House and on the conclusion of the agreements between the National Treatment Purchase Fund and the private nursing homes. A definite date cannot be agreed as yet but it is intended to have the scheme operational in the last quarter of the year.

With regard to Senator McFadden's question on siblings, section 20 refers to the further deferral of the repayment of the ancillary State support in the case of the principal private

residence. Those who can avail of this deferral include certain relatives termed “connected persons”. The siblings must satisfy certain conditions: the asset in question must be their only residence, they must have lived there for not less than three years preceding the original application for ancillary State support, and they must not have an interest in any other property.

Many Senators, especially Senator Twomey, referred to the future provision of public nursing home care. The Government is committed to continuing with the public provision of nursing home care. There are approximately 8,000 public long-stay beds. The Government is providing an additional 860 new beds under the fast-track initiative. We must acknowledge that most of the public capacity is old and the new standards and regulations are being introduced on 1 July this year. The HSE will audit the current facilities and plan to refurbish those that do not meet modern standards. Senators will agree that we should have both public and private facilities of the same standard.

Some Senators referred to the general strategy pertaining to older people and carers. My office is working on the national positive ageing strategy. We hope to proceed to public consultation shortly.

I thank Senators for their contributions. I look forward to the further Stages of this Bill when the views the Senators have put forward will be considered in detail. I commend the Bill to the House.

Question put.

The Seanad divided: Tá, 29; Níl, 12.

Tá

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callanan, Peter.
Callely, Ivor.
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.
Norris, David.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
O'Toole, Joe.
Ormonde, Ann.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bradford, Paul.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.

McCarthy, Michael.
McFadden, Nicky.
Mullen, Rónán.
Regan, Eugene.
Ryan, Brendan.
Twomey, Liam.

Tellers: Tá, Senators Camillus Glynn and Diarmuid Wilson; Níl, Senators Paul Coghlan and Maurice Cummins.

Question declared carried.

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

Senator Donie Cassidy: Next Tuesday.

Committee Stage ordered for Tuesday, 16 June 2009.

Sitting suspended at 5.25 p.m. and resumed at 6 p.m.

Human Trafficking: Motion.

Senator Rónán Mullen: I move:

That Seanad Éireann noting:

- Ireland is currently positioning human trafficking within its immigration policy and practice and not within the sphere of organised crime;
- the victims of sex trafficking are individuals who have experienced human rights abuses at the hands of criminal gangs;
- the State has mandated an immigration law enforcement agency as the sole authority for granting the recovery and reflection period to victims;
- gardaí who police immigration laws are also given the mandate to deal with victims of the crime of human trafficking, even though the two roles are not compatible because many victims will have broken immigration laws as a consequence of being a victim of human trafficking;
- the accommodation and measures set out by the Government to provide assistance to suspected victims of trafficking during the recovery and reflection period is neither conducive to reflection and recovery, nor does it give suspected victims an adequate standard of living;
- in practice victims are not granted the six-month temporary residency permit at the appropriate time;

and considering:

- protection and assistance are not based on the human rights of the victims of the crime but are too conditional upon co-operation with the criminal investigation;
- in practice the threshold is too high and too “evidence-based” in granting victims the recovery and reflection period and is therefore leaving it very difficult for victims to access this protection;
- the process of gathering evidence is traumatising for victims;
- it is traumatising for witnesses to testify in front of the accused and their associates in the court room;
- there is a concern that the State is “ticking boxes” in its efforts to ratify the Council of Europe Convention on Action against Trafficking in Human Beings but not adequately addressing victims’ needs;

calls on the Government to:

- mandate the organised crime section of the Garda to police human trafficking and deal with victims of the crime;

- act so that gardaí in the organised crime section receive specialised training to deal with this issue;
- establish a joint investigation unit to police human trafficking on the island of Ireland more effectively, as human trafficking by its nature is a transnational organised crime and in Ireland it is exacerbated by our loosely monitored border;
- include all of Article 14 of the Council of Europe Convention when it comes to granting victims residency in Ireland so that victims of human trafficking in Ireland will be given protection and assistance based on their human rights;
- follow the advice of the EU Commission's expert group on trafficking in human beings;
- extend the recovery and reflection period to three months and provide it immediately when someone is identified as a suspected victim;
- ensure the identification of suspected victims of trafficking happens in collaboration with law enforcement and victim support agencies;
- commit to granting the six-month temporary residency permit immediately to victims when they begin co-operating with the criminal investigation;
- relieve victim trauma by ensuring victims have the option of giving evidence by video and testifying in court by video link;
- include as part of policy the promotion of exit routes to enable women to move out of prostitution and trafficking situations; and
- follow the lead of Sweden, Norway and Iceland by criminalising the purchase of sex so as to target demand in the sex exploitation industry.

I welcome the Minister. This motion is intended to address in a holistic way issues affecting people who are victims of human trafficking. The stark reality of sex trafficking and prostitution was highlighted last December when a series of brothels throughout Ireland and the UK were raided, leading to the arrest of three alleged traffickers, two of them Irish and two female. They are currently in the custody of Welsh authorities awaiting trial, although all three pleaded not guilty to charges brought against them last Friday. The rationale behind the motion is straightforward. Prostitution and human trafficking are practically inseparable. Each depends on the other and each is a direct attack upon the dignity and welfare of the women involved.

The publication today of the national action plan to combat human trafficking has not, unfortunately, allayed concerns that Ireland is currently positioning the issue of human trafficking within its immigration policy and practice and not within the sphere of organised crime, which is where it should be. This is unfortunate and unnecessary and has practical consequences which places the victims of sex industry exploitation even further at a disadvantage. By mandating an immigration law enforcement agency as the sole authority for granting the recovery and reflection period to victims, in effect, a garda not below the rank of superintendent, the State has created an extra prejudice against the welfare of trafficked and prostituted women. Gardaí who police immigration are also given a mandate to deal with victims of the crime of human trafficking, even though the two roles are not compatible because many victims will have broken immigration laws as a consequence of being involved in human trafficking. This is a tragic catch-22 as these persons would not be breaking any immigration laws if they were not already victims of trafficking.

[Senator Rónán Mullen.]

It is inevitable that immigration gardaí consider immigration laws more urgent than those relating to the crime of human trafficking. What often gets lost among the bureaucracy of immigration control is that the victims of sex trafficking are individuals who have experienced human rights abuses at the hands of criminal gangs. It follows from this glaring category error that victims do not receive support appropriate to their vulnerability which would maintain their dignity as persons. The accommodation and measures set out by the Government to provide assistance to suspected victims of trafficking during the recovery and reflection period is not conducive to reflection and recovery, nor does it give suspected victims an adequate standard of living. For example, victims are given accommodation in hostels for asylum seekers. They share bedrooms with at least two other strangers and there is no privacy or space for the victims to recover. There are no facilities to cook their own food, a substantial problem considering the poor standard of food provided.

Victims are given an allowance of €19.10 per week, which is not enough for an adequate standard of living. The Ruhama organisation, which has done excellent work in supporting women in prostitution, many of them victims of human trafficking, and some of whose representatives are in the Visitors Gallery, has regularly supplemented the care of victims by buying them mobile phones and call credit. The phones are necessary for security reasons and to help victims stay in touch with the support services. The allowance of €19.10 a week barely allows victims to buy toiletries or clothing. Hence, Ruhama assists them in this regard. There is evidence that the accommodation provided by the State for suspected victims of trafficking during the recovery and reflection period can put victims at risk of being re-trafficked or found by their traffickers.

In practice, victims are not granted the six-month temporary residency permit at the appropriate time. Often, victims have spoken to the Garda and even given formal statements before they have been granted the permit. They are left with an insecure residency status for a long period, which adds further to their anxiety and trauma. The six-month permit should be granted immediately to victims when they start co-operating with the criminal investigation. We also need to apply the stipulation which allows for the six-month permit to be granted to victims who may need or want to give evidence before the recovery and reflection period expires.

Protection and assistance are not based on the human rights of the victim but are too conditional upon co-operation with the criminal investigation. I am talking about the *de facto* situation. In addition, the reference in the Immigration, Residence and Protection Bill 2008 to co-operating with the criminal process is unclear. There are concerns for the protection of victims who do not have much evidence to give to a criminal investigation or who are too traumatised to co-operate. In practice the threshold for granting victims a recovery and reflection period is too high and too evidence-based, which means it is difficult for victims to access this protection. In addition, the repetitive and laborious process of gathering hand-written statements is traumatic for victims. In other jurisdictions sophisticated and humane arrangements are made for gathering evidence, such as providing for a video link. I note the Government's proposed amendment to the motion mentions the possibility, provided for under legislation, of giving evidence by video link in court, but it is also important at the information-gathering stage that we step up to the plate and imitate good practice in other countries.

The failure of practice to match theory in the area of sex trafficking reinforces concerns that the State is simply ticking boxes in its efforts to ratify the Council of Europe Convention on Action against Trafficking in Human Beings, while not adequately addressing victims' real-life needs away from the bureaucratic scorecards. We need a fresh approach to victims of the sex abuse industry. There is a compelling need to mandate the organised crime section of the Garda to police human trafficking and deal with victims of the crime. What has happened to

Operation Quest? How many gardaí are working on this? Is it not the case that the only investigations of significance in the sex industry are being done by ordinary gardaí on the ground and that we do not have the specialists we should have? Even in its best days Operation Quest was only Dublin-based.

Gardaí in the organised crime section should be granted the capacity to identify victims of human trafficking in collaboration with other relevant parties, including victim support groups. When we consider how terrified some of the victims will be, this seems the only humane way to proceed. The gardaí in question should also receive specialised training to deal with this issue and be given a clear protocol on policing brothels. For instance, gardaí need to be aware of the vulnerability of victims and the fact that some may be undocumented owing to the mode of operation of human trafficking. Such people should not be arrested under immigration law. Accommodation needs to be victim-centred, allowing victims to be safe from the perpetrators and to receive the care necessary to recover.

Further efforts are needed, such as the establishment of a joint investigation unit to police human trafficking more effectively. Human trafficking by its nature is a transnational organised crime and in Ireland it is exacerbated by our loosely monitored Border. The traffickers regularly move victims around the island to keep the buyers happy with “new women”. Our police forces need to emulate the strategy of the criminals by networking closely. The victims can also find it confusing, repetitive and stressful when they have to deal with multiple police forces who are investigating the same criminal gang.

In terms of our international obligations, we ought to include all of Article 14 of the Council of Europe Convention when it comes to granting victims residency in Ireland so that victims of human trafficking will be given protection and assistance based on their human rights. Currently, the Immigration, Residency and Protection Bill 2008 only includes section (b) of Article 14 and not section (a). Section (a) of Article 14 states with regard to the residence permit that “each party shall issue a renewable residence permit to victims where the competent authority considers that their stay is necessary owing to their personal situation.”

More than this, we must follow the advice of the European Commission’s expert group on trafficking in human beings. The group, established by the European Commission in 2003, has advised that “trafficked persons who do not wish to testify as witnesses — or are not required as witnesses, because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country — require equally adequate protection and assistance as victim-witnesses.”

With this in mind I call on the Government to implement a number of measures, including the extension of the recovery and reflection period to three months and to provide it immediately when someone is identified as a suspected victim; ensuring the identification of suspected victims of trafficking happens in collaboration with law enforcement and victim support agencies; committing to grant the six month temporary residency permit immediately to victims when they begin co-operating with the criminal investigation; relieving victim trauma by ensuring victims have the option of giving statements by video as is the case in the UK; and including as part of policy the promotion of exit routes to enable women to move out of prostitution and trafficking situations.

This brings me to the final part of the three-pronged holistic approach to aiding victims of the sex exploitation industry. As well as the protection of women caught up in sexual exploitation and the promotion of exit route strategies to aid these women to escape from the sex industry, there is a need to follow the lead of Sweden, Norway and Iceland by criminalising the purchase of sex to target the demand for the sex exploitation industry. Reports indicate that criminalisation has been effective and that there has been a reduction in the number

[Senator Rónán Mullen.]

of women in prostitution in Sweden and a relative reduction in human trafficking activity since criminalisation.

When I tabled amendments to the Human Trafficking Bill last year, glib responses were given to me. I was told that it was not clear that what had been done in 1999 in Sweden had worked. Since then Norway and Iceland have followed suit. Sweden has reported a massive reduction in prostitution. When trafficking has been on the rise elsewhere, they have managed to block it in that country.

We were also given the glib response that demand is never dispersed but only displaced, as if that would not be a significant achievement in itself, with a country reducing the incidence of prostitution and exploitation through trafficking. The jury, however, is no longer out.

There are many glib assertions that prostitution is the oldest profession when it is really the oldest oppression. Many crimes have existed since the time of Adam and there are some crimes we may never fully stamp out, but that does not mean we should not seek to deter them. By criminalising the purchase of sexual services, we would help make this country a cold house for traffickers by tackling the demand side of the market.

If the Government is serious in its approach to the sexual exploitation industry it will give legal effect to the above considerations. The dignity and welfare of those who, for whatever reason, are caught up in this web of exploitation demand no less than the most robust legal safeguards. Criminalising the purchase of sex makes Ireland a cold house for sex traffickers and makes it less likely that persons will fall into the clutches of the sex industry. When it comes to prostitution and sex trafficking we have to ensure that everything is done to reduce demand. We have to demand that women are given their own lives to live and not a nightmare substitute.

Senator Joe O'Toole: I congratulate Senator Mullen on the work he has done on this motion. It is crucially important and reflects where we are as a society, even if it makes many people feel uneasy.

This is an issue I have raised over the past 15 years and it is time we were honest and open about how we deal with it. There are arguments about this issue but society is afraid to act. There is no logical reason, if we look at the triangle between the pimp, the prostitute and the punter, that two of those people are trading in illegality while the other goes scot free in law. Someone pimping a woman, a child or even a man, who is selling sex to someone, and the prostitute who is part of that, are guilty under the law of the land while the third person is not.

I do not like using words such as “client”. It is like the phrase “oldest profession”, it is used as if a person is buying a glass of port or going to see the dentist. It is an unequal relationship in every way possible.

The Minister takes a solid and sensible view of the world. We cannot have a situation where the person using the services of a pimp or a prostitute cannot be found guilty. It is possible to go through legislation and point to a line that states that a person can be charged with using the services of a prostitute but I have not been able to find any such case in the past 20 years. It is not acceptable to use that excuse.

This is about supply and demand. By allowing a situation where the person creating the demand is not charged or found guilty, we are driving sex slavery. We are fuelling and feeding the abuse of women. One of the problems I have with the new immigration regulations is that people must drop under the radar for three or four months while they try to secure a new residence permit. This is a classic example of how people drop out of the official system into the nether world where they are wide open for exploitation. I have heard the Minister's argu-

ments in favour of the new regulations and I understand his motivation, but this will create problems.

We should think back to the debates we had on child pornography. Why did we introduce that legislation that made it a crime for someone to look at child pornography or to possess images, film or computer files containing child pornography? We all agreed that looking was a crime because it encouraged, fed and supported the exploitation and abuse of children somewhere else. The thinking was logical — if we allow people to look at and pay for child pornography, somewhere else down the line, we are encouraging child abuse and paedophilia. That was the reason behind it. It is absolutely logical. There is no gainsaying that. We should close this gap. If we are looking at the question of equality — I do not mean equality in the legal sense but in terms of the perfect meaning of the word — how can two sides of the triangle be guilty but the third side, without whom this cannot operate, never be found guilty? The only way to deal with this is by way of the final point in Senator Mullen's motion, that is, to follow the lead of Sweden, Norway and Iceland by criminalising the purchase of sex in order to target the demand for the sex exploitation industry.

I have spent much of my life in situations where I win the argument but get no delivery on the facts at the end of the day. I have spent many occasions shouting across tables when I have been sure of winning the argument. I am absolutely certain I can win the argument tonight but I am very uncertain as to whether that will get any result at the end of the day.

Legalising prostitution is another argument which will come into this debate. This is part of what Senator Mullen referred to as using terms like “the oldest profession”. As he quite rightly said, it is not the oldest profession but the oldest oppression and suppression. It can never be anything else. By using a term such as “sex worker”, it is as if somebody suddenly decides to leave the restaurant business and become a sex worker. It is unacceptable. That kind of soft, user-friendly language, which has tried to take the sting out of what is happening here in ways which make it possible to include it in polite conversation, is unacceptable. It is an abuse of language. It should be seen as such.

People are not prostitutes by choice, except in pornographic material. We are told people love this job and find it easy and so on. Women who become prostitutes do so because they are driven by desperation and as a result of being victims of poverty, drugs, addiction, fear and other negative aspects.

By saying that, in some way, brothels and prostitution allow usually brutal men to find sexual satisfaction, because were it not available they would take it out on people close to them or on innocent people walking the roads or other groups, is like saying it was lucky we put the people in the institutions referred to the Ryan report because if they were not abusing children there, they would have abused children somewhere else. What is happening is unacceptable.

I am happy to second Senator Mullen's motion and appeal to the Minister to take it seriously and to colleagues on all sides of the House to look at what we are doing in terms of respect for the dignity of women, in particular, and for poor people who are exploited and trafficked, especially immigrants. We must take this action and I commend the motion to the House.

Senator Denis O'Donovan: I move amendment No. 1:

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

- welcomes the publication of the comprehensive National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009-2012;

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- notes the extensive package of legislative and administrative measures undertaken in the past 18 months to prevent trafficking in human beings, protect the victims and prosecute the offenders;
- welcomes the coming into operation of the Criminal Law (Human Trafficking) Act 2008 and the arrangements providing for a 60 day recovery and reflection period for suspected victims and for a six month temporary period of residency in the State, which is renewable;
- acknowledges the provision in the Criminal Law (Human Trafficking) Act extending the provisions of the Criminal Evidence Act 1992, including the giving of evidence through a live television link, to victims of trafficking;
- recognises the provision in the Criminal Law (Human Trafficking) Act that made it an offence to solicit a trafficked person, in any place, public or private, for the purpose of prostitution;
- acknowledges the deployment of Garda resources is a matter for the Garda Commissioner based on his professional assessment of the operational requirements;
- acknowledges that the Garda Síochána is the sole authority within the State vested with the power to undertake an investigation into a claim that an offence of human trafficking has been perpetrated and having regard to such powers reaffirms that the Garda Síochána is the appropriate authority to consider if there are reasonable grounds for believing that an offence may have been committed;
- commends the concerted efforts of the Garda Síochána in the identification and protection of victims and in the determined fight against trafficking in human beings and notes the progress being made in this regard;
- notes the establishment of dedicated units in the Department of Justice, Equality and Law Reform and the Garda Síochána to address the issue of human trafficking;
- welcomes the links which the dedicated Units in the Department of Justice, Equality and Law Reform and the Garda Síochána have established with other jurisdictions for the purpose of providing a comprehensive, cross-border and international approach to tackling issues of human trafficking;
- reaffirms that the Minister is the sole authority who has been vested with the power to grant a period of recovery and reflection in the State;
- notes that the 60 day recovery and reflection period goes beyond the minimum period of 30 days provided for in the Council of Europe Convention on Action Against Trafficking in Human Beings;
- notes that the current administrative arrangements provide that the Minister may grant a temporary residence permission prior to the expiry of the period of recovery and reflection;
- reaffirms that the provision of protection and assistance to a suspected victim of human trafficking is not conditional on victims co-operating with the authorities;

- notes that when a person is identified as a potential victim of human trafficking priority consideration is given to the grant of a period of recovery and reflection and the subsequent grant of temporary residency permission;
- supports the partnership approach adopted between Governmental and non-governmental agencies and international organisations in addressing trafficking in human beings both within and outside the jurisdiction;
- acknowledging the supporting role that organisations and individuals engaged in this area can provide to potential victims of human trafficking, calls on those organisations or individuals to encourage and support such persons when engaging with the State authorities and calls on such organisations or individuals to engage with the State authorities to the greatest extent possible so as to assist in the fight against human trafficking and to support early identification of potential victims of human trafficking;
- notes the Governments commitment to ratify the Council of Europe Convention on Action Against Trafficking in Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime as soon as all the necessary legislative and administrative arrangements are in place.

I compliment Senator Mullen on tabling the motion. Although I do not agree with all the points raised, such a debate is needed. I welcome the publication of the comprehensive national action plan to prevent and combat trafficking in human beings in Ireland 2009-12. I note the extensive package of legislative and administrative measures undertaken in the past 18 months to prevent trafficking in human beings, protect the victims and prosecute the offenders. I also welcome the coming into operation of the Criminal Law (Human Trafficking) Act 2008 and the arrangements providing for a 60 day recovery and reflection period for suspected victims and for a six month temporary period of residency in the State, which is renewable.

I acknowledge the provision in the Criminal Law (Human Trafficking) Act 2008 extending the provisions of the Criminal Evidence Act 1992, including the giving of evidence through a live television link, to victims of trafficking. I recognise the provision in the Criminal Law (Human Trafficking) Act 2008 that made it an offence to solicit a trafficked person, in any place, public or private, for the purpose of prostitution. I acknowledge that the deployment of Garda resources is a matter for the Garda Commissioner based on his professional assessment of the operational requirements. I also acknowledge that the Garda Síochána is the sole authority within the State vested with the power to undertake an investigation into a claim that an offence of human trafficking has been perpetrated and having regard to such powers reaffirm that the Garda Síochána is the appropriate authority to consider if there are reasonable grounds for believing that an offence may have been committed.

I commend the concerted efforts of the Garda Síochána in the identification and protection of victims and in the determined fight against trafficking in human beings and I note the progress being made in this regard. I also note the establishment of dedicated units in the Department of Justice, Equality and Law Reform and the Garda Síochána to address the issue of human trafficking. I welcome the links which the dedicated units in the Department of Justice, Equality and Law Reform and the Garda Síochána have established with other jurisdictions for the purpose of providing a comprehensive, cross-border and international approach to tackling issues of human trafficking.

I reaffirm that the Minister is the sole authority who has been vested with the power to grant a period of recovery and reflection in the State. I note that the 60 day recovery and reflection

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period goes beyond the minimum period of 30 days provided for in the Council of Europe Convention on Action Against Trafficking in Human Beings and that the current administrative arrangements provide that the Minister may grant a temporary residence permission prior to the expiry of the period of recovery and reflection.

I reaffirm that the provision of protection and assistance to a suspected victim of human trafficking is not conditional on victims co-operating with the authorities. I note that when a person is identified as a potential victim of human trafficking priority consideration is given to the grant of a period of recovery and reflection and the subsequent grant of temporary residency permission.

I support the partnership approach adopted between governmental and non-governmental agencies and international organisations in addressing trafficking in human beings both within and outside the jurisdiction. I acknowledge the supporting role that organisations and individuals engaged in this area can provide to potential victims of human trafficking, call on those organisations or individuals to encourage and support such persons when engaging with the State authorities and call on such organisations or individuals to engage with the State authorities to the greatest extent possible so as to assist in the fight against human trafficking and to support early identification of potential victims of human trafficking.

I note the Government's commitment to ratify the Council of Europe Convention on Action Against Trafficking in Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime as soon as all the necessary legislative and administrative arrangements are in place.

Any sort of trafficking is a very serious crime. Ten or 15 years ago, this issue was not to the fore in Irish society. Regrettably, it has come to the fore and the Minister, the Department and the Government are taking the appropriate steps in this regard. Significant moves have been made, as set out in the amendment to the motion.

I recognise the sincerity of Senator Mullen in tabling the motion which is worthy of debate but take issue in that there seems to be an insinuation that the Garda National Immigration Bureau is incapable of carrying out its mandate to protect victims of human trafficking because it also enforces Ireland's immigration laws. The gardaí are very experienced in being able to differentiate between an immigration issue and a human trafficking one. By and large, they have considerable experience in this regard. That should be clarified.

The Garda Síochána has much experience dealing with victims of all kinds of violence and trauma and has a well deserved reputation for dealing with vulnerable victims with sensitivity and understanding. The suggestion that members of the Garda National Immigration Bureau might act differently because a person is a victim of human trafficking or an irregular migrant is unwarranted and inappropriate. I note with approval that the Garda Síochána has recently established a human trafficking investigation co-ordination unit within the Garda National Immigration Bureau. Efforts by the Garda, including its co-operation with agencies such as Interpol in Europe and others in the United States and even Asia, have led to significant progress in terms of highlighting and, so far as possible, detecting the issues surrounding human trafficking. As I said, it is a most deplorable crime, particularly where it involves the trafficking of children. My views on this are well recorded. The Garda Síochána has given priority to child trafficking by way of Operation Snow, which was undertaken by the Garda National Immigration Bureau in 2007 and is designed to prevent the trafficking of minors into or within the State, ensure the welfare of suspected victims of such criminal activity is adequately provided for, and achieve prosecutions where criminal activity of this nature has been detected.

While I welcome the thrust of the motion, it must be acknowledged that the Minister and his Department are doing good work in this area. Nevertheless, I recognise that much more remains to be done.

Senator Eugene Regan: I welcome the Minister, Deputy Dermot Ahern. Fine Gael supports the motion before the House. I welcome the opportunity to speak on this difficult and important issue. Human trafficking is the third most lucrative illicit business in the world after arms and drug trafficking. The Government's record in this area is not impressive. The introduction of the Criminal Law (Human Trafficking) Act 2008 was an important step. However, there are deficiencies in the legislation which are already becoming apparent in terms of its effectiveness. The Government has ignored various proposals in this area from both the Opposition and from relevant non-governmental organisations. Having said that, I welcome the publication today of the long-awaited national strategy on human trafficking, which addresses many of these issues.

Human trafficking is a growing industry in Ireland and requires the immediate provision of support and protection services. There must be a comprehensive strategy to tackle this activity. The estimated value of the sex trafficking industry in the State is €180 million, yet there have been no prosecutions to date of perpetrators of this activity. In its 2008 report, entitled *Trafficking in Persons*, the United States Department of State placed Ireland in the second of three performance tiers, based on an assessment of its record in prosecuting offenders, protecting victims and preventing abuses. It described Ireland as a "destination country" for women, men and children trafficked for the "purposes of commercial sexual exploitation and forced labour". The report recommended that Ireland establish formal policies and procedures to ensure victims are provided with access to protection and assistance in co-ordination with anti-trafficking non-governmental organisations and implement a visible trafficking demand reduction campaign. Thus far, the Government has made no response to these recommendations, but the plan announced today presumably represents an effort to address this.

The major problem with the Criminal Law (Human Trafficking) Act 2008 relates to its enforcement in respect of the identification of a person as a victim of trafficking. At present, there are no clear policies or guidelines for identifying a woman as trafficked. Nor is it clear what should happen to women who have been identified as victims of sex trafficking. To date, Ireland has not officially identified any victims of trafficking. The consequences for women being detected but not designated victims of trafficking are serious, ranging from arrest to deportation. Victims of trafficking who come forward to authorities effectively receive no protection. It is they — the victims, not the traffickers — who are most likely to end up in prison. They are identified first and foremost as illegal immigrants.

The focus of the Garda Síochána's efforts in tackling human trafficking should move from the Garda National Immigration Bureau to the Garda organised crime unit. Specialist anti-trafficking officers must be appointed within the force to identify and refer women in prostitution to appropriate services. There is an opportunity, on Report Stage of the Immigration, Residence and Protection Bill 2008, to put in place substantive protection procedures for victims of trafficking. Without adequate protections in place, it will be difficult to secure prosecutions at the supply end of this growing industry.

There is a difficulty with the statistics relating to human trafficking. In this regard, I welcome the undertaking in the action plan announced today to garner more reliable data on the extent of the problem. It is only when this information is available that we can identify and introduce the necessary corrective measures. Those data that are available are worrying. The recent report by the Immigrant Council of Ireland, *Globalisation, Sex Trafficking and Prostitution*, published in April 2009, identified a minimum of 102 women and girls as sex trafficked in 2007

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and 2008, 11 of whom were children. It is estimated that up to 97% of the 1,000 women involved in indoor prostitution in Ireland at any given time are migrant women.

Concerns have been expressed in regard to proposals for the provision of temporary residence status to victims of trafficking. The reality is that if we adopt a sensible and practical application of a temporary residency system, with clear qualifying criteria, abuse of any such system should not follow. Without such protections clearly expressed for victims, they will not come forward to the Garda authorities. This is fundamental to securing convictions against those directly involved in this trade. By doing this, we are hitting the supply end of the industry.

It is clear that a purely criminal law response will not resolve the problem of human trafficking. We must provide sheltered accommodation and other support services for identified victims of trafficking and those who come forward. Fine Gael has tabled an amendment to the Housing (Miscellaneous Provisions) Bill 2008, currently on Committee Stage, to extend the remit of the Sonas Housing Association, which offers accommodation and support services to victims of domestic violence, to include a service to sex trafficked victims. I hope the Government will accept this proposal.

In the United Kingdom, the British Home Secretary has put forward proposals to introduce a provision of direct liability whereby ignorance of the status of an individual as sex trafficked is not a defence in court, which it is under the law of this State. Whether such a provision would pass the constitutional test is another matter. Senator Mullen observed that Sweden and Norway have introduced legislation criminalising the purchase of sex. Fine Gael supports such an approach in principle. It is extraordinarily inequitable and unjust that the seller of sex — to put it euphemistically — is the only criminal in the equation. However, Senator Mullen did not explain that since those two countries have decriminalised the selling of sex, this has had the effect of reducing human trafficking. While prostitution is a criminal offence in this country, it seems fair that the purchaser should also be criminalised. That is an issue in respect of which further debate is required.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I welcome the opportunity to contribute to this debate. Senator O'Toole exhorted me to take this matter seriously. I hope he was not suggesting I do not take it seriously because nothing could be further from the truth. I am glad the proposers of the motion have welcomed the launch earlier today of the national action plan to prevent and combat trafficking in human beings in Ireland for the years 2009 to 2012. I will use this opportunity to enlighten some of the Senators in respect of the type of measures we have put in place during the past 18 months. While I am not seeking credit, they should acknowledge that some fairly significant changes have taken place in this area.

The publication of the national action plan is a landmark in the approach we are taking to dealing with the scourge of trafficking. In the circumstances, it is particularly appropriate that we are debating this matter today. The plan sets out the measures which have already been undertaken to prevent trafficking, protect victims and prosecute offenders. It also identifies areas in respect of which further action is required and sets out the structures which, when fully in place, will allow Ireland to ratify the international instruments dealing with trafficking in human beings.

The plan is based on what is known as the three Ps in the area of trafficking, namely, prevention, protection and prosecution. Among the future initiatives planned are awareness raising by means of targeted campaigns, educational and other programmes, information aimed at law enforcement and front line personnel, victims, migrant communities, countries of origin; the provision of legal advice and assistance to potential and suspected victims of trafficking by

the Legal Aid Board; the development of a data strategy to establish the nature and extent of human trafficking in Ireland which will provide an evidential basis for future policies and programmes to tackle trafficking in persons; the provision of comprehensive information outlining the rights and services available to potential and/or suspected victims and the contact details for organisations which will be useful to a potential and-or suspected victim; and measures to ensure the security and integrity of passports, travel and identity documents.

Senator Mullen referred to significant work done by Ruhama and a number of other NGOs in this area. My Department has funded Ruhama to the tune of €320,000 this year. Some €250,000 of this money came from the probation service and is devoted to court and outreach work, advocacy and assisting trafficking victims. In addition, a €60,000 grant was provided by the Commission for the Support of Victims of Crime to allow representatives of Ruhama to accompany victims to court. The Senator must acknowledge we have provided significant assistance to Ruhama in this regard.

I wish to outline some of the developments in the fight against the crime of trafficking. The Criminal Law (Human Trafficking) Act is the primary and most recent legislative measure underpinning the Government's fight against this despicable crime. I do not accept the comments made by Senator Regan. Legislation is always a living document and can and should be changed, depending on the circumstances that arise. However, this legislation has only been in operation since 7 June 2008. While there are no prosecutions being pursued at present, investigations are taking place. When legislation relating to this area was enacted in 2000, it was many months before cases were brought. Later I will provide figures with regard to the number of investigations that are taking place.

The Criminal Law (Human Trafficking) Act 2008 creates offences criminalising trafficking in persons for the purpose of their sexual or labour exploitation or for the removal of their organs and provides penalties of up to life imprisonment for anyone found guilty of committing these offences. This Act is a milestone in our determination to rid this country of the scourge of traffickers and to ensure that nothing in our criminal justice system acts as a discouragement to trafficked persons from seeking assistance and, ultimately, from giving evidence against the traffickers. A number of investigations into allegations of trafficking under the provisions of the Act are ongoing. When these are complete an investigation file will be prepared and submitted to the law officers for consideration as to what charges, if any, can be brought. Neither I nor the Government are the actors in respect of this matter. The Garda must investigate matters, produce files and then submit them to the DPP, who is independent in his functions.

A number of provisions in the 2008 Act also offer protection under the criminal law to trafficked persons. Witnesses may fear for their own safety and possibly the safety of their families in their home countries. For that reason, the Act provides for the exclusion of the public from court proceedings and, in addition, victims are granted anonymity. In addition, a trafficked person will be able to give evidence, whether in Ireland or abroad, through a live television link.

One issue that was the subject of much comment during the debates on the 2008 legislation was that of prostitution. Where that was directly relevant to the legislation, it was addressed through the tabling of ministerial amendments that made it an offence to solicit or importune a trafficked person, in any place, for the purpose of prostitution. A person convicted on indictment for the offence could face up to five years' imprisonment.

Pressure was exerted upon us with regard to criminalising soliciting by clients in all circumstances and, simultaneously, to decriminalise soliciting by prostitutes. This pressure was resisted during the debates that took place in this House and in the Dáil because of lack of evidence with regard to the results of such a radical change in the law. I am conscious of the statements

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that have been made by Members of both Houses and this is a matter I will keep under constant review. I have informed officials of my Department working in the areas of human trafficking and criminal law that I will continue to monitor the position carefully and that, if necessary, I will change the law if evidence which shows a radical change of this nature would make a difference is presented to me.

As a result of changes in our legislation, it is an offence for a person to solicit another person in a street or public place for the purpose of prostitution. The offence can be committed by the customer, male or female, the prostitute, male or female, or a third party acting for them. The term “public place” is defined to include any place to which the public has access whether as of right or by permission or whether subject to or free of charge. The related crimes of living on the earnings of a prostitute, the organisation of prostitution, procuring a woman or girl for prostitution, advertising of brothels, the services of prostitutes and causing and encouraging the prostitution of a child are also criminalised under various legislation. My Department is currently preparing legislation that will make it an offence to have sex with a child under 18 years of age in exchange for money or some other consideration or by abuse of a position of trust, authority or influence over that child.

As already stated, I will keep the laws on prostitution under review and we are monitoring the position in other countries. If we come to believe that there is a need to change the law, I will bring forward proposals in the usual way. Reference was made to Sweden and one or two other countries where the purchase of sex, as it is described, in any place is a criminal offence and where the selling of sex in any place has been decriminalised. Norway has adopted a law similar to that which obtains in Sweden. However, Finland, Sweden’s other neighbour, adopted a law similar to that which obtains here.

The position in the UK is not as stated in the report in *The Irish Times* today. As I understand it, the Policing and Crime Bill 2009 is on Committee Stage in the House of Lords. This Bill makes it a crime to pay for sex with someone who has been the subject of force, deception or threats of a kind likely to induce or encourage the provision of a sexual service. This provision is similar to that contained in section 5 of the Criminal Law (Human Trafficking) Act 2008. I am of the view, therefore, that we should not always assume our laws are inferior to those of other jurisdictions. The well thought out Irish laws governing the criminalisation of public soliciting for the purpose of prostitution, the running and advertising of brothels and the organisation of prostitution were introduced to deal with conditions that obtain in this country. Any changes will be for the same reason. Any legislation amending the laws on prostitution would have to take the interest of prostitutes into account. I regard prostitution as primarily a social problem, with the criminal law intervening only when other persons are adversely affected or a criminal offence is committed. To change the law, I would have to be satisfied any such change would be in the interest of prostitutes, would not leave them open to even greater exploitation by pimps, would not make it easier to persuade young boys or girls into prostitution, and would not increase the danger experienced by prostitutes by driving prostitution underground or leaving them exposed to a more violent type of client who is not put off by changes in the law. Considering the experience in Sweden, there are suggestions that prostitution has gone further underground because of the changes in the law.

Senator Rónán Mullen: That is out of date.

Deputy Dermot Ahern: My Department is keeping laws under review. The recent report by the Immigrant Council of Ireland is being examined. We note that the report recommends the Swedish model. Confusingly, the comparative research quoted in the report states that one in 15 men in Ireland reported buying sex compared to one in eight in Sweden. We must be careful

in how we measure the success of the steps taken by Sweden and Ireland. I have asked the anti-human trafficking unit to examine the findings and any action we believe necessary will be considered and put in place. We will examine the experience of other countries.

The relationship between trafficking and immigration is clear. Victims of trafficking may experience added vulnerability in circumstances where they are present in the State illegally. The provisions of the Immigration, Residence and Protection Bill 2008, currently before Dáil Éireann, fully address this issue. However, the Government is not waiting for passage of the new legislation. On the contrary, it has brought in similar provisions on an administrative basis and acceded to Deputies' requests on Committee Stage by increasing the reflection period from 45 to 60 days, double what is provided for in the Council of Europe Convention. The Bill and the administrative arrangements also provide a temporary residence permission, in circumstances where the victim wishes to assist the Garda Síochána or other authorities with any investigation or prosecution. It is possible for me to intervene in circumstances where a person remains so traumatised as to be incapable of assisting the authorities, having been granted a period of recovery and reflection, and if the circumstances of the case are of such an exceptional and compelling nature, further consideration of the person's status in the State may be warranted. There is plenty of protection for someone we suspect is the victim of trafficking.

I do not intend to list every measure being taken to address this issue but I will outline some of the significant measures. My Department has established dedicated units in my Department, as has the Garda Síochána in the Garda National Immigration Bureau. A high level inter-departmental group, reporting to me, has been established. I attended one of these meetings. A multidisciplinary partnership approach has been adopted, consisting of an NGO, governmental and international organisations, a round table forum and five interdisciplinary groups, comprising 34 different groups dealing with different aspects of trafficking. These are awareness raising and training, development of a national referral mechanism, labour and sexual exploitation and child trafficking. I attended one of these round table meetings last year to hear the issues at first hand. An awareness raising campaign has been aimed at the public and personnel likely to encounter victims of trafficking and training for law enforcement and other front line personnel likely to encounter victims of trafficking.

I refer to provision of accommodation, health care and material assistance for potential and suspected victims by the Reception and Integration Agency in the case of adults and by the HSE in the case of children. Some NGOs and Oireachtas Members questioned the use of the Reception and Integration Agency accommodation for potential and suspected victims. I am satisfied the standard of accommodation in the Reception and Integration Agency system is suitable for suspected victims of trafficking in the same way as it is suitable for asylum seekers. All accommodation costs are paid directly by the State. Potential and suspected trafficking victims will, like asylum seekers in the Reception and Integration Agency, receive a small cash allowance, which has been assessed to take into account any benefit and privilege including full board and lodging. Potential and suspected trafficking victims will also benefit from ancillary services, including free medical screening on arrival into the asylum accommodation system. They generally qualify for a medical card, making them eligible to receive a wide range of health services free of charge, including GP services, prescribed medicines and HSE supports including public health and community welfare support. A key worker from the HSE devises a care plan for that person based on contributions of assessment of needs from a range of people, including NGOs. Ireland is providing significant assistance and protection in this respect. We are not unique in providing asylum accommodation for potential victims of trafficking. Such accommodation is already provided in Finland and, in some cases, in the UK where a person is referred by the UK borders agency. The Garda Síochána also provides crime pre-

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vention advice to potential victims, including the advice that they should not identify themselves to other residents as being suspected victims. This is suitable and acceptable.

Senator Regan referred to the determination of suspected victims. In determining whether someone is a victim of trafficking, the Garda Síochána takes into account all available information at the time the case is being considered. Each case depends on its merits and each will be determined on a case by case basis. It is important that all relevant agencies provide the Garda Síochána with all information in their possession, whether this supports a claim or otherwise, to enable it to make informed and timely decisions. At a recent meeting of the national referral mechanism working group, set up by the interdepartmental high level group, the Garda Síochána provided a detailed explanation of the process it uses to identify suspected victims of human trafficking. The indicators used are based on the general indicators published in the UN global initiative to fight human trafficking and include whether the person was deceived about the nature of the work or where the person would be working, whether the person's documents were confiscated and whether there is debt bondage or a threat of violence. Other indicators include the type of deception used, the person's legal status, whether the person has been forced to lie to friends or authorities and whether the person is dependent on those who exploit him or her. The point raised by Senator Regan has been examined. The referral group will continue to monitor it.

The Garda Síochána is to the forefront in the investigation of the crime of trafficking. I have seen this and have spoken to gardaí in the context of cross-Border co-operation with colleagues across the Border. I attended a meeting in Enniskillen last year, where over 200 law enforcement agents from both sides of the Border discussed human trafficking and how the Border is used. It is good to see co-operation between the various agencies, not just the Garda Síochána and the PSNI, in the fight against human trafficking in the island of Ireland. Having regard to the powers vested in the Garda Síochána, it is the appropriate authority to undertake a consideration as to whether there are reasonable grounds for believing an offence may have been committed or that a person may be a potential victim of human trafficking. We must operate on the basis of an objective professional assessment that what we are dealing with is a trafficking situation. That is why it has been decided the assessment is to be made by a senior Garda officer. As to which branch of the Garda Síochána should play the lead role, that must be an operational decision for the Garda Commissioner to make. In that sense, it is no different from the way in which the Commissioner assigns resources and responsibilities on a daily basis to provide the most effective law enforcement response to other serious criminal activity. The Commissioner has decided to establish a dedicated unit in the Garda National Immigration Bureau, GNIB, for the investigation of trafficking and this is a very positive development. In this context it should be recalled that although trafficking does not have to entail cross-border movement, there is a strong link with immigration and border control. Furthermore, there should be regard for the added immigration functions of an immigration officer vested in members of the Garda Síochána attached to the bureau, the role of the bureau in regard to border management and the cross-border movement of persons and its role in regard to international liaison on such matters.

As Senators are aware, there are no fixed border controls in respect of persons travelling between North and South but the Garda National Immigration Bureau, the British Border and Immigration Agency, the PSNI and the British police are engaged in close co-operation in order to deal with irregular cross-Border activities. The working relationships already established will be of immense benefit on an all-island basis and also within the common travel area. The arrangements in this jurisdiction for assessing whether a potential trafficking system exists is in

line with the practice in a number of European and other countries where the equivalent competent authorities are members of their law enforcement or police forces.

Turning to recovery and reflection periods and temporary residence, I have already indicated the position. Upon identification as a potential victim of human trafficking, priority consideration is given to the grant of a period of recovery and reflection and any subsequent grant of temporary residence permission. With regard to the breakdown of cases referred by various organisations, in 2008, 96 were referred to or encountered by GNIB, with 22 referred by Ruhama; 51 were encountered by GNIB; 18 from the Office of Refugee Applications Commissioner, ORAC; three from the HSE; two from the Migrant Rights Centre Ireland, MRCI; with none from the Immigrant Council of Ireland, ICI. Until 5 June 2009, there were 55 cases encountered by GNIB and under investigation, with seven from Ruhama, 34 encountered by GNIB, eight from ORAC, two from the HSE, three from the MRCI and one from ICI.

When we speak about victims, we should not limit our thinking to the person against whom it is believed a crime has been committed. Everything possible must be done to bring the perpetrators to justice so as to prevent their committing further crimes and the creation of future unfortunate victims. We should not underestimate the importance of the contribution that a victim can make in helping the authorities investigating their case and the extent to which that co-operation may be instrumental in combating future trafficking. This is recognised in the EU directive providing for temporary residence periods for people providing this sort of assistance.

We should be clear that what we are talking about is immigration permission. The provision of protection and assistance to a victim of human trafficking is provided when an initial claim of trafficking is made. There might be some confusion on the issue of who determines access to the recovery and reflection periods. The sole authority in granting this permission is the Minister for Justice, Equality and Law Reform, and we should remember that recovery and reflection periods and temporary periods of residence are immigration permissions and thus the authority for their grant is the same as for any other immigration permission. The Minister acts on foot of a Garda assessment as described already.

Whereas the assessment of whether there are reasonable grounds to believe that trafficking has taken place is made by a Garda superintendent, this does not mean that there is no role in the process for other organisations or individuals. On the contrary, it may well be the case that possible instances of trafficking will first be brought to the attention of these organisations, as I indicated with the figures provided. There is therefore a key role for those bodies or individuals to engage with the State authorities, and to do so at an early stage, so as to assist both in the investigation of the offence and also in the identification of potential victims of human trafficking.

For the potential victims themselves it is important that they are encouraged and supported in engaging with the authorities and in particular with the Garda National Immigration Bureau special unit. Everyone has a responsibility in this area and the input victim support agencies and others can have is extremely important.

I do not stand before the House and claim that everything we are doing in guarding against trafficking is perfect and needs no change. The phenomenon is relatively new to this jurisdiction and this is why I have stated in the national plan published today that it will be a living document, which will be kept under review and updated with regard to laws relevant to prostitution. It has been specially drafted to allow for flexibility in its recommendations and to adapt to challenges presented and evolve as our understanding, knowledge and practical experiences

[Deputy Dermot Ahern.]

of human trafficking grows. Furthermore, a structured mid-term review of the plan will take place in connection with relevant stakeholders.

It is against this background that I contribute to this debate. I thank the Senators for contributing to it also and bringing the issue forward. We do not underestimate this problem in our country and we take it very seriously. I reject any suggestion to the contrary. I thank all the NGOs which participate in the contact with my Department and the other State agencies. This is the epitome of public and private bodies working intensely together. The new legislation, in force since 7 June, needs time to bed down but if any changes are required, I will make them.

I look forward to the speedy passage of the immigration Bill, which is significant legislation. As I have already noted, before that comes into place I have already positioned administrative arrangements to deal with the potential victims of human trafficking.

I do not want it to go out from this House or the Oireachtas that the Government is in any way indolent in its response to this issue. I have spoken to the Garda Commissioner on many occasions in regard to this issue, which is very serious, to ensure it is top of the agenda. In the policing plan issued some time ago by the Garda Síochána, I pushed an open door in having this as one of the key objectives for the Garda to deal with in conjunction with colleagues across the Border and on the neighbouring island. I thank Senators and I am delighted to have had the opportunity to speak on the matter.

Senator Ann Ormonde: I welcome the Minister and the opportunity to have a discussion on this evil crime, which is a societal issue. We must do everything we can to prevent trafficking, protect potential victims and prosecute offenders. Some time ago I read an article in one of the daily newspapers which discussed human trafficking between Vietnam and Cambodia. It highlighted an example of how it was carried out, how the person described escaped and gave a detailed account of life under this regime of sex exploitation. If the person did not abide by the rules, she was physically abused. It was horrific to read her account of what happened. It was at that stage I knew this was a major issue and that we must do everything in our power to work towards stamping out the problem in this country.

Having read the Minister's speech, I am glad he has introduced an action plan to protect victims. Measures within that action plan are helping to meet this objective. The Minister has taken positive steps in tackling the crime of trafficking human beings, including signing up to the Council of Europe Convention on Action against Trafficking in Human Beings on 13 April 2007 and working towards its ratification this year.

The Government is committed to the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime. This will take place when legislation to ratify the parent convention is enacted. Since signing the Council of Europe convention in April 2007, Ireland has made significant progress towards ratification with the enactment of the Criminal Law (Human Trafficking) Act which came into force on 7 June 2008 and which implements the criminal law aspects of the convention. The Immigration, Residence and Protection Bill 2008 will provide for a period of recovery and reflection of 60 days for alleged victims of trafficking. In circumstances where the person trafficked wishes to assist the Garda in any investigation or prosecution of the alleged trafficking, a further six months will be made available to him or her. An administrative framework allows for a period of recovery, reflection and residency of 60 days in the State for any trafficking victims. This arrangement gives effect to Articles 13 and 14 of the convention.

With the co-operation of other Departments and NGOs, significant progress has been made on advancing the arrangements necessary to meet other obligations in the convention for the

protection of victims. It is important that trafficking victims have suitable accommodation. I hope any of the instances of poor accommodation referred to by Senator Mullen are soon put right.

It is important those gardaí involved in combating human trafficking have sensitivity and understanding when dealing with victims. It was suggested there would be a conflict of interest for gardaí in dealing with the counselling aspect while implementing immigration laws. I see no difficulties arising in this area as gardaí are trained very well. Emphasis must be given to counselling those caught in human trafficking. Having some knowledge myself in dealing with problem children, victims and their cases must be treated sensitively with absolute understanding. A special unit should be established in the Department with well-trained professionals to deal with these cases. While I am glad the period of reflection for trafficking victims was increased to 60 days, it should not be strictly observed as each individual case could be very different. I always believe in a certain flexibility when it comes to timelines.

I am glad the Minister is keeping a close eye on developing other initiatives against human trafficking. While I quite like the phrase “Don’t close your eyes to human trafficking”, a greater awareness campaign is needed. Society must make it its responsibility to control the borders and work in co-operation with Northern Ireland, British police forces and other international organisations to combat this evil crime. It is important it is kept on the agenda. We owe that to the women who have found themselves subjected to this awful and evil crime.

Senator Jim Walsh: The tabling of this Private Members’ motion has given us the opportunity not just to debate the issue but also examine the various initiatives taken to combat human trafficking. As the Minister said, human trafficking is an offence relatively new to our shores. As a result, we are tackling it with firsthand experience while examining best practice in other jurisdictions.

Some Members may recall the book *Roots* and its subsequent TV series which dealt with the slave trade from Africa to America in the 19th century. The central character, Kunta Kinte, was taken from the east coast of Africa as a slave to the United States and the book detailed his life and that of his progeny down to the author who was a direct descendant. Many of us, when we saw the series, were appalled such an uncivilised activity as slave trading occurred in the not-so-distant past.

A similar activity is now taking place in various parts of the world. Young women are being kidnapped or, under false pretences, being lured into various countries in western Europe for prostitution. Stories of the experiences of such girls have been reported in newspapers. The revulsion people feel towards this activity is reflected in the strong investigative and follow-on support arrangements that have been put in place. I am impressed by some of the initiatives taken by the Minister and his Department and their commitment in combating this problem. It is imperative we ensure these arrangements are under active and constant review so other measures can be identified and put in place when required.

I welcome the publication today of the national action plan to combat trafficking in human beings, which is an important step in the right direction. I also welcome and am sure the House will approve of the establishment by the Garda Síochána of a human trafficking investigation and co-ordination unit within the Garda National Immigration Bureau, GNIB. I acknowledge that Senator Mullen has some reservations with regard to the unit being under the aegis of the GNIB. However, given that most of the young girls who are involved in trafficking are from abroad, there probably are significant benefits to and merit in its attachment to that unit.

The entire issue of child trafficking is a matter of concern to all Members and recent reports have demonstrated the protection of children must be kept at the top of their agenda. In this

[Senator Jim Walsh.]

regard, Operation Snow, which is designed to prevent the trafficking of minors into, within and from the State and to ensure the welfare of such victims, is absolutely essential. One example of the success of that operation occurred within the last two years when a person who was suspected of involvement in the trafficking of children within a number of EU member states, and in the Netherlands in particular, was detected and has been removed to the Netherlands on foot of a European arrest warrant. I understand this person now awaits trial and this is the kind of important result that Members welcome. I will refer to another case that did not involve trafficking into the sex industry. Incidentally, like other Members, I dislike that phrase as it is a misnomer to refer to it as an industry. It is an area of criminal activity and should be regarded as such. However, a joint police trafficking investigation took place involving the Garda and police in Romania regarding trafficking for labour exploitation purposes and people were prosecuted in Romania as a consequence.

Action is taking place within this field and it is imperative to ensure that our legislative framework is designed and able to deal effectively with it. The Criminal Law (Human Trafficking) Act 2008 was extremely helpful in that regard by creating the offence of criminal trafficking for sexual or labour exploitation or for the removal of organs. Although the latter offence is something of which Ireland may not have experience, it is a highly unfortunate criminal activity within other jurisdictions. The penalty that can apply to anyone who is found guilty of committing such offences is up to life imprisonment. While ensuring one is not complacent in this regard, one should not dismiss the initiatives and legislative improvements that have been made. However, one must be constantly vigilant and I commend the Senators on tabling this motion, which highlights and creates the awareness to ensure we meet this ongoing challenge in an effective manner.

Senator David Norris: I approve of the vast majority of this motion. I have followed this issue for a number of years and, together with other Members on both sides of the House, I have promoted a number of the motion's recommendations for some years. I also have followed the work done by organisations such as Ruhama and from what I recall of its work, this motion appears to follow closely its requests to have certain aspects of the law amended to protect victims who in most cases are women and who are not given the proper, full protection of the law. I strongly support all these elements in this motion.

However, I do not support the final clause, which calls on the Government "to follow the lead of Sweden, Norway and Iceland by criminalising the purchase of sex so as to target the demand for the sex exploitation industry". This is a recipe for disaster and is hypocritical. It is particularly hypocritical to use Sweden as an example because the very people who promoted this idea are the same people who, over the past ten, 20 or 30 years, used to point to Sweden and regard it as a godless Protestant country that had the highest rate of suicide in Europe. While this was rubbish, they got away with it. They now conveniently trail Sweden in front of Members' noses as a bait because they think Members will jump simply because Sweden did it. However, those Members who have a slightly more sophisticated view of history will remember that among other things, Sweden supplied Hitler with ball bearings during the Second World War and has a serious problem with right-wing hooliganism. Simply because something happens in Sweden does not mean one should automatically gollop it down uncritically. The same is true if Norway and Iceland do the same thing.

In this matter, I am supported by no less than a great doctor of the church, namely, Thomas Aquinas. I am reliably informed of this by an acquaintance who is a leading member of the Iona Institute, who only today stated that he also would have difficulty with this on a practical basis. He pointed out that Thomas Aquinas had stated one must recognise that man was essen-

tially vicious and that the legalisation of prostitution was the lesser of two evils. I hope no one will suggest that, in promoting this idea or at least suggesting it should be discussed, I am anti-Catholic as no one who supports Thomas Aquinas could be so regarded.

I make this point because I have sympathy with the unfortunate people who find themselves in prostitution. I remember well the day in this House — I believe it was in 1993 — when Máire Geoghegan-Quinn introduced legislation decriminalising homosexuality. As usual however, tacked onto it was something about prostitution. I always found that to be irritating because I did not find it flattering, as a respectable old fairy, to be everlastingly shackled to the tarts. On the other hand however, I stated then and continue to believe that I did not want to get my freedom at the expense of other marginalised elements in society.

I believe such people will be damaged further because prostitution will not stop. Does any Member actually think that prostitution will cease because legislation has been passed? As it has never happened anywhere in the last 4,000 or 5,000 years, why should it happen in holy Catholic Ireland? It beats me. Moreover, if these women are driven out of comparative security, they will be beaten to a pulp, will be infected and will infect other people. The right way is to consider this matter in an adult fashion and to provide some method of recognition and protection and to look after the health and safety interests of the women who work in this area. This may not be pleasant and I doubt whether any Member would welcome having a woman or man who worked in this area as a family member because one would feel pained and frightened on that person's behalf. However, Members should not be hypocritical and should not pretend that by driving it underground or into places such as the Phoenix Park or down the docks and in back alleyways, that they will be doing anything for such women, because they most definitely will not. I do not give a damn what individual or organisation states this would help them because I disagree.

For that reason, and my view is completely consistent, it is not appropriate to criminalise those who pay for such services. I make this point from personal experience. For a number of years, there was a brothel in the basement next to me in North Great Georges Street. On one occasion when the woman was being beaten up, I was obliged to intervene and I protected her. I did not avail of her services but it was quite a moving experience because I encountered her as a human being and realised what was going on in that place. On a Saturday evening I often swept my step and I saw many people coming from there, some of whom were quite familiar names in Irish public life. While they got a hell of a shock on seeing me, I never have disclosed a single name and never would. These were professional people, some of whom were in religious professions. What about their families? What would be the point of dragging them through the courts and exposing their families to further hurt, embarrassment and shame?

Holland has not been mentioned so far in this debate because it has not taken the step proposed in this motion. The Dutch approach may appear radical and perhaps it is. Holland provides sexual relief for handicapped people as part of its national health system. That is startling at first, but I think it is wonderful. If one is deformed or disabled, if one feels one is unattractive or if one has some awful medical condition, it must be wonderful to be touched in an intimate way and given pleasure by another sympathetic human being. I cannot condemn it. I will not vote to approve the criminalisation of people in this way. It would be too easy. It would be too much of a luxury for those of us who are lucky to have or have had a happy and full, physical and intimate, sexual relationship, which is one of the greatest joys of being alive. I do not think it would be appropriate to deal with this sector by criminalising those involved in it. If we were to do so, we may regret it. We may think this activity is tawdry, shoddy and regrettable, we may think it is a pity that everybody cannot enjoy a fuller, more balanced and more harmonious relationship, but that does not mean we should drag those involved into court. Come on; let us grow up, for God's sake.

Senator Déirdre de Búrca: I welcome the Minister of State, Deputy Curran. I congratulate Senator Mullen on tabling this coherent and intellectually well put together motion. He has argued that we need to strengthen this country's human trafficking legislation, especially in so far as it relates to the sexual exploitation of women and children. I agree with the main point the motion seems to make, which is that human trafficking should be dealt with as part of Ireland's immigration policy and practice, rather than within the sphere of organised crime. We have become accustomed to migration as a feature of the globalised world in which we live. The business of human trafficking, particularly the trafficking of women and children for sexual purposes, is part of the underbelly of that global trend. Human trafficking, which has correctly been referred to as modern-day slavery, is a form of transnational crime. It is appropriate to respond to it at international, European and national levels. This country has a responsibility to ensure its legislation is well thought through, robust and capable of tackling this form of crime.

While I agree with the Minister, Deputy Dermot Ahern, who said earlier in this debate that his three priorities are to prevent trafficking, protect victims and prosecute those responsible for trafficking, I remind him that part of the problem is the age-old issue of prostitution, which has been raised already. We need to consider whether we, as a modern society, should have a tolerant attitude towards the forms of prostitution and sexual services that are clearly available in our midst or should adopt an alternative attitude to them. I am on Senator Mullen's side of the argument in the sense that I do not agree with Senator Norris that we should overlook the activities of the many respectable people who use these services and ignore the fact that many women are trafficked into this country to provide them. The women in question, who are often in a highly dependent and vulnerable position, are usually intimidated to the extent that they have little or no choice other than to participate in these activities. The kind of human degradation that is involved in providing these services means that, as a society, we cannot afford to continue to turn a blind eye to them. We should not suggest that it is okay that so many health and drug problems are associated with these activities. We should not suggest that it would be unfair to criminalise those who purchase sexual services rather than the providers of these services, who clearly are often victims, as it might be upsetting for them and their families if their activities were to be exposed. I agree with the arguments made by Senator Mullen in this regard.

I was present at the recent launch by the Immigrant Council of Ireland of its interesting report on the trafficking of women and children for sexual purposes. In the report, the council recommended that Ireland should follow the example set by Sweden when it criminalised the purchasing of sexual services. As Senator Mullen said, other Scandinavian countries, including Norway, have followed the Swedish example. The problem under discussion will persist until we do likewise. If we continue to treat it as an inevitable and inescapable problem that will never go away, we will continue to turn a blind eye to what is a large problem for society. I accept that society has an ambivalent attitude towards prostitution. More open debates of this nature are needed. We need to reflect on why we tolerate prostitution. The Immigrant Council of Ireland's report pointed out that, as far as we know, one in ten men use prostitution services. Why is this the case? Given that we criminalise and prosecute those who often have little choice other than to provide these services, why do we not see anything wrong with the behaviour of such men?

The trafficking of women for the purposes of sexual exploitation is a multi-billion dollar business that helps to sustain organised crime. It is disturbing that there is evidence to suggest that organised criminal gangs in this country are helping international traffickers to establish trafficking routes in Ireland. There are links between the Irish sex industry and the Russian mafia. The growing presence of Russian and Albanian mafia members is of particular concern

to the Garda. It has been alleged that gangs based in Estonia and Latvia have also trafficked women into Ireland. We cannot underestimate the importance of the legislation that has been put in place in this area. I admit that we were a little slow in producing the Criminal Law (Human Trafficking) Act 2008. We were criticised for that. Ireland was given a tier 2 rating in a report on human trafficking that was produced by the US State Department. While the US did not see Ireland as one of the worst countries in this respect, it did not believe we were dealing with the issue of human trafficking in a satisfactory manner. It recognised we were making efforts, however.

The proposals outlined in Senator Mullen's motion should be taken seriously and examined. The motion refers to the unfortunate and inappropriate decision to give "gardaí who police immigration laws . . . the mandate to deal with victims of the crime of human trafficking". I suggest that a special anti-human trafficking unit should be established and properly resourced and the gardaí working in it should be given appropriate training. Senator Mullen has suggested we should "extend the recovery and reflection period to three months", which I think would be absolutely appropriate. I agree with him that the threshold for victims who co-operate with the Garda is "too high and too "evidence-based" in granting victims the recovery and reflection period". I accept his contention that "it is traumatising for witnesses to testify in front of the accused and their associates". We need to design processes that take all this into account. Our legislation needs to recognise that it is often difficult for victims to testify against those who have intimidated them and put them in vulnerable positions in which they are obliged to provide these services.

I agree with Senator Mullen that gardaí should receive "specialised training" and that "a joint investigation unit" should be established "to police human trafficking on the island of Ireland". He is right to say that we should "extend the recovery and reflection period to three months", "commit to granting the six-month temporary residency permit immediately to victims when they begin co-operating with the criminal investigation", provide for "the option of giving evidence by video and testifying in court by video link", promote "exit routes to enable women to move out of prostitution" and, most importantly, "follow the lead of Sweden, Norway and Iceland by criminalising the purchase of sex so as to target demand in the sex exploitation industry", rather than targeting the victims. We really need to give consideration to the latter proposal.

Senator Rónán Mullen: I thank all those who spoke, including the Minister of State and Senators O'Toole, O'Donovan, Regan, Ormonde, Walsh, Norris and de Búrca. I regret, however, there were not more speakers given the importance of the issue. The Labour Party's women's group, in particular, has concerns very similar to mine. I am disappointed there was no representation from the Labour Party on this issue although it may have been due to circumstances beyond its control.

I thank Senator Regan for his insights. I explicitly agree with him on the importance of decriminalising the seller, namely, the prostitute. This is what has happened in Sweden and it would make sense here, not least because it would increase the likelihood of victims co-operating with the Garda, for example. Furthermore, doing so would recognise and put in its proper context the actual position of the person in prostitution who, to use patronising but traditional language, is much more to be pitied than condemned. The reality is that those who traffic such people and those who provide them as pimps are the real evildoers on that side of the equation. Those who avail of the so-called services of persons in prostitution both abuse and exploit those persons and perpetuate this ugly reality in our society.

In a general sense, I acknowledge much of what the Minister of State announced regarding the action plan. A lot of good is being done that I would not want to dispute but I felt that

[Senator Rónán Mullen.]

even as he was correcting us as though we were unaware of what was being done, it was coming across that there was and is a failure to consult. It may well make sense in one way that immigration gardaí would deal with the matter but, in another way, it is entirely inappropriate given the terror of law enforcement officers that may be experienced by those who have been trafficked into this country and who already have been abused and exploited. They are on the wrong side of the law to begin with in many cases because of their immigration status.

Let us, therefore, ignore party political considerations and try for a moment to empathise with those concerned and understand their circumstances. Doing so will explain why there is a need for the Government and those in authority to consult and involve the agencies that have walked the lonely journey with people in prostitution and those who have been trafficked. They should be involved in assessing why there is only a short waiting period of a number of days in Britain to avail of the relevant recovery and reflection mechanism. Only a handful of people in Ireland have been able to avail of it thus far. Why is there no quick recourse to it? One reason is that there is no consultation. Those who befriend those who have been trafficked are not incorporated into the process.

Many interesting and provocative points were made by Senators. I was particularly impressed by Senator O'Toole's excellent points on the way in which language gets sanitised. We use terms such as "sex worker" and people refer to prostitution as "the oldest profession". Let us get one thing very clear, there is no such thing as choosing to be in prostitution, as one will realise when one considers both the circumstances in which women in prostitution find themselves and their background. When one considers factors such as dire economic necessity and low self-esteem, which possibly arise because the prostitutes may have been abused sexually and physically throughout their lives, it makes no sense to talk glibly about some of them choosing to be in the business to make money. Even if there are some at the so-called high end of the profession who make money, we should not forget that they probably spend that money on a drug habit or on other problems in their very disordered and tragic lives.

Let me refer to what Senator Norris said. He was rising like Pavlov's dog to try to see in this motion some kind of traditional Catholic-inspired piece of prudery. What we are talking about is protecting the vulnerable in society. It does not matter whether one is a card-carrying atheist, a Jehovah's Witness or a Buddhist, one should be able to recognise that. It is a perversion of logic and humanity to pretend that concern for those in prostitution is what actuates the viewpoint that we should not criminalise the user. In what other walk of life where we see an evil do we refuse to target those who participate in and avail of it? In respect of drink driving and smoking, which seem trivial by comparison, we actively seek to educate. The law itself is a teacher and even if it is never enforced, it has a deterrent effect. This is why there was a reduction in prostitution when the criminalisation of the user was introduced in Sweden in 1999. In addition, there was only a marginal increase in trafficking at a time when the number trafficked into places such as Finland amounted to thousands. The number trafficked into Sweden amounted only to hundreds.

I am sorry that Senator Norris chose the emotive case of the person in disability to try to justify the continuing legality of purchasing a person for sex. He seems not to understand the denial of the dignity of the person in prostitution. He seems not to understand that by continuing with that legalisation, one creates extraordinarily negative attitudes among men towards women. One sends out a powerful message to the next generation that women may be purchased for one's gratification. That is the reverse of what a civilised society should aspire to and it is on that basis that I will be voting against the amendment.

Amendment put.

The Seanad divided: Tá, 25; Níl, 15.

Tá

Brady, Martin.
Butler, Larry.
Callely, Ivor.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Keaveney, Cecilia.
Leyden, Terry.

MacSharry, Marc.
Norris, David.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bradford, Paul.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
McCarthy, Michael.

McFadden, Nicky.
Mullen, Rónán.
O'Toole, Joe.
Phelan, John Paul.
Regan, Eugene.
Ryan, Brendan.
Twomey, Liam.

Tellers: Tá, Senators Camillus Glynn and Diarmuid Wilson; Níl, Senators Rónán Mullen and Joe O'Toole.

Amendment declared carried.

Motion, as amended, agreed to.

An Cathaoirleach: When is it proposed to sit again.

Senator Donie Cassidy: At 10.30 maidin amárach.

Adjournment Matter.

Territorial Waters.

Senator Cecilia Keaveney: I thank the Cathaoirleach for allowing me to raise this important issue. I thank the Minister of State, Deputy Conor Lenihan, for attending to reply to my Adjournment matter, which is to ask the Minister to outline whether he agrees that the Crown Estate has any financial or other claim on the Foyle as a sea or its riverbed.

I understand this will appear to be a controversial Adjournment topic to some. As someone who lives along the Foyle and sees an institution attempting to take moneys and possibly exert a veto over activities that have nothing to do with it, I cannot apologise for that. There has been much diplomacy for decades and tip-toeing through the thorny legalities of who owns the seas around Ireland. I refer to an article by Stephen Price in *The Sunday Business Post* in 2003 when there was a possibility of siting a wind farm in the Foyle. He stated, however, that the Crown Estate, which owns the sea bed 12 miles out around Britain, advertised the lease of the Tunes Plateau for Stg £200,000 in 2002. Even so, neither Government seems entirely sure where

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the offshore border lies and, as somebody in Donegal said, if it was oil they discovered there, one could bet this issue would be settled in the morning. *The Sunday Business Post* article effectively said that the Crown Estate owns 12 miles out around Britain. I challenge under what guise the Crown Estate has any function in the Foyle.

In its response to the Foyle and Carlingford fisheries order of 2007, the Crown Estate indicated that it had significant ownership interests in the foreshore and seabed of Northern Ireland and has broad experience and knowledge of activities around the tidal and inter-tidal zones. It went on to put forward ideas for amendments to the Foyle fisheries order and to retain a level of control for the Crown Estate. I again ask why and under what guise it did that?

Under the Government of Ireland Act I believe that the island of Ireland and its seas were returned and subsequently the Six Counties removed, that is, the counties, not the waters. I could submit to the Minister of State many views on the story prior to the 1920s and post that period. I refer to the Saorstát Éireann Department of Fisheries, section 27 of the Fisheries Act 1925 (No. 32 of 1925), in which Fionan O Loingsigh, the then Minister for Fisheries, defined the new Moville Fishery District Order 1926 Tidal Electoral Division as “The whole of the sea appurtenant to Saorstát Éireann along the coast in Lough Foyle and between Lough Foyle and Malin Head (Co. Donegal) and around any islands or rocks situate off the same (including Inishtrahull) with the whole of the Tideway along said Coast and Islands and the Tidal portions lying within Saorstát Éireann of the several Rivers and Tributaries flowing into Lough Foyle and into the sea between Lough Foyle and Malin Head (Co. Donegal).” I can submit the boundary map I have for the record but I will not have time in five minutes to read all the arguments into the record, both before and after that 1926 order and definition.

Now, under the Foyle fisheries most recent Bill that enabled the licensing of aquaculture, I am again led to believe that our representatives on the Foyle, Carlingford and Irish Lights Commission are in negotiations with the Crown Estate to agree a lease. I ask the straight, one-word question, why? What reason, under what regulation, under what legislation do we have to engage in financially rewarding this body? Under what power does the Crown Estate claim a proportion of the turnover of the Foyle ferry service? What form does our new devolved administration in Stormont and our joint administrations, the Foyle, Carlingford and Irish Lights Commission, have if, when we offer licences or promote projects, or object to projects such as the wind farm proposal to which I referred, there is still some onus to turn to the Crown Estate for, in effect, its veto?

This is not a wrapping a flag around me exercise. It has fundamental serious implications that must be addressed. In Wales the Crown Estate is exercising a right to veto applications for aquaculture licensing. It may be only some time before this becomes a reality in our region and, therefore, the basic tenet of my Adjournment matter remains under what authority is this right being projected?

In 1997 I asked the then Minister, Deputy Barrett, whether there was a change of areas within the Foyle area controlled by the Foyle Fisheries Commission in the mid-1970s and whether the consent of the Foyle Fisheries Commission was given to any redefinition of the Foyle area as controlled by the commission. He answered at that time that the statutory definition of the Foyle area has not altered from that laid down in the Foyle Fisheries Act 1952, where it is defined as meaning the Londonderry District originally created by order in 1855. Therefore, the Irish Government neither had instructed change nor took part in change, but the statutory instrument in the North, SR(NI) 163 of 1975, defines the sea boundary, something that had not been defined in previous legislation. What have we done to challenge such unilat-

eral moves? Are we now talking about surrendering title by offering a rent to the Crown Estate for Lough Foyle?

This is a complex territory. There are many other points I could have added but I cannot do so in the time available. I ask the Cathaoirleach for some leeway to allow me to conclude. Meanwhile this is a financial burden on the Foyle ferry service, which I fought to have reprioritised as a domestic service so that the international security for which we were paying, which was an economic noose, could be removed. We now find that the Crown Estate has put a claim on a percentage of the turnover, yet another ridiculous attempt at another economic noose in an area that does not need it.

As I said, it is also the issue of the veto that leads me to ask again under what guise does the Crown Estate now have any claim to the Foyle? Will we clarify that right, challenge it or, if proven to exist and if necessary, buy it out so that the development of the river, in all its forms, can happen by the association that was set up to do that, namely, the Foyle, Carlingford and Irish Lights Commission? It should be unimpaired in driving the developmental potential of one of our most important resources. Will we halt negotiations at this point with the Crown Estate in regard to developing a lease and have it take a much more fundamental look at its position? I put these questions to the Minister of State, who I am sure, as an Irish Minister, will be interested in asserting our citizens' interests in the north west too.

Minister of State at the Department of Communications, Energy and Natural Resources (Deputy Conor Lenihan): I understand that there has been no formal agreement between Ireland and the United Kingdom on the delimitation of a territorial waters boundary between the two States. However, the policy of the two Governments has been to co-operate in a pragmatic fashion.

In this regard, in order to provide for the management and conservation of the fishery stocks in the Lough Foyle area it was agreed between both jurisdictions to set up the Foyle Fisheries Commission under the Foyle Fisheries Act 1952 and its Northern Ireland equivalent. This Act put in place an agreement on fishing rights in the tidal waters of the lough and River Foyle and its tributaries. The commission had joint representation from both jurisdictions.

As the Senator is aware, the functions of the Foyle Fisheries Commission were transferred under the British-Irish Agreement Act, 1999 and the North-South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999, to the Loughs Agency of the Foyle Carlingford and Irish Lights Commission. The agency is currently under the co-sponsorship of the Department of Communications Energy and Natural Resources and the Department of Agriculture and Rural Development in Northern Ireland.

The Act of 1952 was amended in 2007 through the Foyle and Carlingford Fisheries Act 2007 and its Northern Ireland equivalent, the Foyle and Carlingford Fisheries (Northern Ireland) Order 2007. This, in addition to the functions of the Foyle Fisheries Commission, empowered the Loughs Agency to conserve, protect, develop and manage shell fisheries and aquaculture in the Loughs areas, enabling for the first time the introduction of an agreed regulatory regime for aquaculture and wild shell fisheries in Lough Foyle. It also extended the agency's fisheries conservation and protection role to Carlingford Lough.

The relevant secondary legislation in relation to aquaculture has not yet been introduced, as it is necessary for the agency, *inter alia*, to secure a long-term lease of the cross-Border foreshore areas under its responsibility in Lough Foyle and Carlingford Lough. This will be done by way of a formal foreshore management agreement between the Loughs Agency, the Department of Agriculture, Fisheries and Food and the Crown Estates Commission, which are the responsible bodies for the management of foreshore in both jurisdictions. This will facilitate

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the introduction of a structured management system for aquaculture in the loughs with the objective of achieving sustainable development to the social, economic and environmental benefit of the communities who influence, enjoy and depend on the resource. Negotiations are at an advanced stage between the parties mentioned and it is expected that agreement should be finalised in the near future.

Senator Cecilia Keaveney: Is the Minister aware that the Crown Estate is one of the largest property owners in the UK, with a portfolio worth €7.33 billion, and owns more than 55% of the UK's foreshore? On 1 April 1923 the Irish estates were handed over to the Irish Free State and most of that comprised foreshore. Thus, I ask again why are we in advanced negotiations with the Crown Estate for something to which it has not proved any title. I ask for those negotiations to be examined closely and for an answer to be provided in this regard. If we are going towards a united Ireland or a happily devolved Government in the North, we do not need the interference of a third party in this regard. I have no problem with the Foyle, Carlingford and Irish Lights Commission. It has a dual mandate and we do not need a third partner.

Deputy Conor Lenihan: I reiterate to the Senator that there has never been any formal agreement between Ireland and the United Kingdom on the delimitation of a territorial water boundary between the two states. In the context of the Good Friday Agreement, a decision was taken to co-operate on foreshore and other issues that arise in the management of the lough from conservation and other points of view.

One of the issues is that the median channel in Carlingford is the navigation channel whereas, as the Deputy knows, living as close as she does to the lough, the navigation channel in Lough Foyle hugs the southern side, which makes it rather more difficult to manage or to negotiate an agreement as to where the territorial waters actually lie. There is no agreement between the two Governments on where the boundary lies, which is a problem that has bedevilled the situation for some time. With regard to the Good Friday Agreement, I remind the Deputy again that the preamble of the Constitution defines the nation in terms of the island and its territorial seas.

The Seanad adjourned at 8.15 p.m. until 10.30 a.m. on Thursday, 11 June 2009.