

SEANAD ÉIREANN

Dé Céadaoin, 17 Meitheamh 2009.
Wednesday, 17 June 2009.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

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

The need for the Minister for Health and Children to revisit the drastic budget cut of €10,000 per month to the Meath women's refuge and support services which will leave many vulnerable citizens exposed to risk.

I have also received notice from Senator Fidelma Healy Eames of the following matter:

The need for the Minister for Health and Children to outline how she plans to address the current shortcomings of the pre-school education scheme planned to start next year, namely, the availability of places given the funding cap; the availability of appropriate specialist teaching personnel; the proposed pupil-teacher ratio and a pre-school curriculum associated with a quality pre-school education.

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

The need for the Minister for Education and Science to explore, with his Northern counterpart, the expansion of the school day by bringing in outside organisations for out-of-hours learning, which concept is working well in the North.

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

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion re renewal of provisions of the Offences against the State (Amendment) Act; tributes to a former leader; No. 2, Nursing Homes Support Scheme Bill 2008 — Committee Stage; and No. 35, Private Members' business, motion 32 regarding the information and communication technology sectors. It is proposed that No. 1 shall be taken at the conclusion of the Order of Business and shall conclude within 40 minutes of the Minister's introductory remarks. Spokespersons may speak for five minutes. The tributes to a former Member will be taken at the conclusion of No. 1. No. 2 shall commence after the tributes and shall adjourn not later than 5 p.m., if not previously concluded. No. 35, Private Members' motion, shall be taken from 5 p.m. to 7 p.m. No. 2 shall resume at the conclusion of this motion.

Senator Fidelma Healy Eames: Since last September we have been fixated on using taxpayers' money to help the banks. Anglo Irish Bank is enjoying €7.5 billion of taxpayers' money and one must ask, for what end? It is time we turned our attention to helping home owners who now face real challenges in meeting their mortgage payments. The banks have signed up to a moratorium not to foreclose for six to 12 months after the home owner gets into difficulty, but with rapidly rising unemployment — the ESRI predicts we will have 550,000 unemployed by the end of 2010 — reducing income as a result of levies, the fact, according to today's newspaper, that families are €43,000 less well off than two years ago, and huge personal levels of indebtedness, time is fast running out. This is likely to affect tens of thousands of home owners.

Recent research in the UK showed that the loss of the family home and unemployment are strongly associated with mental health issues. Our nation faces a huge, economic, socially stressful time. I ask the Leader to invite the Minister for Finance to the House before the summer recess to debate how the banks and Government can work together to find creative ways of helping home owners in difficulty during the recession. This is in everyone's interest. There are ways to deal with the issue, but they have not been considered in this country. The UK Government, for example, has put £1.2 billion into a home owner mortgage support scheme. Such initiatives could be a win-win solution because they give home owners the dignity they need to be able to hold onto their homes and the banks can avoid foreclosures and keep performing loans on their books, which is what they want.

The Minister has not intervened enough. He has been disappointing, even with regard to fixed-rate mortgages. He said his job was not to intervene but to regulate. However, he has not done that either. I am disappointed. It is time for the Minister to show respect for taxpayers' money and protect people's homes as well as the banks.

The issue of foreign adoptions remains unresolved. Two disturbing items of news have emerged in recent days which further threaten Irish adoptive families. On Friday, the Vietnamese Government revoked the licence of the Cork-based Helping Hands adoption mediation agency, which is the liaison agency between Vietnam and Irish families who want to adopt children in Vietnam. The licence has been revoked because the Minister of State has not renewed the bilateral agreement on time. What is even more disturbing is the discovery of the text of article 25 of the bilateral agreement, which says——

An Cathaoirleach: The Senator's time is up.

Senator Fidelma Healy Eames: May I conclude?

An Cathaoirleach: No, the time is three minutes for party leaders and two minutes for other Senators. My hands are tied rigidly by that.

Senator Fidelma Healy Eames: With respect, I wish to finish my point. The article says the bilateral should have been automatically renewed unless revoked in writing.

An Cathaoirleach: Please, the Senator's time is concluded. I call Senator Joe O'Toole.

Senator Fidelma Healy Eames: I wish to propose an amendment to the Order of Business to ask the Minister of State with responsibility for children, Deputy Barry Andrews, to come to the House to be asked whether Ireland has cancelled the bilateral agreement in writing, thereby preventing foreign adoptions from Vietnam.

Senator Joe O'Toole: We heard again today about another cutback on social services in rural Ireland, with the decision to cut back or review bus routes in all parts of the country. It should

be recognised that Ireland is a place where we have both urban and rural communities. We have had a cutback in bus services in the capital and now the bus services in rural areas are to be reviewed. It should be recognised that bus services are a crucial part of the lifestyle of people in rural areas, whether in Dún Chaoin, Merville, Castletownbere, Waterford or Wexford. Therefore, this cutback is one more brick being taken from the wall of support there for them. Bus services are as important an artery of living for rural communities as broadband is and should be. The issue must be dealt with.

I appeal to politicians from all sides in both Houses not to be sucked into making major demands for a bus route in their constituencies. That is what always happens. This is a national issue in line with public policy. It is socially and ecologically important to the lives of ordinary people and, therefore, concurs with energy, social and green policy. Cutbacks in this area are not a clever saving of money, but rather something for which we will pay an even greater price. We will have more cars on the road and people will be in a less secure position. In particular, the cutbacks will hurt people without money or transport of their own and elderly people who cannot or will not drive. I ask the Leader to ensure we have a full debate on the issue in the House. This is just one more example of how easy it is to turn out the lights in rural Ireland and no one says anything.

I saw in one of today's newspapers that there is huge demand to restore a service in one part of Ireland, but I will not mention where. That is not the way to do it. The issue affects every one of us and all our constituencies. We should inform the Government this is something we will oppose. This is the kind of ridiculous move that embarrasses and undermines Government and ensures people have less trust in politics.

Senator Alex White: Once again, today, the Roman Catholic Archbishop of Dublin has taken what can only be described as a leadership role in the debate on the future of education, especially of primary school education, by describing the position of the Catholic church. He appears to be ahead of the debate in many cases, certainly ahead of many people who purport to speak on behalf of church interests in this vital area. The archbishop has described the situation with regard to primary school education as a near monopoly of control by the Catholic church and has said that it does not reflect current realities. He has called for a debate, the kind of debate for which many Members have been calling for two years.

When the Minister for Social and Family Affairs, Deputy Mary Hanafin, was Minister for Education and Science, she declined in this House to set up a national forum to consider these questions. The subject was raised last week in the House. Has the Leader had any luck in persuading the Minister for Education and Science to come to the House to facilitate a debate on this crucial issue? Obviously the matter arose again in the context of the recent developments on the Ryan commission report, but I have no difficulty in decoupling those two issues if that would make people feel more comfortable in debating the matter. The issue of church control and management of primary schools throughout the State requires debate in its own right, with or without the Ryan commission report. There have been some developments in this regard, for example, vocational education committee involvement in primary schools in Dublin city.

The issue arises repeatedly in the House. Can we now have a full and comprehensive debate on the issue that takes note of the fact that the Roman Catholic Archbishop of Dublin has said that the current position is a historical hangover and is essentially a monopoly. To his credit, he said the position is detrimental to the possibility of maintaining a true Catholic identity in Catholic schools. That is the Roman Catholic view on the issue. We need debate on the matter.

When this question is debated in the House, on radio programmes and elsewhere, people always say it is a question of choice. We are all in favour of the maximum amount of choice

[Senator Alex White.]

being afforded to citizens, parents and children, but resources must also be considered. In any country or economy, scarce resources will dictate what level of choice we can provide or can vindicate for parents, whether religious, non-religious or multid denominational education. These are important questions that should be debated in the House and I ask the Leader to arrange a debate with the Minister for Education and Science at the earliest opportunity.

Senator Marc MacSharry: Yesterday, Irish bonds were oversubscribed to in another bond auction. This does not have much effect but does result in a mild reduction in the cost of lending for Ireland. This is significant in that it is the first time it has happened for some time. We are still the most expensive country in terms of what we have to pay, but we are moving in the right direction. It gives some confidence to international investors. The three-year bonds were oversubscribed to the extent of 2.5 times and the seven-year bonds to 2.2 times. This is significant and I congratulate those people in the National Treasury Management Agency for their efforts in that regard.

I join Senator Healy Eames in the call, which is in line with my call of some weeks ago, for a debate on innovative ways to help people who may not be mortgage defaulters at this time but who may get into difficulty given that interest rates are at an historic low but will rise inevitably, unemployment is increasing and we expect serious social problems as a result that will cost the nation a fortune. I ask the Leader to arrange a further debate on this issue. I and colleagues have been considering a number of options. One suggestion is that the Money Advice and Budgeting Service should be required to certify whether a financial institution should be permitted to proceed to seek a court order to repossess a house. In advance of granting a repossession, a series of innovative options could be considered by all the covered financial institutions. These include freezing the mortgage for a specified period, extending the term covered by the mortgage, reducing the interest rate for a period or renting back the property if it is a complete basket case.

As I stated some weeks ago, we must also address the issue of illegal money lending by criminal elements that use Don Corleone type enforcement methods. This practice is endemic in all parts of the country. Legal money lending at exorbitant rates is also a problem. A British public limited company, Provident Financial, is lending money legally to desperate households at annual percentage rates, APRs, of as high as 187%. These issues must be addressed and I ask the Leader to arrange a debate on them with the Minister for Finance. Senators will gladly facilitate the Minister in holding any such debate at his convenience.

Senator Eugene Regan: The National Assets Management Agency is mandated to assume the toxic loans of the banks and, where necessary, call in the securities provided and realise the value of the properties in question. The Government has not addressed a technical problem of fundamental importance to the ability of NAMA to realise the assets which underpin the loans it proposes to assume. This problem, of which the Government is aware, relates to lands and properties which are co-owned. In such cases, there is an inability to enforce the judgment mortgage and securities in the courts. This issue was highlighted by the Law Reform Commission in a consultation paper on judgment mortgages published in 2004 and in a High Court judgment issued by Ms Justice Laffoy in the *Irwin v. Deasy* case on 31 January 2006. It has also been noted at various law conferences in recent years. Despite this, no action has been taken to address the issue. I ask the Leader to address it to the Minister for Justice, Equality and Law Reform.

The effect of the problem to which I refer is that, in the case of loans secured on properties which are in co-ownership, the National Assets Management Agency would not be in a position to enforce securities and judgment mortgages. This appears to be a major impediment to the

work of the agency. Notwithstanding the fact that the Fine Gael Party is not favourably disposed to the entire NAMA project, we would like the Government to get it right if it is intent on pursuing this option.

Senator Donie Cassidy: In what year was the judgment to which the Senator refers?

Senator Eugene Regan: In 2006, Ms Justice Laffoy noted a lacunain the law and stated it was for legislators to remedy it. As no action has been taken, I ask the Leader to address the matter to the Minister. The question of family homes does not arise in this respect as such properties are afforded additional constitutional and statutory protections. The problem relates to commercial and agricultural property and land which may be the subject of NAMA's work.

Senator Denis O'Donovan: Will the Leader confirm his commitment to hold a debate on the Common Fisheries Policy before the end of the session? It is critical that we debate this issue because the current Dáil and Seanad will be no longer in place when the Common Fisheries Policy is next debated.

Senator O'Toole stole my thunder when he raised the issue of rural transport. I echo and support his contribution on the suggestion that the night transport aspect of the rural transport scheme is to be removed. The scheme was introduced by the Minister on a pilot basis. I do not wish to be parochial on this issue but I represent an area with many peninsulas and remote locations. I listened on radio this morning to a lady from Glengarriff who lives some distance from her church and avails of the scheme to travel to church on Saturday evenings. This is a wonderful service which should, if possible, be maintained, even if it means increasing the charge by €1 or €2. The Minister for Community, Rural and Gaeltacht Affairs, Deputy Éamon Ó Cuív, has given great support to this and other initiatives in rural areas and disadvantaged urban areas, and I will be disappointed if the suggestion about which we heard this morning transpires to be true. I ask the Leader to arrange a debate on rural transport and social inclusion before the end of the term.

Senator David Norris: I ask the Leader to explain the reason he did not indicate there would be a sos during the debate on the Nursing Homes Support Scheme Bill. Given that, as with many other Bills taken in the House, the same three or four Senators will be present all day, we are entitled to this little courtesy. I note the Leader is nodding and I assume, therefore, that a sos will be included, for which I thank him.

I support the views expressed by my colleagues, Senators O'Toole and O'Donovan, on rural transport. Restrictions on alcohol have left people frightened to go to pubs at night, which may or may not be a good thing. I heard the woman to whom Senator O'Donovan referred state on radio this morning that she would be unable to attend mass on Saturday evenings in the event that the rural transport scheme is ended. She also said people were lonely and perishing of isolation. Her comment that they may as well kill us all provides a stark warning to those of us in public life.

I ask the Leader to arrange a debate on genetically modified organisms and food to ascertain the current position of the Government on the issue, particularly in light of the fact that Tasmania has decided to continue its ban on the release of genetically modified organisms. The relevant Minister, Mr. David Llewellyn, stated that Tasmania's "GMO-free status is a vital factor for our primary producers, helping them realise their full potential in the international and interstate markets." This is precisely the point some of us have been making. Irrespective of the scientific basis for such a ban, politically and economically it is a good thing.

I ask the Leader to arrange a debate on human rights in the international perspective. This evening the Ceann Comhairle will receive a delegation from the People's Republic of China

[Senator David Norris.]

for dinner in the House. I hope to be able to attend the event to raise the situation in Tibet where people are still being killed. A mass movement of population to facilitate a hydroelectric project has resulted in six Tibetans being seriously wounded and some of them may have been killed. While I may not get an opportunity to raise the matter directly with the Chinese delegation, I would like an opportunity to discuss these important issues of humanity in the House.

Senator Cecilia Keaveney: As one who lives near Lough Foyle, I declare my interest in this serious issue. The Foyle, Carlingford and Irish Lights Commission is charged with managing Lough Foyle. I have been informed by the Minister of State, Deputy Conor Lenihan, that negotiations with the Crown Estate to buy a lease for the aquaculture licensing of the lough are at an advanced stage. Why are we negotiating with this body? I contest its claim in this matter.

In response to articles on the front page and inside pages of yesterday's edition of the *Irish News*, the Crown Estate indicated it would not make a claim of ownership until an international marine border was agreed by the British and Irish Governments. I ask for the current negotiations to be stopped. Difficulties in defining the seabed should first be resolved and ownership and veto rights on development in Lough Foyle handed over to the Foyle, Carlingford and Irish Lights Commission, the cross-Border body charged with managing the lough. Contrary to its statement to the *Irish News*, the website of the Crown Estate features a claim of 200 nautical miles of seabed. Under the United Kingdom's 2004 Energy Act, it claims a right of veto over any developments on the seabed and foreshore. I challenge this claim.

Negotiations with a third party on this matter must cease. If the Crown Estate can prove its claim, we should buy it out. The relevant cross-Border body should be responsible for the development of Lough Foyle. We cannot develop the lough in a consistent and coherent manner if all developments are subject to threat of a third party veto. I am supported in this matter by members of the Northern Executive and local councils in the North. I hope we will be able to bring the issue to a speedy conclusion.

Senator Paschal Donohoe: My colleagues have touched on the considerable variety of challenges facing the country, with potentially 550,000 unemployed by the end of the year, the set-up of the National Asset Management Agency, NAMA, and the future of rural life. A crucial question is the ability of the Government and politicians in general to lead the country through such considerable challenges facing us. I call on the Leader to arrange a debate on the decisions that will be made in September on the salaries to be paid to senior figures in the public service. I look at the additional sums the Taoiseach and the Cabinet Ministers receive for the privilege of leading the country and I must question whether that really is appropriate given the challenges the country faces. What I would like to see happen is a move to a system where, for example, the Taoiseach gets paid an additional €30,000 for the privilege of leading the country, Cabinet Ministers get €20,000 and Ministers of State get €10,000 on top of the salary they receive as TDs. This may be a radical and severe change from the current position, but it is less radical and less severe than what is faced by many who the Government is looking to serve. I call for a debate on the salaries paid to such figures and the general question of how Government and politics in general can gain the credibility and support of the people to get through the significant changes ahead.

I second Senator Healy Eames's amendment to the Order of Business. I also agree with Senator Alex White on the comments of the Roman Catholic Archbishop of Dublin. The archbishop appears to be ahead not only of elements within the church but of the Government in the call he made yesterday and that would merit debate in the House.

Senator Mary M. White: I plead with the Leader to arrange before the end of the session for the Minister for Health and Children to come to the Seanad to discuss what she and the HSE are doing about the national crisis of suicide in the community. At a time when the number of suicides is increasing, the funding of the suicide prevention organisation has been cut back. My evidence is from the organisations which deal with suicide. There is disbelief because they know there are many more suicides. There have been clusters of suicides and nothing has been done about them. I want to see the Government deliver what it promised in the programme for Government, namely, that it would reduce the rate of suicide by 20% by 2012. The European Alliance Against Depression indicated that four proven community-led methods can bring down the rate of suicide by 24% over two years.

Almost 500 people in this country die from suicide each year and I want to know why the energy of the Department of Health and Children, the HSE and the Minister is not being galvanised. If 500 people a year were dying from swine flu, a national emergency would be declared, but this is being ignored. Much of the reason for this is that the stigma of mental illness and suicide is still very evident. I tabled a motion at the Fianna Fáil parliamentary party meeting — it was the only motion tabled — and I got super support from my colleagues on this. I am pleading. It is not worth my while coming to the Seanad unless the Minister for Health and Children can come to the House and inform Members why she is not addressing this national crisis of suicide.

Senator Dominic Hannigan: I join other Senators in expressing my dismay at the proposed cutbacks in the rural bus services. Clearly, it will lead to additional hardship for people living in rural communities. It will increase isolation, and we just heard Senator Mary White speak eloquently about the potential impact of isolation on people. It will also make it more difficult for young people to access the jobs market. Many in my constituency have complained about the lack of bus services to get to jobs when they are being offered. It would also put additional pressure on the local road infrastructure which is crumbling, as all Members will be aware. My concern is little cost-benefit analysis has been done on these proposals. If it were, it would show that the social cost of these cutbacks will be greater than any potential savings. I join in the call for a debate as soon as possible on rural transport networks.

Senator Terry Leyden: I support the proposal by Senator O'Toole on the review of the rural transport scheme. This innovative scheme was introduced as a pilot scheme by the former Minister, Deputy Mary O'Rourke, and it has been rolled out to quite a number of areas with considerable success. I see it operating at first hand in my own area. It would be a worthwhile exercise to have a full review of this issue in the Seanad and to put forward the strong view held. I compliment the Minister, Deputy Ó Cuív, who took much criticism at the time over the introduction of the nightly bus, which he very much supports.

On No. 25 on the Order Paper, I ask that we devote time to the question of the Council of Europe on the occasion of its 60th anniversary. Ireland is one of ten founding members of the Council of Europe. President Mary McAleese will address the plenary session at 12.30 p.m. on Tuesday, 23 June. I ask Senators to accommodate Senator Keaveney, Senator Joe O'Reilly and myself, the three representing the Seanad in the Council of Europe. It would be worthwhile. Senators Bacik, O'Toole and Norris could look at this matter from the point of view that it is in order that we Members of the Seanad should be allowed attend such plenary sessions when we must be there for events. Indeed, I am vice-president of the ALDE group in the Council of Europe and I have great difficulty in getting a chance to attend next week. I ask the Leader of the House, and the Cathaoirleach, that there should be some provision where Senators are nominated——

Senator Joe O'Toole: It is a matter for the Whips.

An Cathaoirleach: It is a matter for the Whips.

Senator Terry Leyden: —to international bodies. It affects Senators Keaveney, O'Reilly and myself.

An Cathaoirleach: It is a matter for the Whips.

Senator Terry Leyden: It is not. There is a motion on the Order Paper due to its 60th anniversary. Next Tuesday the President will address that assembly and the Seanad should be represented by those who have been nominated to attend. I appeal to all Members of the House who purport to be liberal, progressive and in favour of human rights—

An Cathaoirleach: The Senator has made his point.

Senator Terry Leyden: —to allow the Members here to attend.

Senator Joe O'Toole: On a point of order, why are these remarks being made in this direction?

An Cathaoirleach: It is a matter for the Whips, if people are absent in whatever way.

Senator Joe O'Toole: Exactly.

Senator David Norris: Senator Leyden recognises our natural leadership.

Senator Terry Leyden: Senator O'Toole knows exactly why.

Senator Paudie Coffey: I agree with the sentiments of previous speakers on isolation and the importance of the rural bus network. Last week we heard how Bus Éireann, the national bus provider, will also cut networks in and around the country. Rural isolation will have a significant social impact, and we must remember that Ireland is predominantly rural. Much of the time politicians in Dublin forget that beyond the Pale there is three quarters of the population who still require services.

Senator Joe O'Toole: Hear, hear.

Senator Paudie Coffey: Rural isolation is one of the highest priorities in rural areas. I commend the Government on rolling out the rural bus network over recent years, but now it will undo all that work and leave in the lurch the people who have been using this service, which is unacceptable.

I support the call of my colleague, Senator Healy Eames, for a debate on mortgages. Many home owners are under severe pressure and all that is relieving them at present are the low interest rates. I ask the Leader to call the Minister for Finance to the House to discuss the area of home mortgages and how we can assist home owners. The moratorium only applies to a certain small number of banks. There are many other banks which are putting considerable pressure on family homes and we need to respond constructively and find mechanisms to address this problem in society. We, as politicians, must do that. It is an obligation on us.

I commend the Government, which may surprise the Leader, on the commencement of the further provisions of the Public Health (Tobacco) Acts. On 1 July there will be no advertising of tobacco products in retail premises, and I welcome that. One of the best acts of the Government over recent years was to ban smoking in public establishments in 2004. More than 7,000

people die in this country every year from tobacco related illnesses. It is a stark statistic which should never be forgotten by any member of any Government. More can be done through our educational establishments and schools to help educate our young people to avoid cigarettes at all costs because the major health implications of smoking will continue for many years and will only manifest themselves later in life. I ask the Leader to commend the Government on the provisions of the ban on the advertising of tobacco and perhaps some day in the next term he could provide for a debate on tobacco and its implications for the country.

Senator Ivor Callely: I support my colleagues who referred to the significant and vital role played by the rural transport scheme in the country. Like Senator Donovan, I see first hand the benefits of the rural transport scheme, particularly social inclusion and what it does for people in rural areas. I look forward to the Leader accommodating the request for a discussion on the issue.

I also support Senator Mary White on the issue of the national crisis of suicide in Ireland. There is no doubt, given the current economic climate and recession, that suicide is on the increase. I ask that when we address the topic of suicide to ensure the Department of Health and Children, which has the principle role in the provision of various programmes, accommodates and seeks to ensure that the financial institutions participate in whatever working group would be put together by the Department of Finance. There is no doubt the actions of financial institutions can, on occasion, create an impulsive action by people whom they unfairly put under pressure.

I rise for the second time to support the comments of Senator MacSharry on the success of the National Treasury Management Agency in the oversubscription of the sale of our national bonds. I understand they were oversubscribed 2.5 times, which is a great indicator for the current financial status of the country and to the international markets. I support the proposals of Senator MacSharry to help address the problems of mortgage defaulters.

Senator Ivana Bacik: I echo the words of Senator Alex White in calling for a debate on the ownership of national schools. While Archbishop Martin's comments that the Catholic monopoly, as he put it, over schooling is not tenable are welcome, some caution is necessary. The archbishop referred, in the reported version of his speech, to the management of schools rather than ownership. If we are to have debate on this matter we must also look at the ownership of schools that are being paid for and maintained by the State and yet remain, as far as we can tell, predominantly in the ownership of the Catholic church. A debate is needed to ensure there is greater choice for parents and children as to where they receive their education.

I renew my call to the Leader for a timeframe for the introduction of the Climate Protection Bill and the Civil Partnership Bill. The Leader responded yesterday but did not give a commitment as to when those Bills will be introduced——

Senator Joe O'Toole: Nor a promise.

Senator Ivana Bacik: ——or any sort of promise as to whether they would be introduced. There has been a long lead-in for both Bills. We heard accusations of Ministers sleeping in the other House last week and there is a danger that Ministers might be seen to be sleeping on the job if the Bills I referred to are not introduced very shortly because there has been plenty of preparation time.

I introduced the Climate Protection Bill to the House and we called a vote on it in the last number of weeks. There has been plenty of preparation time available to the Government and there are plenty of models for climate protection legislation to be introduced without further delay. We are facing into the Copenhagen climate summit in December. This is something that

[Senator Ivana Bacik.]

cannot be left on the long finger. The Stop Climate Chaos campaign organised a massive human hourglass on Sandymount Strand last weekend to show that time is running out and we need legislative action on this issue. I ask for an answer on that.

I support Senator Healy-Eames in her call for a debate on bilateral adoption agreements, with particular reference to Vietnam. It is of real concern to hear that the Vietnamese authorities have now, I understand, cancelled the licence for the agency with which Irish couples have been working. A great number of individuals and couples in Ireland have been left in limbo and do not know where they stand regarding their prospective adoptions of Vietnamese children. We need the Minister for Health and Children, Deputy Mary Harney, to come into the House to answer questions on this matter.

Senator Ann Ormonde: I agree with all those who spoke about the lack of rural transport. I am very concerned that we would cut back on rural transport. I feel very strongly that we must do something to activate community life. When people are trying to get planning permission to build a house on their farm it is refused and now rural transport is being cut back. There will be no rural life in this country and I am very concerned about that. A debate on the matter is necessary. I want to see more vibrant communities and life back in the country. I do not want one way of life based in cities and urbanised areas. I love the rural way of life. It is the way we should be. There is currently no balance and there will now be cutbacks in rural transport.

I would also welcome a debate on Church and State management and ownership of education. I have no fixed ideas about it, but a choice regarding education must always be available. It would be very welcome and this would be the best Chamber to have such a debate. I am constantly advocating that we have such debates in the Chamber because they help to open up thinking. Once again we have an opportunity to debate a very serious matter, that is, the education of our young people.

Rural transport must come on the agenda very quickly to make sure we re-activate community life in all forms. I would like such a debate before we break for the summer.

Senator Paul Coghlan: I am also concerned——

A Senator: The Senator should move more to the left.

Senator Paul Coghlan: No.

An Cathaoirleach: Senator Coghlan on the Order of Business without interruption.

Senator Paul Coghlan: I am equally concerned about the rural transport networks because we all understood the aim was to eliminate, minimise or reduce isolation in every way we can. The re-jigging of this scheme is very serious and will have disastrous social consequences. I support the call of all other Senators for a debate on the matter.

I am generally very complimentary of Irish Rail for the improved rail service we have. It is of course greatly subsidised. I do not know if what happens on the Kerry service happens elsewhere. Perhaps it happens in Sligo, Westport and other places. I refer to a direct train which leaves early in the morning. People may have to leave home without a bite to eat and may want some breakfast. On the train I travel on early in the morning, the restaurant carriage is designated as a first class carriage. In other words, one is expected to pay a supplement to become a first class passenger in order to eat breakfast. It is a ridiculous situation.

Senator Joe O'Toole: Hear, hear.

An Cathaoirleach: Questions to the Leader.

Senator Jerry Buttimer: It would not happen on the train to Cork.

Senator Paul Coghlan: The Leader understands what I am talking about as he is a man with his feet firmly planted in rural Ireland. We are at one on this issue.

Senator Labhrás Ó Murchú: It is a great source of concern and is very alarming to learn that more than 100 immigrants to the North of this island had to take refuge in a church because they feared for their lives. Among them was a five day old baby. These people have come under sustained, organised attack for a long period of time and it is only by the luck of God that nobody has been killed. It beggars belief that this could be happening in modern days. It is more like an echo from medieval times.

I salute the neighbours who came out onto the street——

Senator David Norris: Hear, hear.

Senator Labhrás Ó Murchú: ——in support of the people concerned because it took courage and they also came under attack. One can only imagine what the stories currently going out of this country are like. It is just one country. If we cast our minds back to the early Irish immigrants who went to America, one wonders what it would have been like if that community had come under the very same kind of attack. It is vital this is nipped in the bud. We must be aware this could just as easily happen in the South in socially deprived times. It is important we show solidarity with the people who came out and with the agencies in the North while at the same time remain careful in any language we use to ensure we do not inflame passions. It must be borne in mind that this was not individual thuggery, it is quite clear there was an organised hand behind this incident. The question that arises is whose hand was it. We must be careful that we do not hand over to some particular group the opportunity to do so again in the future.

Senator Phil Prendergast: Will the Leader arrange for a debate on the interpretation of special needs in schools? I was concerned to read of cutbacks across the whole spectrum of schools with special needs assistants for children. For a child in the autistic spectrum familiarity and relationship building is a strong feature in terms of their achieving some degree of normality within our education system. It is a matter of grave concern to me and many others across the country that children with special needs have been disadvantaged in this way. There has been much focus lately on abuse of children. To me it is an abuse if we do not cherish all of our children equally. Children with special needs should never be singled out as the first in line in terms of cutbacks. Very rarely are they able to speak for themselves. Parents are put to the pin of their collars to cope given some of these children can be challenging at home and in the school system. As I stated, relationship building is important to special needs children.

I wish to raise another matter which relates in a small way to the rural transportation system. Our current fleet of ambulances are top of the range — they may be Mercedes — and are fine when used to transport people on the M50 or other good roads. However, their use in the Nire valley, which is beautifully scenic and so on, is not good as the suspension in the ambulances is not suitable to roads deemed to be of not good standard. Patients, be they in premature labour or suffering spinal injury, can suffer more danger to their health when transported in these vehicles. I ask that a standardised protocol be put in place so that the ambulance service, in light of the provision of centres of excellence in regionalised locations, is suitable for all roads in the country and not just on motorways.

Senator John Hanafin: I join with colleagues who condemned the racist attacks on the Lisburn Road in Belfast. We have long thought we had seen an end to racism in the North. However, it has again raised its ugly head. I believe, as mentioned by previous speakers, that this attack was organised. This organisation took the form of the current economic downturn to blame immigrants for the lack of jobs and opportunity in Ireland. This is not a phenomenon unique to Northern Ireland, it could happen here and has happened in the UK with the British National Party. We know from history that throughout Europe there has been a resurgence of the far right. Whereas this is not a cause of immediate concern it is a situation that should be monitored carefully. One of the groups that has progressed is a far right group in Hungary with a paramilitary wing. We have also seen the rise of the far right in Austria. Whereas different ideologies might be looked at, including Communism, which I do not support but the principals of which are based on economics, Fascism has principals based on race, the most evil and heinous type of political activity in which the far right engages.

I ask the Leader to call on the Minister for Finance to look again at how we can operate with the Northern Ireland Executive in particular in terms of ministerial pricing orders on tobacco and alcohol, which would serve both sides. It is perhaps time that we again consider the use of pricing orders as a method of developing a social policy on the abuse of alcohol. The fact is that in some off-licences alcohol can be purchased cheaper than cans of Coca-Cola.

I call again for a two-day debate that would include all political parties outlining their economic policies on how to deal with the €20 billion deficit, within which they would have independently costed how much cuts they would make and what taxes would be increased.

Senator Maurice Cummins: The Government has spent approximately €40 million on a site, including design and planning, for a new prison at Thornton Hall, a project which has been shelved indefinitely. Recent reports suggest that our prisons are grossly over-crowded and that conditions therein are deplorable. I call on the Minister for Justice, Equality and Law Reform to come into this House to outline what he intends doing in terms of the provision of extra spaces in our prisons and how he intends to tackle gross over-crowding therein, which is a recipe for unrest into the future. Proper measures must be put in place as a matter of urgency before the situation gets totally out of hand.

Senator Brian Ó Domhnaill: I support the concerns expressed by a number of Members regarding the evening rural transport scheme which is due to expire on 10 July 2009. It was a pilot scheme initiated approximately seven years ago at a cost of €500,000, which is relatively small given the benefit accrued from the service provided. The service is being provided in rural parts of west Donegal and is used during the day by people going to collect their pensions and social welfare payments and in the evening to attend bingo and other community events in the local area. The withdrawal of this service would result in the isolation of these people in their homes in the evenings. I am aware the Minister for Transport met yesterday with some of the groups concerned. It is hoped a positive outcome in this regard can be achieved. I support the call for a debate on the matter in this House before the summer recess, if possible next week.

I wish also to raise the issue of the availability of finance to small and medium enterprises from financial institutions, of which there is none. Many SMEs across the country — I know of many in my constituency — that have employed people down through the years and have healthy cash flows cannot obtain finance from the banks, be it bridging loans or other finance required. The decision-making process while previously a function of the local bank manager has been centralised to Dublin and is causing grief and pain for many businesses. This is an issue we must address in this House perhaps by way of a debate with the Minister for Finance prior to the summer recess, if possible.

Senator Jerry Buttimer: I join with other speakers in asking the Leader to provide time, if possible this week, for a debate on rural Ireland and community life. Senator Ó Domhnaill spoke about the evening rural transport scheme which is to be cut. Let us not forget that three quarters of Ireland is rural. We need a viable transport link in rural areas. The Government is taking a short-sighted approach to saving money and is depriving people of the opportunity to live in their communities. Also, the decision of Bus Éireann to sever, curtail or discontinue services in many parts and the cut by the Health Service Executive in home care packages will result in people being deprived of services and the majority of areas becoming isolated.

I ask the Leader to provide time for a debate with the Minister for Arts, Sport and Tourism in the context of his remarks yesterday in the Dáil regarding the grant scheme to the Gaelic Players Association. This, coupled with the fact that the Minister has shelved the sports capital programme, tells our elite GAA players they will not be rewarded for playing the game or raising the sport to the highest level. This Government appears to have no policy on sport. I have called on numerous occasions for a debate on sport but have not yet received a positive response.

I seek a debate on assistance to home owners, particularly those who are hard pressed to repay their mortgages. I know many couples who are temporarily paying their mortgages with credit cards. Loan sharks are preying on people and making their lives uncomfortable. We should call on the relevant Oireachtas committee to regulate these sharks and moneylenders so that we can have an equitable system of lending and relieve the pressure on young couples.

Senator Rónán Mullen: I concur with Senator Hanafin and others regarding the racist attacks in Belfast, which yet again demonstrate that we have a long way to go before full respect for the dignity of the person is enjoyed by all members of society. They underline the need to promote values of tolerance at all levels, but mere tolerance will not suffice. We need to emphasise the ethical absolute of the right of each person to participate equally in the goods of our society. That is more a matter of respect for the person than a mere assertion of rights or values of tolerance. Our schools should play a key part in emphasising these rights.

I would welcome a debate on the ownership and management of our schools. The key value in this regard must be parental choice. According to a recent poll of parents' preferences conducted by Red C Research, 47% want their children to attend Catholic schools, 37% want schools where all religions are taught and 11% want schools in which no religion is taught. All those groups must enjoy access to schooling under the model they prefer. I would regret any attempt to use the current controversy, which must be taken seriously, as a wedge to pursue a separate agenda for the control and ownership of schools. I have criticised the Labour Party and others in this regard.

Senator Joe O'Toole: Did the Senator speak to the archbishop about the matter?

Senator Paul Coghlan: Archbishop Martin is a sound man.

An Cathaoirleach: Senator Mullen, without interruption.

Senator Rónán Mullen: I fully support the comments of Archbishop Martin in this regard. We must move to a situation in which people have access to ownership models of schools in proportion to their aspirations as parents. If we pursue that aim rather than a statist, one size fits all model, we will achieve social justice while acting harmoniously with the wishes of parents.

Senator Donie Cassidy: Senators Healy Eames, O'Toole, MacSharry, Coffey and Buttimer expressed strong views on the difficulties being experienced by home owners, particularly those

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who have lost their jobs. The banks and the Government must play a part and I support the calls for assisting those who are on the margins. Home owners with good track records should be given extensions to their mortgages and allowed to suspend payments while they are unemployed. Financial agencies have to act responsibly towards people who have good track records and if there are hardship cases, we as public representatives should use our good offices to assist those who have lost their jobs through no fault of their own. I have a friend whose mortgage repayments decreased from €1,400 last September to €1,020 this month because interest rates are at a historic low. However, interest rates are irrelevant if somebody has lost his or her job. I have no difficulty in allocating time to discuss this issue in minute detail with the Minister for Finance prior to the summer recess.

Senators Healy Eames and Bacik spoke about the adoption challenges faced by many parents, particularly those who are affected by the negotiations on a bilateral agreement with Vietnam. The Minister of State at the Department of Health and Children has informed the House that he is doing everything he can in this regard. I will discuss with him how we can make progress on the issue.

Senator Fidelma Healy Eames: We are not making progress.

Senator Donie Cassidy: I provided an update for Senators last week and if further progress is made this week I will revert to the issue on tomorrow's Order of Business.

Senators O'Toole, O'Donovan, Hannigan, Leyden, Coffey, Callely, Ormonde, Coghlan, Ó Murchú, Ó Domhnaill and Buttimer expressed strong support for rural bus services. I commend the Minister for Community, Rural and Gaeltacht Affairs, Deputy Ó Cuív, and my constituency colleague and former Minister for Transport, Deputy O'Rourke, on their role in looking after those who need transport. One should be able to look forward to quality of life and happiness, particularly in the autumn of one's career. I know from another walk of life the terrible feeling of loneliness and of being unable to communicate with anybody. As Senator O'Toole correctly pointed out, the rural transport initiative has been a godsend for those who want to go to bingo or draw their pensions. Those of us who come from rural areas would not be worth our salt if we did not stand up for the people who need this service. During this downturn in the economy, many people need this facility because they may no longer be able to insure or tax their cars. I will arrange a debate on the issue early next week.

Senators Alex White, Bacik, Donohoe, Ormonde and Mullen referred to the recent statement by the very courageous Archbishop of Dublin, Diarmuid Martin, on the church's long-standing commitment to education. When there was no money, the churches not only brought faith to the people but also education to Ireland and, through our missionaries, the world. I will see what I can do to have a debate on the matter with the Minister for Education and Science at the earliest opportunity.

Senator MacSharry welcomed yesterday's bond offering. That the three and seven year bonds were over-subscribed is an indication of the confidence of foreign investors and those who have money.

Senator Regan drew on his legal experience to put a proposition before the House which I will bring to the relevant Minister's attention. The proposition concerned joint land owners, the challenges facing NAMA and the 2006 Laffoy judgment. It was worthy of the Senator to bring these matters to our attention.

Senator O'Donovan called for a debate on the Common Fisheries Policy. I gave a commitment to the House regarding this serious challenge for the fishing industry. It is also an oppor-

tunity for job creation if we are serious about addressing the plight of fishermen and women. I have scheduled time for a debate on the issue before the summer recess.

Senator Norris called for a debate on human rights. I have no difficulty in agreeing to such a debate. I will also address with the relevant Minister the remaining issues raised by the Senator.

Senator David Norris: I asked about a sos.

Senator Donie Cassidy: I think that is a reasonable request because this will be a long sitting day — we may not adjourn before 11 p.m. or midnight. I accede to the request by the Senator for a sos from 1.30 p.m. until 2.30 p.m.

An Cathaoirleach: Is that agreed? Agreed.

Senator Donie Cassidy: Senator Keaveney expressed her views on the Foyle, Carlingford and Irish Lights Commission and rights on the seabed. I will pass on the Senator's strong views to the Minister.

Senator Donohoe raised certain issues and highlighted the major challenges facing our country regarding the problem of the economy. I gave an undertaking earlier on the Order of Business that we will have this debate. On almost every Order of Business in the past two weeks Senator Hanafin has called for such a debate to allow everyone the opportunity to bring forward their policies. A Senator called earlier for an independent analysis of the proposals before they come to the House, which would assist the Government in its effort to help everyone regarding the challenges facing the economy.

Senator Mary White and Senator Callely called for a debate on suicide. We must all commend Senator White who outlined to the House that 500 people die as a result of suicide every year. It is a terrible tragedy and we must do anything we can to help in that regard. This report is very welcome. I thank Senator Keaveney and other Senators who assisted the Dáil Deputies in bringing this report to our attention. The least we can do is scrutinise and discuss it in the House at the earliest opportunity.

On the issue highlighted by Senator Leyden, it is hoped the Whips will address that at their weekly meeting tomorrow to determine how they can assist colleagues who wish to attend the Council of Europe on the occasion of its 60th anniversary, particularly as our President, Mary McAleese, will give an address there next Tuesday.

Senator Coffey expressed his support for the new laws coming in governing aspects of the smoking ban. I agree with him on that.

Senator Bacik asked again for an indication of the timeframe for the two Bills she inquired of me yesterday. I can inform the House that the Civil Partnership Bill is on the Government's A list and it is hoped to publish the Bill next week. I await from the Department the timeframe on the Climate Change Bill. A timeframe is available and I will inform the House on that tomorrow morning.

Senators Ó Murchú, Hanafin and Mullen expressed their shock, horror and disappointment about the 100 immigrants in Belfast, in the North, who found themselves in what must be called a fight for their lives. I agree with the concern and views expressed by the Senators. We must show solidarity with those people because it is only 50, 60 or 70 years ago that members of our families and friends were in the same position in other countries trying to get a start in life. I look forward to supporting all of those people who are looking for a new life to get assistance. I agree with the sentiments expressed earlier in that regard.

Senator Prendergast called on the Minister for Health and Children to come to the House for a debate on the interpretation of special needs in schools, particularly in terms of those

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young people suffering from autism. Anything we can do to help them must be done. It is extremely important that at a very early age they are given all the assistance that can be given. It is wonderful to see the progress that takes place when that help is given to those young boys and girls. I have no difficulty in having that matter addressed in the House with the Minister present. I hope the Minister will be in the House for the debate. I am doing everything I can to discuss all matters and the up to date position in regard to the Health Service Executive before the summer recess.

Senator Prendergast also spoke about the ambulance services. The comfort of patients is of the utmost importance when they are undertaking journeys of 100 and 130 miles. It is a long journey for a patient to travel from Clonmel to Dublin. I fully agree with the sentiments expressed by the Senator about that area.

Senator Coffey and Senator Hanafin raised the issue of pricing orders North and South and called for co-operation with our ministerial colleagues in the North in regard to alcohol prices and alcohol abuse. I agree fully with the call made about that issue.

Senator Cummins called for a debate on extra spaces in our prisons. That is a worthwhile call and I am aware the Minister for Justice, Equality and Law Reform would be only too pleased to come to the House to give us the up to date position. I am aware an extra 400 new places are being put in place this year. I will arrange for this debate to take place if at all possible.

Senator Ó Domhnaill called for the banks to make funding available for small and medium sized enterprises, particularly now that it appears local bank managers no longer have the discretion or the authority they had many years ago. Applications to all the banks now go to their central offices in Dublin. The credit control committees take over from there but they do not know the people who have been working in the various rural areas over the years making the commitments and providing employment, all of whom have credibility. I agree with the Senators on this issue. Anyone who is creating employment should be given top priority, and that should be the message from this Government. I am aware the Taoiseach and the Minister for Finance are doing everything they can——

Senator Fidelma Healy Eames: Hear, hear.

Senator Donie Cassidy: ——with the banks in regard to this area.

Senator Fidelma Healy Eames: Do it.

Senator Jerry Buttimer: When is it going to act?

Senator Donie Cassidy: If someone is giving employment, and I speak with considerable experience in this regard——

Senator Fidelma Healy Eames: Go for it.

Senator Donie Cassidy: ——they are a respected person in terms of what they can do to make a contribution and help people to work in the land where they were born and reared.

Senator Fidelma Healy Eames: The Senator should raise it with the Minister.

Senator Donie Cassidy: That is of the utmost importance at the present time.

Senator Fidelma Healy Eames: Agreed.

Senator Donie Cassidy: Senator Buttimer called for a debate on sport with the Minister present. I have no difficulty in having that debate take place at the earliest possible time.

An Cathaoirleach: Senator Healy Eames has moved an amendment to the Order of Business: “That a debate on the cancellation of the bilateral agreement on foreign adoptions between Ireland and Vietnam be taken today.” Is the amendment being pressed?

Senator Fidelma Healy Eames: Yes.

Amendment put.

The Seanad divided: Tá, 21; Níl, 23.

Tá

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.

Healy Eames, Fidelma.
McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Reilly, Joe.
O'Toole, Joe.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.
White, Alex.

Níl

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

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

Tellers: Tá, Senators Jerry Buttimer and Maurice Cummins; Níl, Senators Labhrás Ó Murchú and Diarmuid Wilson.

Amendment declared lost.

Order of Business agreed to.

Offences against the State (Amendment) Act 1998: Motion.

Senator Denis O'Donovan: I move:

That Seanad Éireann resolves that sections 2 to 4, 6 to 12, 14 and 17 of the Offences against the State (Amendment) Act 1998 (No. 39 of 1998) shall continue in operation for the period of 12 months beginning on 30 June 2009.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy Barry Andrews): This resolution seeks the approval of Seanad Éireann to continue in operation those sections of the Offences against the State (Amendment) Act 1998 which would otherwise cease

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to be in operation after 30 June next. A similar resolution is being taken in the Dáil today. Senators will recall that the 1998 Act was enacted in the aftermath of the Omagh bombing in August 1998, a dreadful tragedy which claimed 29 innocent lives and impacted grievously on many more. The memory of this calculated, brutal act is undiminished more than a decade later.

The attack on Omagh was a deliberate attempt by desperate people to undermine the Northern Ireland peace process and to overturn the Good Friday agreement. The bombing sought to crush the progress that had been achieved. Thankfully, the establishment of a new dispensation in Northern Ireland is testament to their failure. Communities from all traditions in all parts of the island stood firm then and continue to stand firm in their determination to have a peaceful future based on the rule of law. The Government of the day and the House shared that determination and enacted the Offences against the State (Amendment) Act to equip the Garda with the tools necessary to defeat the bombers and their fellow travellers.

The families of the Omagh victims recently won a notable victory in the High Court in Belfast in a civil action. I am pleased to place on the record of the House that the Government facilitated the relatives and the Northern Ireland court by taking some of the evidence in this jurisdiction. The House should be aware that the investigation into the atrocity in Omagh remains open on both sides of the Border and there is excellent co-operation between the Garda and the Police Service of Northern Ireland, PSNI, in this regard.

Given the exceptional events that form the background to the introduction of the Act, the Oireachtas decided that it should revisit certain provisions of the Act annually to decide on their continued necessity. This allows Members to consider and to take a view on whether the current circumstances justify the continued operation of these provisions for a further period not exceeding 12 months. I have no doubt this is justified and I will outline to the House why that is so.

As required by the Act and to support consideration of the matter by both Houses, the Minister for Justice, Equality and Law Reform is required to lay before the Oireachtas a report on the operation of the relevant provisions prior to moving the resolution. This report, laid before the House on 11 June 2009, covers the period from when the last such report was prepared in June 2008 to 31 May 2009. The assessment of the Minister is that the relevant sections of the 1998 Act should remain in force for a further 12 months. This conclusion has been reached based on the current security situation, the Garda Síochána's advice and the information provided in the report.

The House will not need to be reminded of the despicable murders in Northern Ireland of two soldiers, sappers Mark Quinsey and Patrick Azimkar, at the Massereene barracks in Antrim and of a PSNI constable, Stephen Carroll, in Craigavon in March this year. Those murders followed a series of attacks on PSNI officers which could have proved fatal and which demonstrated the determination of these groups to kill at any cost. Shortly before the murders an incident took place involving an abandoned bomb in County Down which had the potential to kill scores of people had it exploded. Those who made that bomb and those who carried out the earlier attacks have nothing positive to offer the country. This is the sad reality that compels us to take these necessary measures to protect innocent lives. The 21st report of the Independent Monitoring Commission, which the Minister published last month, leaves no doubt that the Real IRA, the Continuity IRA, the INLA and some other smaller dissident groups remain committed to violent paramilitary action to pursue their aims. We should be clear as to the criminal nature of these groups and the activities they carry on to line their pockets. They rob and extort money, they engage in kidnapping and intimidation, they deal in drugs and they exploit women in brothels. They engage in this behaviour for their own gain and to support

their particular lifestyles. Let us not imagine for a moment that the members of these groups are involved in a noble or historic struggle for freedom. They have nothing positive to offer the country. They are the relics of a violent past that the communities of the island have soundly rejected. Senators will agree that very significant advances have been made in normalising politics in Northern Ireland, bringing communities together on the island and escaping from the legacy of past conflict. However, a substantial threat remains from these dissident groups which are implacably opposed to democracy and peace and which are ready to kill in that cause.

The resolution before the House is concerned primarily with provisions aimed at the threat posed by domestic terrorism. However, we cannot ignore the growth in recent years of a wider, international terrorist threat. The extent and nature of this terrorist threat varies greatly from one state to another, but we should not be complacent in our response to it. We must continue to act, especially with our EU counterparts, to defeat it. The 1998 Act is an essential part of the effort to counter terrorism in all its forms and to protect the people.

It is the firm view of the Garda Síochána that the 1998 Act continues to be a most important tool in its ongoing efforts to counter the threat of terrorism. The Garda has stated unequivocally that in the current circumstances it is essential that the Act's provisions should continue in force to support the ongoing investigation of terrorist activity. The sad reality is those who carried out the Omagh bombing, and others like them, continue to pose a substantial threat in the pursuit of their subversive aims and activities. The Real IRA, the Continuity IRA and the INLA still aspire to commit serious and wanton acts of terrorism. They plan and pursue campaigns of violence and continue to engage in various acts of criminality.

I refer to the provisions which are the subject of the resolution. The Minister has laid before the House a report on the operation of the relevant sections since June 2008, which clearly demonstrates the value of these provisions to the Garda. Section 2 allows a court, in proceedings for membership of an unlawful organisation, to draw appropriate inferences where an accused person fails to answer or gives false or misleading answers to questions. However, a person cannot be convicted of the offence solely on the basis of such an inference. There must be some other evidence which points towards a person's guilt. The section was used 20 times in the period covered by the report. Section 3 requires an accused person, in proceedings for membership of an unlawful organisation, to give notification of an intention to call a person to give evidence on his behalf. This section was used 12 times.

Section 4 provides that evidence of membership of an unlawful organisation can be inferred from certain conduct, including matters such as movements, actions, activities or associations on the part of the accused. The section was not used in the period covered by the report. Section 6 creates the offence of directing the activities of an organisation in respect of which a suppression order was made under the Offences against the State Act 1939 — it was used once. Section 7 makes it an offence to possess articles in circumstances that give rise to a reasonable suspicion that the article is in possession for a purpose connected with the commission, preparation or instigation of specified firearms or explosives offences — it was used 28 times. Section 8 makes it an offence to collect, record or possess information which is likely to be useful to members of an unlawful organisation in the commission of serious offences — it was not used in the period covered by the report.

Section 9 makes it an offence to withhold certain information which might be of material assistance in preventing the commission of a serious offence or securing the apprehension, prosecution or conviction of a person for such an offence — it was used 137 times. Section 10 extends the maximum period of detention permitted under section 30 of the Offences against the State Act from 48 hours to 72 hours, but only on the express authorisation of a judge of

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the District Court, following an application by a garda of at least superintendent rank. Furthermore, the person detained is entitled to be present in court during the application and to make, or to have made, submissions on his behalf. The section was used 41 times and an extension was granted in 41 cases. Section 11 allows a judge of the District Court to permit the rearrest and detention of a person in respect of an offence for which he was previously detained under section 30 of the Offences against the State Act but who was released without charge. This further period must not exceed 24 hours and can only be authorised where the judge is satisfied on information supplied on oath by a member of the Garda Síochána that further information has come to the knowledge of the Garda Síochána about that person's suspected participation in the offence — it was used 18 times.

Section 12 makes it an offence for a person to instruct or train another person in the making or use of firearms or explosives or to receive such training without lawful authority or reasonable excuse. It was not used in the period covered by the report. Section 14 is, in effect, a procedural section which makes the offences created under sections 6 to 9 and 12 of the 1998 Act scheduled offences for the purposes of Part V of the 1939 Act. This means that persons suspected of committing these offences are liable to arrest under section 30 of the 1939 Act. Section 17 builds on the provision in the Criminal Justice Act 1994 that provides for the forfeiture of property. Where a person is convicted of offences relating to the possession of firearms or explosives, and where there is property liable to forfeiture under the 1994 Act, the court is required to order the forfeiture of such property unless it is satisfied that there would be a serious risk of injustice if it made such an order. The section was not used in the period covered by the report.

Section 5 of the Act was repealed by the Criminal Justice Act 2007. This section was reported on last year as its repeal fell part way during the reporting period and it had been in use up to that point. The section provided for the drawing of adverse inferences in certain circumstances where an accused relied on a fact in his defence that he could reasonably have been expected to mention during questioning or on being charged but did not do so. Part 4 of the Criminal Justice Act 2007 now provides for a broader treatment of this issue, including the particular circumstances set out in the repealed section 5. Accordingly, section 5 does not fall to be renewed.

The fact remains that these paramilitary groups are active, ruthless and determined to strike if given the opportunity. They remain resolutely opposed to the Good Friday Agreement and to peace on this island. They are determined to destroy that peace and they are prepared to kill indiscriminately to do so. So long as they maintain this course, the State must have robust counter-measures available to face down the threat. The House and the people of this State, would rightly question the Government's commitment to defeating these groups if we did not ensure adequate legislative provisions were in place to meet that threat.

The Offences against the State (Amendment) Act 1998 is one element of the State's ongoing defence against the terrorist threat. I urge the House not to countenance any weakening of the tools the State has at its disposal in the fight against terrorism. Through good policing, supported by strong legislation and the continued determination of the people of the island, the murderous activities of these paramilitary groups can and will be defeated. I pay tribute to the ongoing work of the Garda Síochána, in co-operation with the PSNI, in facing up to the threats posed. On the basis of the information set out in the report, it is clear the 1998 Act continues to be an important element of the Garda response to terrorism. From the advice given by the Garda Síochána on the value of the provisions, taken together with the ongoing threat from terrorist groups, I consider that the relevant provisions of the 1998 Act should remain in oper-

ation for further 12 months and I have no doubt right-thinking Senators on all sides will agree. I commend the resolution to the House.

Senator Eugene Regan: I thank the Minister of State for his exposition of the situation with regard to terrorism on the island of Ireland and the need for this legislation to be continued. Fine Gael fully supports the continuation of the provisions of the Offences against the State (Amendment) Act 1998 given the deterioration in the situation over the past year. I refer to the killings of British Army soldiers, Mark Quinsey and Patrick Azimkar, in March and the killing of PSNI Constable Stephen Carroll on 9 March. These killings highlight how the situation has deteriorated. It is encouraging that all sections of the community, North and South, and all organisations and political parties have supported the forces of law and order in both parts of the island in confronting the resurgence of violence. The 21st report of the Independent Monitoring Commission highlights how the Provisional IRA has adhered to its commitments in the peace process and that there is no evidence of any violence or terrorist activity by that organisation. This is the one positive element in the report of the Independent Monitoring Commission on 7 May 2009.

This terrorist activity is not just confined to Northern Ireland but straddles general criminal activity and it is clear these organisations are involved in criminal activity of the worst type. In January 2009, the Garda Commissioner highlighted in *The Irish Times* that the threat from dissident republicans should not be underestimated. This is a cause for concern not only for the PSNI but also for the Garda Síochána. The Commissioner highlighted the range of criminal activities in which these bodies are engaged.

The report of the Independent Monitoring Commission clearly states that the current ongoing violence is an attempt to destroy the peace process and return the community in Northern Ireland to the period of violent struggle from which it has so painfully and relatively recently emerged. The attacks on the homes of the Sinn Féin Minister, Conor Maguire, and Mitchel McLaughlin highlight the fact that these organisations are intent on damaging and injuring those who are in any way associated with the restoration of normality in the political and democratic process in Northern Ireland.

The report also highlights the extent of the criminal activity of these organisations. It states that Continuity IRA members continue to be involved in a wide range of other serious criminal activity, including drug dealing, tiger kidnappings, robbery, extortion, brothel keeping and offences designed to defraud the two Exchequers, such as the smuggling of tobacco, in the main, and fuel laundering. The commission is of the view that members of the Continuity IRA were responsible for armed robberies in Dungannon in January 2009 and in Lurgan the following month.

This type of criminal activity affects the ability of the Garda Síochána to maintain law and order on this side of the Border so we have a serious interest in ensuring both the PSNI and the Garda Síochána are given the facilities and legislative framework to ensure they can carry out their responsibilities. The Minister of State has made the case for the legislation and it has the full support of Fine Gael.

Senator Denis O'Donovan: I welcome the Minister of State. I fully support the proposals he has put before the House. It is regrettable and unfortunate that in the aftermath of the Good Friday Agreement this legislation still requires to be buttressed and kept in place to ensure the threats from extreme elements are held at bay. This legislation came into being in the aftermath of the Omagh bombings which was one of the most terrible atrocities ever committed in this country.

[Senator Denis O'Donovan.]

Despite the fact that the Good Friday Agreement was endorsed by probably 95% of the people of this country, North and South, we still have a threat of violence from extreme paramilitary groups. This is a reminder to us that the despicable murders in Northern Ireland of two soldiers, Mark Quinsey and Patrick Azimkar, in the Massereene Barracks and the murder of Constable Stephen Carroll in Craigavon and, as Senator Regan said, the threats against the houses of some Sinn Féin members shows there is an element — albeit a small element — who are ruthless and are involved in all sorts of drug cartels, cross-Border smuggling and criminal activities, even in this city of Dublin, and they must be kept at bay.

I welcome the continuation of these provisions. In the knowledge that these threats will not dissipate overnight, the annual renewal of the provisions of the Act should be extended to a three to five-year renewal period. I cannot envisage that this threat will vanish overnight. There is no doubt those groups, such as the Real IRA, the Continuity IRA and the INLA, which have not given up their arms and which have not complied with the provisions of the Good Friday Agreement have no moral approbation whatsoever, either north or south of the Border, for continuing such violent acts. In that regard we must use all our might and main to ensure they do not get their wicked way. It is unfortunate the Garda Síochána must put such resources and effort into ensuring an atrocity such as Omagh will never occur again either north or south of the Border. There is a continuing threat. From a legal and jurisprudence perspective the measures appear to be severe and draconian, but they are necessary. I concur with the continuation of the sections. In the aftermath of the Good Friday Agreement we hoped that many measures, introduced during what was almost a civil war, could be put aside. We dreamed of a Utopia and hoped a hiatus might occur in the aftermath of the Good Friday Agreement. The Agreement has, by and large, stood firm. It has been implemented by the British Government, acknowledged in Northern Ireland and implemented here in the South. The Good Friday Agreement has been a huge success. It took many decades of effort by many Governments and by people north and south of the Border and in Britain to put it in place. It is a great success story.

We must do whatever needs to be done, including the measures proposed today by the Minister of State. We must be vigilant in ensuring no other acts of violence occur or that those which do occur are dealt with efficiently and effectively.

Senator Alex White: The Labour Party will not be opposing the renewal of the sections of the Act, as proposed by the Minister of State on behalf of the Minister for Justice, Equality and Law Reform. However, I have some concerns. They are about the manner in which the proposals are being dealt with rather than with their substance. I strongly disagree with Senator O'Donovan's suggestion that we give up our current minimal level of scrutiny and renew the legislation only every three or five years. I would wholly oppose such a proposal.

The Minister of State referred to normalisation in the North and in the country generally. That is to be welcomed. The normalisation of our law, including the criminal code, should also be clearly in our sights. Horrific crimes have occurred in the last couple of years but this is not, in itself, a reason to continue to operate emergency legislation or special powers. It should be the Government's objective to ensure that we do not operate under special powers but in a normalised environment with a criminal code which is sufficiently robust, strict and punitive to deal with the kind of crimes of which we are talking. Our horror at an act of violence does not imply agreement to any powers which might be sought. I am sure neither the Minister of State nor any Member would agree that our role as scrutineers of legislation should ever be set aside.

There is no copy of the Offences against the State (Amendment) Act 1998 on the table in the Seanad ante-room, where legislation we are asked to consider is usually placed. Of course,

many Senators will have read the Act. However, it is an abrogation of the role of a legislature to nod through legislation which includes considerable powers and serious offences. These powers have been considered necessary by the Government but it would be a complete denial of the role of Parliament to nod such legislation through on a yearly basis or, as is advocated, every three or five years.

The Garda Síochána has a job to do and the Minister must act on the advice of the Garda. A tool may be desirable but this does not mean it is necessary. We should have a greater and longer opportunity to scrutinise each of the sections to which the Minister of State referred. Perhaps this could be done in a committee. Are these measures necessary as well as desirable? The Minister of State reported the number of times each section was used. Reading over the speech made this time last year by Deputy Brian Lenihan, then Minister for Justice, Equality and Law Reform, I see that while some sections were used more often this year than last year many were used substantially less often. The Houses of the Oireachtas should be in position to question the Minister and an Garda Síochána as to what the gardaí would do if these measures were not available to them. We could then accept that a particular measure is actually necessary. We might want to argue with the Minister and, through him, with Garda advice that a particular measure was not necessary, although desirable to the Garda.

That is the level of scrutiny in which we should engage as we consider the request to extend these sections. I regret that we do not have an opportunity to do so. We have been given 40 minutes. Would it make any difference if we were given four minutes, or even four seconds? The level of scrutiny is not good. It should be better. I do not take from what I said at the outset. The Minister of State, on behalf of the Minister for Justice, Equality and Law Reform, has informed the Oireachtas that these powers are necessary in the context of a terrorist threat. I see we have added the question of international terrorism, which was not contemplated in 1998 but has been grafted on to the case for these measures. We need a much more comprehensive and structured debate on these issues. However, I will not oppose the measure itself.

Senator Ivana Bacik: I welcome the Minister of State. I declare my own interest in this matter as I have represented people before the Special Criminal Court and have, therefore, worked with the provisions at issue in the motion. I echo Senator Alex White's words by expressing some concern about the procedure and the low level of scrutiny we give to these measures. It is important we retain the power of annual review.

Before I speak in detail about the provisions, I join other Senators in condemning the dreadful atrocity in Omagh which gave rise to the 1998 amendment Act. We all remember that appalling tragedy only too well. Since we debated this matter last year we have seen the further appalling murders of Mark Quinsey and Patrick Azimkar at Massereene barracks and of Constable Stephen Carroll. We all join the Minister of State in condemning those and in expressing our sympathy to the relatives and families of the people killed. This morning, we heard disturbing news of further attacks in Belfast. These attacks are racist rather than sectarian. As one reporter observed, racism appears to be the new sectarianism. All of us must be very concerned about this disturbing rise in racist attacks directed at a number of Romanian families, who are seeking shelter today.

Having expressed those concerns and our recognition of the need for special measures to deal with ongoing threats to State and individual security, it is important to point out that the Offences against the State Acts, including the 1998 amendment Act, represent a significant departure from the normal criminal justice rules and procedures and the general protections for accused persons in our criminal justice system. The fact that the 1998 Act, in particular, represents such a departure is acknowledged in the inclusion of a provision for an annual review. It is, indeed, an emergency or special powers legislative measure. It should also be

[Senator Ivana Bacik.]

recalled that the House is currently debating a criminal procedure Bill which will also make inroads into established protections for civil liberties and the rights of accused persons, particularly regarding the rule against double jeopardy. We must be wary of undue encroachments on civil liberties and, in particular, the rights of the accused.

There have been notable criticisms of the Offences against the State Acts over the years. The former Senator, Mary Robinson, expressed a great deal of concern about the operation of the Special Criminal Court in a well known pamphlet she prepared in the 1970s, in which she expressed reservations about the use of a non-jury court to try serious offences. More recently, the report of the expert group set up to review the Offences against the State Acts also expressed reservations about certain aspects of the legislation. There has also been international criticism of the use of the Special Criminal Court to try non-scheduled offences.

We must be cautious not just about the use of the Special Criminal Court but also about particular provisions in the Offences against the State Acts code. One of the new provisions introduced in the 1998 Act was in section 2. It allows a court to draw inferences from the failure of an accused person to answer questions where they are in detention and being questioned by a garda about an offence, notably membership of an unlawful organisation. The court can draw inferences from silence. The failure to answer questions may be capable of amounting to corroboration. Section 2, in conjunction with earlier offences against the State legislation, means in practice that a person can be convicted of membership of an unlawful organisation on the word of a chief superintendent alone — this is based on the 1972 amendment Act — corroborated by a failure to answer material questions. We should have some concern about the relatively low levels of proof required.

We might also be concerned about the special caution that is required to put into effect the section 2 warning for an accused person who is being questioned by gardaí. Again, little work has been done in this regard. A special caution was promised whereby accused persons would be made aware that they were being asked material questions in the course of a Garda interview. The caution would put them on notice that a failure to answer those questions would lead to inferences being drawn. Many of us who practice in the area have some procedural concerns about the operation of the 1998 Act.

The Minister helpfully referred to the number of times particular provisions of the 1998 Act were used in the past year. Clearly, there was greater use and application of many of the provisions last year than in the previous year. However, a small number of provisions were not used. I note that section 12 was not used in the period covered by the Minister's report today, nor was it used in the 2007-08 period. That begs the question of the continued need for its existence. The Minister noted that section 5 of the Act will not be renewed this year as it has effectively been superseded by Part 4 of the Criminal Justice Act 2007. That is a useful precedent; there might be other provisions in the 1998 Act that need not be renewed to meet threats from terrorism and organised crime.

My main concern is, as Senator Alex White mentioned, that we should not simply rubber-stamp the renewal of an Act of this importance every 12 months. I welcome the principle that we should have a debate on this, even if that debate is too short and somewhat cursory in nature. It is important to have legislative scrutiny and that the scrutiny take place at least every year. I urge the Minister not to accede to any requests that the time period between reviews be lengthened. It is important to retain the annual review and that each year we examine individual provisions of the 1998 Act to assess how effective and necessary they are in dealing with the very real and recognised threat of terrorism. If they are not necessary or effective, we should give serious consideration to not renewing those provisions.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy Barry Andrews): I thank the Senators for their comments and support for the motion. The people at whom these provisions are aimed have been identified as a serious threat to the State. They participate in some of the worst criminality on the island, both North and South. They are trying to derail the peace process, which was voted for by people on both sides of the Border in a historic vote following the Good Friday Agreement. They are working against that and against the will of the people. It is not just the Government's determination to tackle these people, it is also the will of all the people in Ireland that this be done.

Senator Denis O'Donovan mentioned a longer period between reviews of the legislation. Initially, there was to be no specific period and it could be renewed indefinitely, but it was thought more prudent that it be renewed on an annual basis given that these are very serious measures which have serious consequences. There was obviously a determination that they would not be in place indefinitely and that they would be replaced. There is good value in having the measures examined, even in the truncated fashion we are using today, to ensure they are being used and that they are proportionate to the threat. The Members referred to the tragic deaths of Constable Carroll and the soldiers at Massereene barracks. These underline the threat that exists, as does the IMC report referred to by Senator Eugene Regan. I support the annual review of the Act.

Senator Alex White expressed concern that we are nodding this through and not properly analysing it. A report was laid before the Houses of the Oireachtas by the Minister for Justice, Equality and Law Reform on 11 June which outlines his reason for seeking this resolution today. It gives Members of both Houses an opportunity to reflect on it. Although it was done very recently, it allows Members to be well informed and to put forward points that might be of concern to them. I wonder if putting it on the table in the ante room outside the Chamber would give Members a further opportunity for scrutiny. Legislators should have access to all of the statutes concerning them. To be helpful perhaps we should provide this legislation in the same way as other legislation is provided for scrutiny in the House.

A total of 246 persons were detained last year under the 1998 Act. There were 39 convictions and 202 cases are awaiting trial. That just refers to the reporting period we are discussing today. It is clear, therefore, that the Act is used regularly. In response to Senator Ivana Bacik, section 5 was not repealed because it was not being used but because there is a similar provision in the Criminal Justice Act 2007. It is simply replaced in another Act.

Senator Ivana Bacik: I was aware of that.

Deputy Barry Andrews: I thank the Senators for their considered comments and their support for the motion.

Question put and agreed to.

Death of former Member: Expressions of Sympathy.

An Cathaoirleach: I call on Members to offer their tributes to the late Senator Michael Howard.

Senator Donie Cassidy: This is a sad occasion. However, it gives me pleasure to say some words about a person with whom I was elected on at least four, perhaps five, occasions, who served in this House for many years.

Michael Howard was born on 19 September 1933 in Ballinalacken in north Clare, the only child of the late Thomas and Bridget Howard. Michael's father passed away when he was a very young man and it fell to his mother Bridget to raise him. She had a considerable influence

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on his political life. Bridget was the former Bridget Murphy from Ballymacraven in Ennistymon, a cousin of Bill Murphy, the former Fine Gael Deputy for County Clare. She encouraged Michael's interest in politics by involving him in discussions. As a result, from an early age he developed a keen interest in politics, particularly in Fine Gael, an interest he maintained to the day of his death.

He was especially proud of the role that Cumann na nGaedheal leaders played in establishing the founding democratic institutions of our State and he remained faithful to the core philosophy and policies of the Fine Gael Party. It was no surprise that Michael entered the political arena. He was successfully elected to Clare County Council in 1974 where he continued to serve with distinction until 1991. It was only a matter of time before he entered national politics, standing for Fine Gael in the 1969 Dáil elections. He stood for the party on two further occasions, in 1973 and 1981. Although he was not successful in his endeavours, he had an opportunity to enter national politics when he was elected on the industrial and commercial panel to Seanad Éireann in 1977 with a nomination from the Vintners Federation of Ireland. He served as a Member of this House from 1977 to 1987 and again from 1989 to 1997. Michael was a very keen Member of Seanad Éireann and was a greatly respected and popular man among his peers across the political divide. Even though he retired from politics in 1997 Michael never lost his love of and interest in politics. He returned regularly to Leinster House where he enjoyed catching up with old friends and keeping up to date with the latest news.

In his early years, Michael was very involved with Macra na Feirme and played a leading role in the IFA and national farming organisations. He was instrumental in setting up Clare mart in Ennis which was extremely successful at the time. He and his late wife Breda ran a very successful farm and tourist-related business in Ennis. The One Mile Inn licensed premises in Ennis was an establishment where he played a leading role in helping and assisting the Licensed Vintners Association. As the vintners' representative in Seanad Éireann he certainly made his presence felt in his capacity to lobby on their behalf.

He was also a very strong supporter of Ireland's entry to the European Union in 1973 and continued his great support, particularly for the Common Agricultural Policy, up to the time of his death.

He was highly regarded as an analyst and commentator at election time and was an expert on election results. He did numerous commentaries on Clare FM radio as counts progressed during many elections. Nothing would have given him greater joy than to have seen his daughter, Mary, elected to Ennis town council on Friday, 5 June.

On a personal note, I found Michael to be a remarkable individual who gave his all to the people he represented. He had a wonderful way of viewing the world and displayed a remarkable insight into current events. Like so many others in the Seanad, I benefited from his wisdom and political expertise.

We on this side of the House acknowledge Michael's tremendous contribution to Seanad Éireann, to the Fine Gael organisation and to Irish society. He will be sorely missed. On my behalf and that of the Fianna Fáil Party, and as Leader of Seanad Éireann, I extend my deepest sympathy to Michael's family, to Tom, Michael, Mary, Seamus, Elizabeth, Gearóid, Louise and Bríd, to his grandchildren and to the Fine Gael organisation in general. Go ndéanfaidh Dia trócaire ar a anam.

Senator Frances Fitzgerald: On behalf of the Fine Gael Party and as leader of the Fine Gael Seanad group, I pay tribute to our former party colleague, the late Senator Michael Howard, a true gentleman of striking appearance who hailed from north Clare, the heart of the Burren.

I acknowledge the presence of many of Michael's family members with us in the Seanad today as we speak about him and his contribution to this House and to society.

Michael passed away in February this year after a short illness. His son, Michael junior, described how his father had been utterly courageous, never flinching as he approached his death. At his funeral mourners were told how Michael Howard had told the counselling nurse sent to visit him after the news of his illness that he had no fear of death, that it was an exam he had prepared for all his life. What wonderful and consoling words for his family to remember.

These traits of courage, stability, decency and deep faith tell us a lot about the man Michael was and the politician he was, both nationally and locally. Michael served as a Senator for 20 years, a wonderful record of public service, from 1977 until 1997. He represented his community on Clare County Council from 1974 until 1991 and on Ennis Town Council. Those in politics who knew him describe him as a tremendous organiser and a great strategist. I understand he was a vibrant and informed commentator on election results over many years. He also showed his great ability as a doer in politics and outside as a farmer involved in the IFA and as a founder member of the Vintners Federation of Ireland, for which he worked very hard.

Michael stood for Fine Gael in three general elections. He was always willing and ready to serve his party, his county and his country. I can only imagine the delight and pride with which Michael looked down upon the election only a few weeks ago to Ennis Town Council of his daughter, Mary.

Many people speak about Michael as a great family man. On behalf of the Fine Gael Party, I extend our deepest sympathy to his family, his sons, Tom, Michael, Seamus and Gearóid, and his daughters, Elizabeth, Louise, Mary and Bríd. Ar dheis Dé go raibh a anam dílis.

Senator Joe O'Toole: On behalf of Independent Members and Sinn Féin, I wish to be associated with the words of sympathy expressed by my colleagues. I acknowledge and welcome the family of Michael Howard to the Distinguished Visitors Gallery. When I joined the House in 1987, Michael Howard was already here and he was at all times pleasant, friendly and popular. There was nothing better than to watch the way he could wind up Tras Honan, when everybody else was slightly afraid of her. We always remember public figures here in the personal way we got to know them.

At a time like this, we sometimes repeat ourselves, but that is as it should be. We are all in the same job, no matter on what side of the House we happen to be. I would like to say to the grandchildren that it is always more difficult for them to lose a grandad because they do not expect to lose them. We are aware of that.

In offering condolences from these benches to the family, the extended family and the Fine Gael Party, we recognise that putting one's name on a ballot paper and standing for election, wherever that happens to be, is the highest calling within a democracy. The day we cannot get people to do that, is the day a democracy fails. I wish to extend our recognition and acknowledgment of this to Michael Howard's family. He showed commitment at all stages of his life to serve as a people's representative. No matter what party one belongs to, we cry out for such people, those who will stand up and be counted, have a point of view and be prepared to stand by it. This is an important role and I urge the family to recognise that this is the legacy of which they can be proud. This is the nation building part of public representation.

Michael Howard did this as a member of Clare County Council and he was at all times busy, active and effective — the classic example of if you want something done, ask a busy person to do it. He was a person who just stretched his time. He made everything fit into that time. He represented his colleagues in the Vintners Federation of Ireland and was also a voice for

[Senator Joe O'Toole.]

farmers. When he took on a responsibility, he took it all the way. As a vintner he had something to say and something to fight for and represent. He went all the way and became president of the vintners' group. It was a similar situation in his local community. He went all the way to become a member of the local authority and put forward his point of view there. He was, similarly, a voice for farmers.

He carried all those interests into the Seanad, which is what the Seanad is supposed to be about. I say this as a person who calls constantly for Seanad reform. The Seanad is about people with a mixed and varied background who can stand up and talk about the various areas of life such as rural Ireland, running a business, running a farm, politics etc. I remind Michael's family and grandchildren that they can take great pride in his commitment and energy. They are his legacy. He has made his mark and will be remembered. That is on record. I urge them to take pride in that. We are proud of the fact we served with him.

It is appropriate for me to finish with the words of Deputy Pat Breen on Clare radio last February. He said:

Michael was one of life's gentlemen and a tremendous organiser and strategist. It was these qualities that endeared him to the various farming, business and political organisations he served during his life.

Is fíor iad na focail sin. Tá sé thar a bheith tábhachtach go bhfuil daoine mar Michael sásta a ainmneacha a chur san áireamh agus dul thar bhráid an phobail chun a dhícheall a dhéanamh ar son na ndaoine. We take pride in him. Ar dheis Dé go raibh sé.

Senator Alex White: On behalf of the Labour Party, I wish to be associated with the condolences to the Howard family on the sad loss of former Senator, Michael Howard. Unlike other party leaders, I was not personally acquainted with him, but I know from my Labour Party colleagues that he was a man who was held in considerable affection and respect in the House over the 20 years he served so loyally here and on Clare County Council. This was a long period of active and dedicated service to public life and the importance of that contribution is enormous. I noticed that even after he had retired in 1997 he remained very active politically and was involved in the campaign against the downgrading of the Ennis hospital in 2003. Even at that stage, he was still very committed to Ennis and his county, which is to his credit.

I was not personally acquainted with the former Senator, but it is impressive to see so many members of his family in the Distinguished Visitors Gallery. I am acquainted with two members of his family, Elizabeth Howard and Michael Howard junior, Senior Counsel. In my short political trajectory my colleagues have, at various times, expressed support for me, and perhaps, more often, sympathy in my various dilemmas, but none more so than Michael Howard junior. I thank him for that. Knowing him and Liz as I do, I have some sense or glimpse of the kind of man their father was. It is appropriate we mark his passing in this House but, obviously, it is the members of his family who have suffered the greatest loss on his untimely passing. On behalf of the Labour Party I pass our sympathy to all the family. Ar dheis Dé go raibh a anam.

Senator Eugene Regan: I knew Michael Howard very briefly, but found him a unique gentleman. His insight into Irish politics, and the Seanad and its operation in particular, was profound. I am privileged to have known him and am proud to say he was a friend of mine. Senator Fitzgerald spoke about his ability as a strategist and his experience of 20 years in the Seanad. I was the beneficiary of some of that expertise and experience. Without his advice, assistance and encouragement, I would not be in the Seanad today. I thank him for that.

I feel enriched by having known Michael Howard and this House was enriched by his presence here for 20 years and by his ability, expertise and insights into politics. He will be very much missed by his family, but he will also be missed by me and all Members of this House.

Senator Joe O'Reilly: The late Senator Michael Howard was one of the most rounded people I ever met. He was wise, intelligent, good-humoured, committed and very honest. He was a great colleague and was respected by one and all. When he spoke, people listened. He had a very real sense of the role of Parliament, specifically the Seanad, and took his responsibilities as a legislator very seriously and contributed significantly. His own innate dignity and presence contributed greatly to the working of the Seanad. I worked alongside him as Deputy Whip of the Fine Gael Party when he was the party Whip in the Seanad. He was a good, kindly and inspirational colleague. I know how dear and important his family was to Michael. He was a good family man and all-round good man. Ar dheis Dé go raibh a anam dílis.

Senator David Norris: I knew Michael Howard for many years. He was a man of considerable courtesy and charm and was always immaculately dressed and presented. In a profession which is not replete with gentlemen, he definitely was a gentleman and exhibited that in all his dealings.

I had not intended to speak, but I had the pleasure of meeting some of his family about 20 minutes ago so I came up here. I asked my colleague Senator Joe O'Toole if he had put on the record an interesting fact he had told me, but he told me he had forgotten it. That fact was that we are all indebted to Senator Howard because it was he who found the crack in the ceiling. This resulted in the closure of the Chamber because of the dangerous condition of the ceiling. Without Senator Howard's eagle eye, some of us might not have been here today or may have been covered in debris from the ceiling. Michael Howard would have enjoyed that because while he knew when to be solemn, he had the most wonderful sense of humour.

Michael's son who is a distinguished lawyer at the Bar told me he had devilled with a friend of mine and a decent man, John McBratney, who was responsible for me becoming a Member of the House. At a point when I was about to give up, John told me at a meeting that he would leave a few suggestions behind. The suggestion was a cheque for £500, almost the only contribution I ever received. I cashed it and used the money. I am not surprised he was a friend of Michael Howard who was also a decent, supportive man.

I also helped out in a way because, as I told Michael's family, I did not always attend GAA matches and in those days, as Members of the Oireachtas, we used to get two tickets each for the all-Ireland final. Michael, in a very delicate way, would always ask if any tickets were available for the final and I would give them to him. I was shocked and saddened to learn of Michael's untimely death. He will be missed but he has left behind a family of whom he can be very proud.

Senator Paul Bradford: I am pleased and honoured to have an opportunity to say a few words about my long-standing political colleague, Michael Howard. While all of us will have thousands of memories when we leave politics, only a few will be abiding ones of the things we did and people we met. One of my lifelong memories of my time in Leinster House is the night I was first elected to the Seanad in 1987. After I was elected at 8 or 9 o'clock in the evening, the count commenced for the industrial and commercial panel on which Michael stood. He received a tremendous first preference vote and at about 3 a.m., when the count reached a conclusion and I was still on a high having been elected to the House — I considered myself a person of serious importance — he and I went out to the plinth where he produced a pipe and lit up. We spoke for about an hour on life, politics and where our careers were heading.

[Senator Paul Bradford.]

Bizarrely, in perhaps the greatest turnaround in Seanad electoral history, Michael lost his seat by the narrowest of margins the following day. Michael was, however, a gentleman and stayed around with his permanent smile for a full week. Two years later, we were all thrilled when he was re-elected to Seanad Éireann.

Michael Howard was the definition of the word “gentleman” and, as has been noted, a superb political strategist. As colleagues and friends on both sides are aware, for a long time it was considered impossible that Fine Gael could win two out of four seats in County Clare. This seemingly impossible goal was achieved in three if not four elections under the astute direction of Michael Howard who took great pleasure in assisting Donal Carey and Madeleine Taylor-Quinn to become Dáil Deputies.

Another characteristic of Michael Howard which strikes a strong chord with me was his regular visits to the House when he finally left the Oireachtas in 1997. He was one of the former Members, whether they voluntarily left the House or were defeated in an election, to return to the House to be with friends and former colleagues and offer advice. Michael visited every month and loved to have a chat and the craic with us all.

Michael Howard was a gentleman and pioneer in every respect. My first visit to a health farm, which I understood only existed in Sweden, was to Michael’s farm. I never expected to find a farmer running a health farm in County Clare.

Michael Howard had vision, experience and a breadth of knowledge. Above all, he had a smile on his face at all times. I never heard him complain about anyone in politics and never saw him frown or grumble. For him, politics was about public service and he provided that service with a smile. That is the greatest tribute we can pay to him. If more people like him were involved in politics, it would be the best possible advertisement for the profession. His memory will remain with us and while we are sad he has gone, we are happy and joyful that he has left such a legacy. His decency, sincerity and permanent smile will be what we always remember of him.

Senator Paddy Burke: I wish to be associated with the expressions of sympathy to the late Michael Howard and welcome his family to the House. I was the Government Whip in the House from 1994 to 1997 when Mr. Howard was a Senator. He was a dependable and honourable man who was great for a Whip because he had the ability to come into the Chamber at a moment’s notice and speak on any issue. This is not a surprise when one considers the words spoken about Michael Howard by Senators. He did not need to consult Google before entering the Chamber because he had his own system based on the experience he had gained as a vintner, farmer, businessman and local and national politician. Michael acquired the experience in business and politics to enable him to speak on every subject discussed in the House.

Senator Bradford referred to the count for the 1987 Seanad election which, in the case of Michael Howard, went down to the last vote. Those who aspire to become a Member of the House should note that Michael was beaten by the current Deputy Phil Hogan because the final vote to be distributed recorded a sixth preference for Hogan and seventh preference for Howard. The order on the ballot paper clearly mattered in that count.

Senator Francis O’Brien: I join previous speakers in extending sympathy to the family of Michael Howard with whom I served in this House from 1989 to 1997. As Senators have most eloquently noted, Michael was a gentleman through and through who enjoyed the respect of Senators from across the political divide. He was an honourable and great man who had many friends in County Clare and throughout the country. As his family will be aware, Pat Joe Burke,

an independent councillor from Miltown Malbay, was one of his closest friends. I express my deepest sympathy to Michael's family. May he rest in peace.

An Cathaoirleach: I wish to be associated with the tributes to the late Michael Howard who was a Member of the House from 1977 to 1987 and from 1989 to 1997. Mr. Howard was president of the Vintners Federation of Ireland in 1976 and 1977. Nominated to the Seanad by the association in 1989, he tenaciously represented the interests of publicans and business in the Chamber.

Michael made a huge contribution to political life and the Houses of the Oireachtas in his role as a Senator. His daughter Mary continues the political tradition, having been elected to Ennis Town Council, and I wish her well in the future. It was a great honour, as Cathaoirleach, to have represented Seanad Éireann at Michael's funeral in Ennis. I express the thanks of Senators to Michael's family for affording Seanad Éireann and the people of County Clare his outstanding commitment to public life. I also extend my sincere sympathy on their sad loss. May he rest in peace.

Members rose.

Nursing Homes Support Scheme Bill 2008: Committee Stage.

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy Áine Brady, to the House.

Sections 1 and 2 agreed to.

SECTION 3.

An Leas-Chathaoirleach: Amendments Nos. 1 and 2 in the names of Senators Mullen and Norris, respectively, are deemed to be out of order because of a potential charge on the Revenue.

Amendments Nos. 1 and 2 not moved.

Section 3 agreed to.

SECTION 4.

An Leas-Chathaoirleach: Amendment No. 3 in the names of Senators Fitzgerald and Norris is deemed to be out of order because of a potential charge on the Revenue.

Senator David Norris: These are cases in which the Leas-Chathaoirleach's ruling is clear, but I appealed a previous decision to the Committee on Procedure and Privileges. Will the Leas-Chathaoirleach use his office to ensure that there is a meeting of the Committee on Procedure and Privileges soon to tease out this matter of the ruling out of amendments on economic grounds? Perhaps we can also look at the fact that it is idiotic that the Seanad is prohibited from making important amendments on this ground. I understand there is a constitutional prohibition but I want to raise that protest.

An Leas-Chathaoirleach: That is a matter for the Cathaoirleach, and Senator Norris has a representative on the committee to which he referred.

Senator David Norris: I wrote to him but he keeps telling me that no meetings take place of the Committee on Procedure and Privileges.

Amendment No. 3 not moved.

Section 4 agreed to.

SECTION 5.

Senator Frances Fitzgerald: I move amendment No. 4:

In page 12, between lines 12 and 13, to insert the following subsection:

“(6) The Minister shall provide a report to the Houses of the Oireachtas on the funds made available for the Nursing Home State Support Scheme.”.

This issue of how the elderly will get support if they need residential care is one of the critical issues we in society must face at present. As the House will be aware, it is very inequitable, it is arbitrary and the criteria are far from clear. This legislation is an attempt to move in a direction that provides some clarity and a mechanism to bring fairness into the equation.

The critical question is: what resources will be made available to allow this to happen and what resource capping will there be as we move towards implementing this important legislation? I am concerned that we would arrive at a situation where, for example, there would be a care assessment, it would be agreed by everybody that it was necessary that a residential placement should be provided but, because of resource shortages, it would not be available.

This is the position at present. If one takes the number of people who are in hospital beds whose care has effectively been assessed as in need of residential care and who are high dependency, there are large numbers of individuals living in hospitals around the country who should be in residential care.

The question of what resources will be made available to implement this legislation is critical and it is not an easy one. Obviously, we are in an extremely difficult financial situation. It is not an easy question for the Minister to respond to or to give guarantees on, but the point of this legislation is to make places available to those who need them and to provide a funding mechanism for families, who are unclear on the matter and who are finding it very difficult to manage. Many people are paying a great deal of money. Some of them are getting subvention while some are not and it is not clear why that is the case. It is a major concern for families and individuals.

My simple amendment states that the Minister shall on an ongoing basis — I expect on a yearly basis — provide a report to the Seanad and the Dáil on the funds made available for the nursing home State support scheme.

Section 5 of the Bill stipulates that the fair deal scheme is resource capped. Obviously, that will lead to waiting lists for support under the scheme and it is possible that family members will be called upon to fund the difference. At the same time in recent budgets the tax relief on nursing home care has been reduced to the standard rate.

This amendment brings some accountability to the Houses of the Oireachtas for the funds being made available to the scheme. It is an opportunity to look at how adequate is the provision being made by Government at any particular time for funding for the scheme. There are questions. If the scheme is to be resource capped, which I understand, there will inevitably be waiting lists, but how will the waiting lists be dealt with? Will family members continue to be expected to pay up while we wait for some funds to be freed up by places becoming available, perhaps through death?

Under the existing system, people received some contribution to the cost of their care, even if it had to be supplemented by the person's family. Under the new scheme, is it possible that an older person could be left with nothing and no certainty about how funding might become

available? We are in a situation where the need for high dependency beds is great. Many high dependency people are in unsuitable placements in hospitals, which is creating major problems within hospitals and for individuals and their families. I look forward to hearing what the Minister for State has to say about the resource issue because it is critical.

I do not know how much she can say on the matter today, given the financial situation, but at the least this amendment would ensure there is some ongoing monitoring of how the scheme is evolving and developing, what funds are being made available, what priority it is getting from Government, how many places are being made available on an ongoing basis, how many are being funded, what the waiting lists are and what the need is. It would bring some useful democratic accountability into the process. I ask the Minister of State to accept the amendment.

Senator David Norris: I support the thoughtful amendment tabled by Senator Fitzgerald because she used the correct word when she mentioned accountability. For the Houses of the Oireachtas to operate effectively it is important we have access to all the information on a factual basis.

Senator Fitzgerald expressed some hesitation and did not seem completely sure the amendment would be accepted and would not be ruled out of order because it could have been as I have no doubt it creates a charge on the Exchequer. It must do so because one would have to prepare, print, publish and issue a report. A number of amendments have been knocked out because they would cause a charge on the Exchequer. This amendment plainly does but for some reason, perhaps because it is an interesting subject to discuss, it has been accepted.

I mention this because the amendments that have been ruled out of order were important, for example, the one on couples. I would have welcomed the opportunity to again say to the Minister of State, Deputy Brady, that I welcome the interesting development of accepting same sex couples and so on. It would have been useful for me because in this House I have been accused of being sectarian and not accepting the views of the Roman Catholic Church. It has made a strong case for the acceptance of people outside marital relationships of various kinds, such as siblings who are living together. This kind of thing exists all over the country, where elderly people, such as two brothers or sisters, are living on an old farm up on the hill in Kerry, Leitrim or wherever. I have no difficulty whatsoever in saying such people should be covered, but I would protect and ring-fence the radical change here, which is the redefinition of "couple" to include same sex couples. I did not have the opportunity to say that because of the prohibition on this amendment.

I again highlight the fact that sometimes these decisions are absurdly exclusionary or inclusionary, but I welcome the inclusion of this amendment although I have no doubt there is a charge, small though it may be. Technically, this amendment could have been ruled out of order. I am very glad it was not and I compliment Senator Fitzgerald.

An Leas-Chathaoirleach: It has been judged by the Cathaoirleach that this report could be carried out from existing resources.

Senator David Norris: It still creates a charge.

Minister of State at the Department of the Health and Children (Deputy Áine Brady): I understand Senators are concerned that there should be transparency regarding the level of funding committed to the scheme in each financial year. A dedicated subhead has been established within the overall HSE Vote for the purposes of the scheme. Subhead B16 would then be part of Vote 40. As such, the funding made available for the scheme will always be ring-fenced and will be clearly identifiable within the Revised Estimates of public expenditure. The

[Deputy Áine Brady.]

funding within the subhead will be subject to careful monitoring and the Department of Health and Children has already agreed a set of reporting requirements in this regard.

Furthermore, under section 31 of the Health Act 2004, the HSE has to prepare and submit a service plan. The Minister has stipulated that the service plan must report on the numbers of people provided with support under the scheme and the current plan already reflects this within its performance activity targets for services for older people. In addition, the HSE will also have to include in its annual report any information that may be specified by the Minister for Health and Children.

I do not propose to accept amendment No. 4 due to the range of reporting and monitoring mechanisms already in place and I hope the measures I have outlined will address the concerns of the Senators.

Senator Frances Fitzgerald: I thank the Minister of State, but her response does not reassure me and I will tell her why. In the past year mental health funding was supposed to be ring-fenced but it has disappeared into a black hole and has not been used for mental health. There is a number of other examples. The idea that there is a subhead where this money should be spent is not enough. The fact that it is in the service plan that would come from the HSE is not enough.

It is one thing to introduce this Bill to the House, but it is quite another to ensure the spirit of the Bill is maintained and it is put effectively into practice. If we are to bring back democratic accountability to this House, we ought to have reports before the House outlining how the scheme is being run, what the effects of the legislation are, how much money is being spent on it and what the balance is between the demand for the service and what is actually being delivered.

The people we are discussing are the most vulnerable in society, namely, the elderly who are high dependency and need these places. A report ought to be provided to the Oireachtas on a yearly basis. I am not happy to leave it with the HSE, given the critiques there have been of it in recent times and the lack of ring-fencing of money — I gave the area of mental health as an example. This amendment would mean bringing actual detail on what was happening regarding the Bill to the floors of the Dáil, Seanad and committees. It is about time we started doing more of that in this House and stopped hiving off responsibility to unaccountable bodies or bodies which are not directly accountable to Members of this House.

Senator David Norris: I would like to register my delight at the Leas-Chathaoirleach's wonderfully Jesuitical justification. I shall remember it because it applies to every single amendment that has been excluded previously. In other words, as long as it comes within the global budget, no matter what it dislodges, it is not a charge on the Exchequer. I am extremely grateful for his instruction. I shall improve and I shall certainly use this justification when I am arguing for the retention of these kinds of amendments in the future.

Deputy Áine Brady: In response to Senator Fitzgerald, mental health funding was not put into a single dedicated subhead and because the fair deal funding is within a single dedicated subhead it cannot be moved elsewhere without notification to the Oireachtas. The HSE makes monthly returns to the Department regarding expenditure on each subhead, including B16, and this will be carefully monitored. Allocation of resources to this and all other health expenditure is a matter for Government and is kept constantly under review.

An Leas-Chathaoirleach: Is amendment No. 4 being pressed?

Senator Frances Fitzgerald: Yes.

Amendment put.

The Seanad divided: Tá, 16; Níl, 22.

Tá

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Coffey, Paudie.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.

Hannigan, Dominic.
McCarthy, Michael.
McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Reilly, Joe.
Ryan, Brendan.
White, Alex.

Níl

Brady, Martin.
Butler, Larry.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Feeney, Geraldine.
Hanafin, John.
Keaveney, Cecilia.
Leyden, Terry.
MacSharry, Marc.

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

Tellers: Tá, Senators Jerry Buttimer and Maurice Cummins; Níl, Senators Labhrás Ó Murchú and Diarmuid Wilson.

Amendment declared lost.

Section 5 agreed to.

Senator Donie Cassidy: I propose that the House suspends until 2.45 p.m.

An Cathaoirleach: Is that agreed? Agreed.

Sitting suspended at 1.40 p.m. and resumed at 2.45 p.m.

Section 6 agreed to.

SECTION 7.

Senator Frances Fitzgerald: I move amendment No. 5:

In page 13, subsection (4), line 2, after “possible,” to insert “not to exceed a period of six weeks”.

This amendment is about the assessment. The Bill accepts there should be a care assessment. Section 7(4) states: “Upon receipt of an application for a care needs assessment, the Executive shall, as soon as reasonably possible . . .”. Instead of as soon as is reasonably possible we propose the assessment should be done within six weeks. That is to ensure it is done when it is needed and that there is a timeframe for it. We propose giving six weeks to have this assess-

[Senator Frances Fitzgerald.]

ment done because if a timeframe is not put on it, the process could go on and on. It is also difficult for hospitals because they do not know when the care needs assessment will be done. A patient's acute phase of care might be over, the assessment would still not be done and the patient would be waiting to get it done. There is a priority about making the assessment for high dependency patients in terms of getting suitable placement. The way to do that is to have a care needs assessment, as outlined in the Bill, but we suggest it should be done within six weeks.

I would be interested to hear what the Minister of State has to say in terms of whether that is feasible. What does she expect will happen under the Bill? What sort of timeframe are the Health Service Executive and the Department working within currently in terms of the care needs assessment? Does the Minister of State intend to put anything into regulations as to when it should be carried out? The Minister of State might inform the House on the way she intends dealing with this issue because rather than leaving it open-ended, there might be the possibility of it being done reasonably quickly. Six weeks is a fairly short time but we are talking about high dependency patients.

Senator David Norris: I support Senator Fitzgerald's amendment because sometimes it can be critical to have these assessments done quickly. As she said, many of these patients are highly dependent. There may be an urgency about it. Speaking professionally as a member of the NUJ, I worked as a journalist for a mass circulation newspaper for three and a half years and I found the fact that I had a deadline of lunchtime on Thursday focused the mind wonderfully. I am what Sean O'Casey would have called a prognosticator and a prevaricator and I believe things can be very easily put off to the next day or whenever. This kind of thing concentrates the mind. I strongly support the principle but I am not sure about the six weeks timeframe. While I do not mean I withdraw my support because of this, I am not sure how appropriate that timeframe is. It may be that a shorter or longer term might be necessary in some circumstances. I would be interested to hear the Minister of State's views on this but the idea of a target date and a time limit is good in ensuring efficiency.

Senator Ivor Callely: I understand from where Senator Fitzgerald is coming in regard to the time period to which Senator Norris referred. In the whole area of care assessment needs, to which several sections of the Bill refer, the real issue I have come across is the consultation process in regard to the assessment and the discussion with the individual and the family. There is currently a bit of passing of the ball from the social worker to the medical person to the GP, and from one set of suggestions to another, before people begin considering long-stay options.

Other areas of the Bill will also deal with this issue. I am not sure we can insert an assessment period because if a person is in assessment, the authorities may need to continue the assessment over a period of weeks as the person progresses either to a better or worse state of well-being, and assessment in such a situation might not work. There is room for improvement, however, and I am interested to hear what the Minister of State has to say. The one change I would like to see is more involvement on a case conference basis which involves the family with all the other participants in the care assessment to ensure there is full and clear understanding by and co-operation between those associated with the person under assessment and those who should be involved in assessing that individual.

Senator Rónán Mullen: I support Senator Fitzgerald's amendment. It is very easy to include in legislation phrases such as "as soon as is reasonably possible" when what we want to promote in all aspects of care, in particular care of older persons in our society, is a culture of excellence, dispatch and thoroughness. I support the amendment on that basis. There should be minimal

delay in this regard. Only if we set out clearly in legislation what we require will we get to the stage where matters are handled with appropriate dispatch given the importance of the decisions involved.

Deputy Áine Brady: The amendment proposes to impose a timeframe for the commencement of care needs assessments. I appreciate the policy intention of this amendment. It is envisaged that care needs assessments would be undertaken quickly. However, it is considered imperative that the legislation should be flexible on this point. This is particularly pertinent having regard to the fact that the legislation will establish a scheme that will have to accommodate the needs of a rapidly growing demographic.

In drafting the Bill, careful consideration was given to the Disability Act 2005 which provides that assessments must be commenced within three months of the date of application. Assessments of need require a considerable level of resources, particularly dedicated input by health care professionals. As such, the stipulation of a timeframe for commencing assessments within the Disability Act has necessitated that a phased approach be taken to the roll-out of needs assessments. However, even with a phased approach, the HSE service plan 2009 reports that only 79% of assessments commenced within the timeframe.

In summary, given, first, the variable length and potentially time and resource consuming nature of the assessment, second, the rapidly growing demographic to which it relates and, third, the experience gleaned from the roll-out of assessments under the Disability Act, it would be unwise to immediately implement a statutory timeframe in respect of care needs assessment. For these reasons, I cannot accept the amendment. I will, however, offer the Senators a commitment that the issue will be addressed by way of published guidelines, approved by the Minister for Health and Children. Furthermore, the issue will be tabled for consideration in the review of the scheme which will take place three years after its introduction.

Senator Frances Fitzgerald: I welcome the fact that the Minister intends to publish guidelines, which will be helpful. I take it they will be published shortly.

Deputy Áine Brady: Yes.

Senator Frances Fitzgerald: That will be helpful. I ask the Minister of State to bear in mind the difficulties that will arise if those guidelines are not rigorous and detailed in regard to when this assessment should be done, again bearing in mind the high dependency people we are in general talking about.

The Minister of State used the statistic of 79%. Almost 80% is not a bad statistic with regard to the completion of assessments in this roll-out in regard to disability. In a way, that is nearly an argument for accepting this amendment, given that the Department was almost in a position to move to an 80% review. While we of course all want 100%, in terms of the roll-out of any new assessment of needs, close to 80% is certainly moving in the right direction. We have achieved lower target figures in other areas previously.

I ask the Minister of State to seriously consider including in the published guidelines as much detail as possible in regard to the expectation concerning when the care assessment should be done. It could be the case that a person is left in a situation where there are not enough resources to carry out the assessment, although that person is still in a totally unsuitable placement and nobody knows when the necessary resources will be available.

I will withdraw the amendment. Perhaps the Minister of State will come back on Report Stage to give us more detail on the guidelines it is intended to publish and to inform the House in more detail of how she sees those guidelines developing, which would be helpful.

Deputy Áine Brady: I appreciate the Senator's point in regard to the 79% figure but this means the law is being broken in regard to over 20% of cases. It has taken us five years to reach 79%. I will get further information on the guidelines for the Senator.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 6 to 14, inclusive, are related and may be discussed together. Within this grouping, some amendments are alternatives to others.

Senator David Norris: I move amendment No. 6:

In page 13, subsection (5), lines 5 to 7, to delete all words from and including "shall" in line 5 down to and including "Executive)" in line 7 and substitute the following:

"shall be carried out by a multidisciplinary team (who may be employees of the Executive)".

This deals with the multidisciplinary aspect of the assessment group, and assessment is at the core of this section of the Bill. The amendment refers to section 7(5) which states: "The assessment referred to in *subsection (4)* shall be carried out by [the following is a description of the composition of the team] a person or persons (who may be an employee or employees of the Executive) who, in the opinion of the Executive, are suitably qualified to make that assessment and prepare a report in relation to the assessment." This is general and vague in that "a person or persons ... may be ... suitably qualified". In this area, we have a particular tradition and particular advice from within the professional bodies, which is also endorsed by the HSE. I want to replace that very loose definition with the simple phrase "shall be carried out by a multidisciplinary team (who may be employees of the Executive)". This is the first and most important amendment.

The second important amendment is No. 13, which seeks to tighten up subsection (7), which currently states: "A care needs assessment may include an examination of the person concerned by, as appropriate, a registered medical practitioner, a registered nurse, an occupational therapist or a chartered physiotherapist, or any combination thereof." However, that

3 o'clock combination is an internal reference. It does not expand or allow for expansion but it constrains by numbering off these elements. It allows for a combination of this entire group, but it does not make reference to any other groups such as therapists, social workers and so on. In assessing family and community support one really needs the input of professionals, adequately and properly trained, to review and assess social variables. A document has been produced by the Nursing and Midwifery Council this very year entitled *Guidance for the Care of Older People* and I wish to quote a sentence from it. It states, "You need to recognise your limitations in the scope of your practice and refer to a colleague, for example older people's nurse specialists, psychiatric and palliative care nurses or other members of the multidisciplinary team, to ensure that the most appropriate care is provided". I accept that section 7(5) states the assessment should be carried out by persons suitably qualified to make the assessment and that section 7(6) goes much further in explicitly setting out professions whose service will be guaranteed in care needs assessment, but social workers are not included, which is a concern.

I refer the Minister of State to the HSE's 2009 code of practice for integrated discharge planning, which argued strongly for patient assessment that is thorough, that covers pathological, physiological, psychological, social and cultural needs with a multidisciplinary and multiagency approach. It is useful to put on the record the professional definition of a multidisciplinary approach as understood generally within the service. Multidisciplinary teams are groups of

professionals from different disciplines who work together to provide comprehensive patient assessment and treatment. The team usually consists of medical staff, a consultant registrar, a nursing team, a discharge co-ordinator, community services, a discharge liaison officer, a dietitian, physiotherapists, occupational therapists, speech and language therapists, pharmacists, social workers, a public health liaison nurse, a chaplain and a spiritual adviser. This definition is from the HSE itself and yet a constriction or narrowing is applied. Either it should have been left vaguer to allow for these additional inputs, which are very valuable, or it should have been specified in the way I suggested. One reason is the type of vulnerable patients involved very often have a complex background and medical situation. It may well be necessary to draw on the resources and professional capacity of people who have a specialised interest or capacity in this area.

I have been briefed by Age Action Ireland and I refer to its position. It believes assessments ought to be made by a multidisciplinary team because of the proven benefits in making appropriate and timely referrals. It quotes several academic papers published in this area including O'Dell, 2006; Wilson, 1998; BMA, British Medical Association, 2000; and Paul et al, 2000. Multidisciplinary teams are advantageous in reducing the likelihood of mistakes and also subjectivity. In other words, there is a group or variety of specialists all of whom bring expertise to bear. Otherwise things may be missed, especially if people are suffering from strokes. There may be an apparent incapacity but someone with a particular skill may unlock a capacity on the part of that person. Multidisciplinary teams are advantageous in resolving the likelihood of mistakes and also subjectivity from the decision making process. In addition, because the assessment is used to determine what health or personal social services may be appropriate for the person, correct assessment is fundamental for people going into care and the nature and extent of services they will be deemed to need.

In 2006 the HSE itself advised that assessment of need for residential care would be carried out throughout the country by multidisciplinary teams of health care professionals in the course of that coming year. It used the phrase "multidisciplinary teams" again. We know what it means and we know also that certain elements are excluded from the operation of the Bill as it stands. I refer again to the complex needs of patients. The benefits of such co-operative working include timely and effective patient discharge, increased patient confidence, continuity of quality care, enhanced communication, partnership regarding resources management and so on.

My final argument, for the moment at least, in support of the amendment is to quote the Minister of State on the subject. On 26 May 2009 the Minister of State at the Department of Health and Children, Deputy Áine Brady, stated: "By maintaining the function of undertaking care needs assessments within the HSE, the legislation ensures that the applicant has access to a multidisciplinary team of health care professionals located close to his or her place of residence". The belief generally is this is not comprehensively catered for in the wording of the Bill before the House and that a guarantee of access to such teamwork and professional expertise needs to be written into the Bill on this Stage. For this reason I put my amendments before the House and I believe the same applies for my colleagues who have placed either similar or related amendments.

Senator Nicky McFadden: I support the amendment. A multidisciplinary team is the only way to proceed. Each individual is different and, therefore, has different needs. This is especially the case for elderly men in rural areas, for example, who need support from a professional such as a social worker and this position has been argued by my colleague in the Dáil. I believe it is necessary to have a service from doctors, nurses and occupational therapists but the service should also involve social workers. No two people are the same and there should be a care

[Senator Nicky McFadden.]

package designed to suit every individual. There must be professionals such as social workers available to support the best possible care package for the individual.

Senator Rónán Mullen: I support the statements of my colleagues. We may try to take different ways up the mountain but we all agree there should be more than one person involved in an assessment and that the various needs of a person subject to an assessment should be spotted. In this regard I thank Age Action Ireland and Nursing Homes Ireland for their briefings. Mr. Tadhg Daly of Nursing Homes Ireland is present today.

My approach in amendment No. 7 is to suggest the deletion in page 13, subsection (5), line 6, of “a person or” to move towards what Senator Norris referred to as a multidisciplinary, multiperson approach and that more than one person should be involved. This is the very minimum one would expect and there should be no question of the term “a person or”. The fact the legislation is so worded suggests the Government is a good way off realising the complex and multidisciplinary nature of what is required.

Amendment No. 9 proposes the insertion of wording after the word “Executive”. The assessment referred to in subsection (5) should be carried out by persons who may be employees of the executive with experience in caring for older persons and this is the nub of the issue. I do not intend to press any of my amendments today but I call on the Minister of State to give consideration to the question of whether we should go even further. I may go further myself on Report Stage. It is not just an option but it should be a requirement that a geriatrician or a psychiatrist specialising in old age should be involved in the care assessment. My reason for this suggestion is that when decisions are being made by, for and to the benefit of a person who may need long-stay residential care, there may be a number of competing interests and sometimes those competing interests may be unconscious on the part of the people who hold them. I refer to an example suggested to me by a geriatrician who has great expertise in this area. He suggested that a younger person who is worried about Mammy or Daddy and feels they may need to go into a nursing home, has the best interests of their loved one at heart and there is no doubt about that. However, they also want their own peace of mind. I will put it bluntly that Mammy or Daddy, on the other hand, might prefer to contemplate falling down the stairs and even being on the floor overnight rather than losing their independence. It may well be that a person who has experience, such as a geriatrician or a psychiatrist who is a specialist in old age, who would see that older person in a consultation, might well be able to tease out some of the issues causing concern to the older person in question. It seems to me that geriatricians and psychiatrists have the kind of experience of dealing with cases that makes their participation not something to be considered as a desirable inclusion if possible but as something that should be mandatory. I ask the Minister of State to give consideration to this proposal.

Amendment No. 10 was earlier ruled out of order on the basis of the usual excuse that it might involve a charge on the Exchequer. I fully support what Senator Norris said in that regard. It is very important for us to be able to consider legislation properly. For example, in the case of amendment No. 10, I was suggesting that it would not be a matter of “may” but rather of “will”. My proposal was that a care assessment will include an examination of the person concerned. It seems to me that it should be a mandatory situation that it would be required that there would be a registered medical practitioner or a registered nurse, an occupational therapist or a chartered physiotherapist or any combination thereof and, as I have added, a geriatrician or an old-age psychiatrist. It seems to be very lame to exclude my proposal on such a technical ground when I am proposing that it should be mandatory rather than optional to include such expertise. This goes to the heart of this legislation. To exclude such a

proposed amendment on a technical ground shows up the inadequacy of our procedures as they stand.

Amendment No. 12 proposes:

In page 13, subsection (7), lines 34 to 36, to delete all words from and including “, as” in line 34 down to and including “thereof” in line 36 and substitute the following:

“a registered medical practitioner and/or a nurse with an occupational therapist or chartered physiotherapist.”

Senators Norris and McFadden have spoken to these proposals adequately and I submit that between all of us, we are making clear the need for full and thorough assessment as distinct from something that is partial or that could be done just by one person. On that basis I will conclude my comments.

Senator Frances Fitzgerald: Two issues are dealt with in this series of amendments Nos. 6 to 14. I ask the Minister of State to consider the possibility of including social workers in the multidisciplinary team. The legislation is not making their inclusion mandatory but is proposing that professionals are to be used as appropriate. There would be occasions where it would be appropriate that a social worker would be the professional involved. It would seem to me to be very reasonable to include this provision. Given the role of social workers in doing this type of assessment and their familiarity with such assessments and care plans and meeting families where care is needed, to exclude the social work profession from this group of professions is inappropriate and I ask the Minister of State to return on Report Stage and respond to that point.

There are two issues in the care needs assessment where I would see the social work assessment as being critical. The legislation states that the family and community supports available to the person should be assessed and the personal social services that are available to the person should be assessed. It would seem unreasonable to exclude the profession of social work and I ask the Minister of State to consider this proposal.

The independence of the care needs assessment is addressed in amendment No. 8. There is an inherent problem with the HSE being the provider of the service and the body that establishes whether the person is entitled to receive the service. There could be a real conflict of interest and there could be an under-reporting of need, simply because the resources are not in place. The same body would be doing the assessment and recommendations and supplying the service. I refer to a number of groups with an interest in this area. I compliment Age Action Ireland and the Nursing Homes Association of Ireland for the interest they have taken in this Bill and I am sure the Minister of State is also looking at their submissions.

Assessments of need for those with autism carried out in the UK found that very low prevalence rates were found that were completely inconsistent with the national average. The belief was that this under-reporting happened because the services were not in place so there was a tendency not to identify the need. For example, if the HSE is coping with shortages of services which will be the case while at the same time it is being asked to do the assessments, if one is operating within the same service, the tendency might be to minimise the needs of the person. To avoid any under-reporting, we propose that the assessment of needs should be conducted by a multidisciplinary team of health care professionals who are independent from the HSE and the Department of Health and Children. I look forward to the Minister of State's response.

Senator Paul Bradford: I support the points made by the two previous speakers about the type of examination which is required to ensure the correct result is obtained for the elderly

[Senator Paul Bradford.]

person who would be the subject of the application. It is very important to ask for what this legislation provides. We must be determined that this legislation is for looking after the interests of the elderly people in a holistic fashion and who may need nursing home accommodation. The legislation should not be about making the State feel good about the fact it is providing in some fashion a clean bed in a clean nursing home. It should not be about simply reassuring families that their loved one is looked after; it must be about what is best for the elderly person who may be placed in a residential nursing home. As part of the assessment of that person's application and more important as part of the decision as to whether a nursing home solution is either the best or the only option, we must consider all the aspects, not simply the financial aspect, not from the perspective of whether a family member is available to care for them in their own home or community, not whether neighbours or friends can help out; it must be a case of considering what is the best for the person concerned. This is the reason it is so important that all strands of examination from a social worker to the physiotherapist and the GP is part of that equation.

Senator Mullen made an interesting and challenging observation as to what the person may wish for himself or herself. It may not be a clean bed in a clean nursing home and safety from robbery and vandalism. It may be a desire to spend his or her remaining years in the community. To arrive at that solution might require considerable questioning and probing. That is why it is important the examination be done by a multidisciplinary team, as is proposed.

I hope the Minister of State has, at the core of her thinking, what is right for those who are elderly today because that will be all of us tomorrow. The legislation is not about filling a gap, getting rid of the inconvenience of nursing home subventions and finding places for elderly people when there is no one to look after them. That would be a very sad philosophy on which to base legislation in the 21st century. Assessments must include the broadest possible physical, physiological and psychiatric services. The necessary teams must be in place. We must not seek easy answers but look at the question from all angles. I ask the Minister of State to consider these amendments. The Bill must not present the neat and easy solution of Shady Pines. We must be broad in our thinking and aspirations.

Senator Nicky McFadden: Subsection 7(6) states that a care needs assessment of a person shall comprise an evaluation of a list of several aspects of a person's needs. The list consists of physical needs. The subsection refers to the provision of "medical, health and personal social services" but I cannot see a mention of mental health. As my colleague has said, we must be concerned with the whole person and not merely with his or her physical needs. While I do not wish to be patronising, psychiatric illness among the elderly is a serious issue. Senator Mary White will agree that there has been a huge increase in suicide among the elderly. Psychiatric services should be part of the multidisciplinary approach.

Deputy Áine Brady: These amendments all concern the issue of who may undertake the care needs assessments. Amendments Nos. 6 and 7 would require all assessments to be carried out by more than one person and by a multidisciplinary team. I can assure Senators that applicants will have access to assessment by a multidisciplinary team, as required. As stated previously, the care needs assessment is intended to be a flexible, person-centred process. It acknowledges the reality that some applicants will require a greater level of assessment by a wider range of health care professionals than others. The legislation mirrors this, enabling a person to be assessed by more than one professional, as necessary. This approach is appropriate as forcing applicants to be assessed by all professionals, regardless of their particular care needs, would detract from the flexible nature of the assessment, divert precious health care resources away from front-line services and into unnecessary assessments and could cause needless delays for

persons requiring long-term residential care. In addition, the term “multidisciplinary team” is not defined in legislation and I would be concerned as to whether the term could be legally contentious. For these reasons, I do not propose to accept amendments Nos. 6 and 7.

Amendment No. 8 proposes that care needs assessments would be undertaken by a representative of the Health Information and Quality Authority, HIQA. The function of HIQA will be to register and inspect all designated centres, including public, private and voluntary nursing homes. The undertaking of care needs assessments would be outside HIQA’s role and would distract from its critical role as a national regulatory authority. It would also represent an inefficient use of public resources. By maintaining the function of undertaking care needs assessment within the HSE, the legislation ensures the applicant has access to a multidisciplinary team of health care professionals located close to the applicant’s place of residence. Such health care professionals will simultaneously be engaged in the provision of care, either within the acute sector as part of their primary care teams or in the community setting generally. The transfer of this function to HIQA would require significant dedicated resources to be provided, with a resulting drain on the provision of front-line health care staff from the HSE. The fact that HIQA is a centralised regulatory authority would also represent problems in terms of providing efficient and cost-effective assessments to applicants at local level. For these reasons, I do not propose to accept this amendment.

Amendment No. 9 seeks to stipulate expressly that the person carrying out the care needs assessment must have experience in caring for older persons. The legislation provides that such persons must be suitable, which is defined in section 3 to mean the person has the necessary qualifications, training or experience, or combination thereof, to perform that function. As such, the proposed amendment is superfluous. I do not propose to accept amendment No. 9.

Amendments Nos. 11 to 14, inclusive, all concern the issue of examinations conducted under section 7(7). This subsection is merely an enabling provision which relates to physical examinations under the care needs assessment only. The actual legal basis for undertaking care needs assessment is section 7(5) which states that care needs assessments shall be carried out by persons who, in the opinion of the HSE, are suitably qualified to make the assessment. The intent and purpose of subsection 7(5) is to ensure a multidisciplinary team may carry out assessments on a flexible basis, as required. As such, I can confirm that the section will enable assessment by social workers, as necessary.

On a related note, the parameters of the care needs assessment as set out in section 7(6) extend to social as well as medical and health issues. The assessment is, therefore, holistic in nature. I trust this clarification addresses the concerns of Senators. On this basis, I do not propose to accept amendments Nos. 11 to 14, inclusive.

Senator David Norris: The Minister of State, although of very pleasant demeanour, is not giving very much to the Seanad. There was a slight chink that indicated she might consider some aspect of the principle. I am a little disposed to calling a vote but I will relent and leave the matter to Report Stage if the Minister of State can indicate she will consider some of the substance of what was said. For example, I referred to the apparently exclusionary effect of having a list. In Bill after Bill we are told not to add items to lists because it would appear to exclude other categories. Section 7(7) includes a brief list followed by the phrase, “or any combination thereof”. This suggests the addition of any other specialised expertise is not contemplated. It is noticeable there is no mention of social workers. Senator Fitzgerald and I have proposed the inclusion of references to social workers at different points in this section. Can the Minister of State reassure Members about this? Social work is a professional area which is very helpful in assessments.

[Senator David Norris.]

If the Minister of State can give an assurance that she will look again, charitably, at what has been said by Senators and, perhaps, promise a further review on Report Stage, we may not be inclined to push for a vote. On the other hand, there is always that possibility. I do not suggest there will not be any votes. There may be some later on.

Senator Rónán Mullen: Like Senator Norris, I admire the Minister of State's demeanour while regretting her lack of flexibility. The word, "flexibility" is key. The Minister of State herself spoke of the need for flexibility. The word can be a euphemism when we think how the wheels of authority grind. The need for flexibility can permit an unhelpful vagueness about what is to be provided. We should focus not so much on flexibility as on accountability and excellence. That is the reason we are proposing a high degree of specificity about what is required when an assessment is being made.

I remind the Government that its record is not good in this regard. Should we depend on everything being fine because the language is sufficiently broad to include everything that might be required? Recall that although people have a constitutional right to State-funded nursing home care, less 80% of the non-contributory pension, the authorities have not wanted people to know about that. Health care professionals who advised people who were thinking of opting for the relatively high cost subvention scheme of nursing home care for loved ones of their right to State-funded nursing home care were regarded as going offside. When they said that if they were told the constitutional position is otherwise, they would advise people accordingly — I spelt this out on Second Stage — the HSE officials more or less said: "You know the score". This is the State's record. Recall, too, that in recent days we have been discussing the Ryan report and the failure of the apparatus of the State to treat people properly. It is happening in this area too, in a different way. People have not been encouraged to pursue their rights.

I would go further. Earlier, my amendment proposing the inclusion of the therapeutic needs of the person was ruled out of order. Under the guise of generosity and giving people peace of mind, what has really happened here is that the State has not wanted people to know their rights. Then it holds out the so-called fair deal as a type of manna from heaven. There is something wrong with that. There is also something wrong with the fact that in a system where the State proposes to take money from people in the form of a proportion of the value of their property after their death, which is unprecedented, the people who would avail of such provisions are not guaranteed, at least, all necessary therapeutic care. We are aware of the diversity of needs of people in long-stay residential care. What should be on offer from the State, which presumes to take some of their property after their death, is at least everything they might be able to get if they were on the top plan of the VHI. That would be cherishing all the children of the nation equally, including our older citizens.

Therapeutic care in nursing homes is important and should be front and centre of what the State proposes to provide. Consider a person who has a swallowing disorder or a condition that might require some form of speech therapy. Is that provided for or guaranteed under this legislation? I do not think so. However, it arose in the Leas Cross report, and calls for such care provision were included in the Irish national audit of stroke care. That was accepted. It is interesting to note that Appendix A in the HIQA nursing home regulations for standards in residential care refers to the need for a minimum data set for needs in nursing homes. I am talking about an all-encompassing assessment of the needs of people who go into long-term residential care, with their full range of needs being assessed and set down. It would be much more than the rather vague assessment in which merely one person might be involved, as proposed by the legislation for the care assessment.

Something more thorough is required and this is aspired to by HIQA in the appendix. Not only would this help to ensure that the various needs of the person going into long-stay residential care would be addressed but it would also ensure thorough data for assessing how our nursing homes are performing, data which could be compared with international experience. However, I do not believe that is forthcoming and I regret that very much. At least we should be considering a national computerised system that gives instant feedback on each person's needs as well as our ability to assess the quality of the response at any time.

That is the reason for our concern. When the Minister talks about flexibility, what she is really endorsing is an unhelpful vagueness that will, on occasions, not prevent the correct assessment from taking place but very likely on other occasions will provide cover for an inadequate response to the care needs of the individual.

Senator Nicky McFadden: I share the concerns of Senator Mullen, Senator Fitzgerald and the other Senators on this side of the House. The phrase “any combination thereof” must be outlined more clearly. This is about the person's mental state, their happiness and how they will live the rest of their lives. As Senator Mullen said, a contribution from the person's estate will pay for this service. This is not just about forgetting our elderly by putting them into horrible institutions, as we did in the past, but about creating a home for the elderly, our relatives and loved ones, where they can live complete lives. They should be able to garden, to live in villages for the elderly, to get their hair done and look after their other necessities.

Assessment by a psychiatrist is necessary and it should be included in the list of needs. The Minister has provided a very comprehensive and good list but there is no reference to the mental health of the individual. There have been appalling circumstances in the past and the Minister cannot blame us, as legislators, for not having confidence. The Minister must reassure us. The last phrase “any combination thereof” is too vague.

Senator Frances Fitzgerald: Senator Rónán Mullen and Senator Nicky McFadden have put the case extremely well. There is a real danger of minimalist standards, combined with the lack of an independent review. There is a striking lack throughout the Bill of provision for independence or independent reviews, or involvement by people other than the HSE. This can be linked to an earlier amendment I put down which was supported by my colleagues. That amendment provided for a report to the Houses about the amount of money. When the Minister responded to that proposal, she said that what I had said about mental health was not correct. It was correct; I have checked it. There was a special allocation for the implementation of A Vision for Change, but that money was hived off. What the Minister said was incorrect. The money was put aside for mental health but it was hived off and not spent in the area for which it was allocated but on general health. That is the reason for having the specifics built in and the Minister reporting back to the House. It happened previously and it could happen in this area as well. That is also the reason there must be provision for independence in the Bill, whether it is with regard to care assessments or other reviews, the nursing homes, disputes about fees or other issues. There must be provision for independent review but it is not included to the necessary degree in the Bill.

The other issue is the care assessment. It is assumed that we are discussing quite high dependency persons. High dependency generally means there is a range of needs that must be assessed. It is unlikely that one discipline would be able to do that. The Minister should name a social worker and a psychiatrist in the list of the potential people who should make assessments. In addition, she should go into more detail about the guidelines she intends to publish. Perhaps she will clarify whether this area of assessment will be addressed in the guidelines, how the multi-disciplinary assessment will be carried out and by whom. What is the standard of assessment?

[Senator Frances Fitzgerald.]

Previously, when I worked as a social worker, I was involved in assessments and they can vary. Senator Callely said assessments often need to take place over time, and that is true. It is likely that a number of disciplines would be required and that there would be certain minimum standards. It would be necessary to examine the physical, psychological and mental health and the social care provisions. In most cases all these issues would have to be addressed so a proper final care assessment can be carried out. That should be spelt out. The specificity which Senator Mullen discussed is the key point because without it one is potentially dealing with low standards and lack of proper assessments. My other point relates to long-term residential care services. What exactly are we talking about here? This is not spelt out in the Bill and many people are concerned about it, including many providers of such care and people who work with the elderly. If a person is obliged to give up 15% of his or her home, to be taken from the family, exactly what will he or she get for it? What level of care and what services will people receive? Will physiotherapy and occupational therapy be included? What minimum and maximum standards are guaranteed in the legislation given what is proposed, namely, the financial intrusion and demands made and the precedence to be set in the taking of money from estates? This may well be necessary but what will people get for their 15%? Is this information outlined anywhere? Will the Minister of State address this matter?

Might there be a situation in which nursing home residents would not have the same entitlements to specialised equipment, therapies and access to allied health professionals they currently enjoy in the community? We know that community services are lacking for the elderly at present but I acknowledge there have been great improvements, for example, in access to occupational therapy. Occupational therapists call to elderly people in their homes, make assessments and provide the aids and equipment necessary and this has led to a qualitative improvement in people's lives in the community. However, is there a possibility that people might end up in nursing homes without such access, having had 80% of whatever money they might have, such as pensions, taken? They might not have access to money to be able to afford to get basic services they badly need. What will nursing homes do if they find themselves in this situation, without any clarity?

I intend to discuss section 11 of the Bill and I hope my colleagues will do so also, especially the lawyers in the House. I am intrigued by this section which states there is no obligation to provide for or arrange for the provision of any such services. I find that an extraordinary paragraph. Perhaps it is *pro forma* but it brings up the issue of an obligation to provide services. Where is that laid down? What is the obligation and what is the standard of such services, considering the 15% of money and estate that is to be taken?

I ask the Minister of State to return to this matter. Is one entitled only to one's health care, food and bed, or are other services such as physiotherapy, chiropody and occupational therapy included? How can we find out about this? How can we know what is included? Where is it specified in the legislation? Will it be included in any guidelines the Minister of State will publish? If not, there will be a very big gap with very serious financial consequences for individuals, nursing homes and the State. This is an issue we must discuss in the House and there must be clarity on it from the Minister of State, either now or on Report Stage.

Senator Paul Bradford: I hope the Minister of State has been listening intently to what was said by previous speakers. One of the weaknesses in the way we treat legislation in this country is that a Bill is published and a great deal of debate follows but minimal changes may flow from it. It is disappointing that, although there were ongoing debates about the elderly and their care before the publication of this Bill, we did not have a level of substantive debate, either in the Houses of the Oireachtas or at the Joint Committee on Health and Children. We

might have teased out the problems and put forward our ideas about possible solutions in advance of publication.

This is a very important political debate but is also important philosophically. It is a statements debate because it offers a statement about how we wish to see today's elderly being treated. All of us will be tomorrow's elderly. I am worried that what we are doing is a house-keeping rather than a homemaking exercise, if the pun may be forgiven. It is about fitting people into a slot where they will be neat and tidy but removed and no longer the source of controversy and debate.

Reference was made earlier to the Ryan report and to what we must do as a result of that dreadful report and other similar ones dealing with what we deem to be atrocities. There is talk of a referendum on children. I hope that will come to pass and that children will have strong constitutional and legal protection. In 1983 and on other occasions we introduced into the Constitution protection for our unborn and I am happy with that provision. On Second Stage I made the point that perhaps it is time we deemed necessary the possibility of having a referendum to provide protection in the Constitution to safeguard the rights of the elderly in our community. That may be the type of statement we should make as a society.

Unfortunately, there are people in this country today who are literally afraid to grow old because they have no idea what the future holds for them. This Bill is an attempt to resolve their worries and concerns but it is politically and philosophically wrong in the sense that we are trying to find a solution to remove the problem from our books rather than address the needs of tens of thousands of our citizens. I do not mean this as party political and I hope the Minister of State knows me well enough to realise that.

The debate, therefore, must be wide-ranging as must the examination of options. That is why it is so necessary the Minister of State should take on board what we are saying. Perhaps we will not divide on Committee Stage. We are all going down the same road and in some way will all be part of the consequences of this legislation. We must get it right. The debate has not been sufficient over the course of the past two or three years. We do not seem to have recognised fully the demographics of society or faced up to the challenge of what we know the population trends will produce. However, if this Bill, in its amended form, is to bring about the sort of place in our society which our elderly people can enjoy, with safeguards, security and other options, more must be done. This is only a small part of what we should be trying to do for our hundreds of thousands of elderly citizens. We will not debate again today the questions of carer's allowance and benefits, community care and housing associations etc. That is for another day. In so far as we are trying to provide long-stay residential care by means of this Bill, it is crucially important that we approach it from the widest possible remit and that the type of concerns my colleagues have outlined should be taken on board by the Minister of State.

This is a profound political opportunity for the Minister of State to make her mark. Since I had the privilege of joining the Oireachtas over 20 years ago I have to say, looking at all sides of the Houses and all political parties, there have been very few Ministers who could genuinely say they had made a difference when they walked out of Leinster House. One who made a difference, with regard to the elderly and their care, was the late Seamus Brennan. Most people simply pass through and finish their job without making any real difference to anybody. I hope the Minister of State will avail of this opportunity to put in place a scheme of care and support for our elderly which will make a difference. She should try to approach that in the right direction, philosophically speaking.

The Bill needs significant changes, particularly in the thinking that underlies it. We are asking for a very small step, namely, that there should be the broadest consultation, examination and

[Senator Paul Bradford.]

level of analysis of each person's unique circumstances. Rightly and properly, we love to tell children and teenagers how unique they are and how many options lie before them. The world is their oyster. The thinking in the Bill says to people at the other end of the life cycle they are not unique but more or less the same and one solution will fit all. I certainly do not agree with that analysis and hope the Minister of State can bring about the changes that will make life not just bearable but better for the people who have built this country. Our paying so much lip service to the elderly and claiming they built the country, etc. is glib, self-satisfying and hypocritical unless we make real changes and make this Bill work. We must put people, including the elderly, at its centre and not regard them as parts of some economic equation.

Progress reported; Committee to sit again.

Visit of Chinese Delegation.

An Cathaoirleach: Members of the House will wish to join me in welcoming a delegation from the National People's Congress of China led by the Mr. Zhang Bolin, MP. On behalf of myself and my colleagues in Seanad Éireann, I extend a very warm welcome to the delegation and sincere good wishes for a very successful visit.

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

Debate resumed on amendment No. 6:

In page 13, subsection (5), lines 5 to 7, to delete all words from and including "shall" in line 5 down to and including "Executive)" in line 7 and substitute the following:

"shall be carried out by a multidisciplinary team (who may be employees of the Executive)".

—(Senator David Norris).

Senator David Norris: Part of the problem experienced by those of us who are pushing for a multidisciplinary approach is that this legislation, like most legislation generated by the Government, is not fundamentally rights based. Therefore, there is no automatic entitlement to anything. That underlines Senator Fitzgerald's point that the Government does not want to be tied in to automatic financial liability in servicing the needs of patients, which is a pity. I know we face difficult circumstances economically but many of us in this House have argued for rights-based legislation.

All Members on this side have been eloquent. Equally eloquent is the silence on the Government side because, to quote our friend the late James Joyce, "silence gives consent, Mr. Ankle-gazer". If silence is equated to giving consent, there is some agreement on the Government benches. It is masked by a discreet silence. For the sake of inclusiveness, I must point out that my two female Fine Gael colleagues, Senators McFadden and Fitzgerald, said Senator Mullen had made his defence well. For the sake of being complete, I must state I argued well also. I would hate that to be omitted from the record.

Senator Rónán Mullen: Hear, hear. There is no surprise there; an rud is annamh is iontach.

An Cathaoirleach: Senator Norris should speak to the amendment.

Senator David Norris: My point is absolutely on the amendment. It is a pre-emptive strike to save a little time. I anticipate what the Minister of State may say in part of her response, especially on the plea many of us have made for the inclusion of social workers as a category. It is quite astonishing that they should be left out in light of everything that has been said by

Senator Fitzgerald who has professional experience in this area. For that reason alone we should listen to her argument.

Having read the record, I note Deputy Paul Connaughton of Fine Gael made a very strong argument for the inclusion of social workers because there are isolated elderly males in rural circumstances. He stated their social background should be assessed in addition to the other criteria. It is very ironic today that the rural night-time bus service is to be cancelled for economic reasons, bearing in mind that it was introduced after a very powerful intervention by the President of Ireland, Ms Mary McAleese, and her husband, Mr. Martin McAleese. It is now possible that it will be withdrawn and it is important to bear this in mind.

I understand that in the discussions in the Dáil, amendments were tabled to the legislation. Amendment No. 114 — I am not sure whether it was tabled by the Government or Fine Gael — concerned the addition of social workers to the list of specified persons in the Bill. If the Minister of State is going to pop that one out at us, so to speak, and suggest it addresses the matter, it will not be acceptable. The provision was incorporated into the text of the Bill as received from the Dáil but its effect is to include social workers as a category of persons able “to apply” for assessments. The word “apply” is used but the wording does not include social workers among those persons involved in the making of assessments. That answer would not be regarded by me or Senator Fitzgerald as satisfactory. I am signalling that point, which is my shot across the bows.

Senator Ivor Callely: It is with interest that I listened to the various contributors to this debate. On one hand, I concur with most of the contributions but, on the other, I am not too sure whether we should allow ourselves to get bogged down in ticking the boxes and ensuring everyone is included for the sake of assessment. One can have assessment after assessment and involve everyone but usually the people involved in the provision of care to the elderly, who may have tapped in with service providers, either on a day care, respite or treatment basis, would probably have a very good handle on the level of care required rather than those persons whom Members propose should be included in the assessment process. I ask the Minister of State to clarify the phrase “may include” in section 7. Does this mean “may not include” equally?

Senator David Norris: Absolutely.

Senator Ivor Callely: Are we getting hung up on circumstances that may arise and, in particular, getting hung up on one discipline? I ask that this be clarified.

It is in everyone’s interest, including that of the Minister of State and her officials, that we deal with the legislation along with the proposed regulations. If the guidelines are not available at this stage, a draft should be made available. This would assist Members and would probably prevent our wasting much time in discussion.

Other speakers referred to the level of care provided to elderly people in long-stay care. I was on the circuit for a little while with regard to the provision of services. Before this, I was involved in the pharmaceutical industry and visited a number of the institutions under discussion. There are few that I have not been in, including long-stay hospitals. Senator McFadden and others asked about the services old people will be receiving.

In my family there was a discussion about the need for long-stay care for one individual. When I mentioned St. Mary’s in the Phoenix Park, a long-stay provision institution, one family member said: “Never, what a place.” I had to correct the individual and asked when they were last in the institution. It so happened they were last there to visit their granny 30 years previously. I encourage every Member to visit the fabulous new facility in St. Mary’s. Tremendous,

[Senator Ivor Callely.]

state-of-the-art units have been built at the back and there is a tremendous array of services. This has not just been achieved in the public sector but has also been achieved in the private sector. Certain incentives have been put in place to encourage private operators to develop additional services for the elderly.

We should send out a clear message from this House that there is a tremendous array of services, including hair dressing and physiotherapy, of which one would like to see the elderly avail. They are probably not being provided to every single bed but that is because there are a number of beds in the system for a considerable period. We need to remove them from the system when we roll out the new beds and ensure the latter beds have the required array of services. Will the Minister of State indicate the number of long-stay beds currently in the system and the number that have been identified as requiring an upgrade by way of support services?

Minister of State at the Department of the Health and Children (Deputy Áine Brady): The intent and purpose of subsection (50) is to ensure a multidisciplinary team is available to carry out all the assessments on a flexible basis. Under subsection (6), the assessment extends to social as well as medical and health issues, whereas subsection (7) deals only with a physical examination. The multidisciplinary teams established by the Health Service Executive in pilot schemes around the country include geriatricians, social workers and members of other disciplines specialised in older person care.

The term “suitable” used in the Bill encompasses the fact that a person should have appropriate experience in the care of older people. The common summary assessment record is the standard reporting format for the care needs assessment. It will ensure the person’s care needs across all parameters of the assessment are examined and recorded. The cost components of public care will be laid before the Oireachtas.

Some of the concerns raised by Senator Mullen will be addressed by the new standards and regulations for care and nursing homes. The Minister has approved new standards and will underpin these by regulation in the near future. Among other things, these regulations will provide individual care plans for residents of nursing homes and quality of care in nursing homes, including social and care needs. They will be inspected by the Health Information and Quality Authority, HIQA.

On mental health, which was raised by Senator McFadden, the care assessment will include cognitive ability, orientation and any other matter that affects the person’s ability to care for himself or herself. The phrase “long-term residential care” is defined as maintenance, health or personal care services.

The term “multidisciplinary” is not used in the Bill and is not defined in legislation. The use of the singular and plural form, as in “person” or “persons”, is consistent with the Disability Act 2005. However, I will consider the amendment on this matter, subject to legal advice.

Senator Frances Fitzgerald: The Minister of State indicated several times that the care needs assessment is a physical assessment under subsection (7). Under subsection (6), however, it is clear that a care needs assessment takes into account family and community support as well as medical, health and personal and social services. The members of the multidisciplinary team are not defined under this subsection.

The Minister of State indicated that subsection (7) refers only to a physical examination. Where is the issue of the multidisciplinary team addressed? Who will do the assessment once it has been determined as being required under subsection (6)? If, under subsection (7), the evaluation will be a physical assessment and will be done by a doctor, nurse, occupational

therapist or chartered physiotherapist, who are the multidisciplinary professionals who will carry out the assessment, as defined under subsection (6)?

I acknowledge the Minister of State's commitment to return to this matter and propose to withdraw my amendments until Report Stage.

Senator David Norris: We will return to the substance of some of these matters in later amendments. With regard to the multidisciplinary aspect, I am not aware of any occasion in the Bill where the phrase "multidisciplinary team" is employed. Perhaps the Minister of State will point to a passage where the term is used as I may have overlooked it. I note her skilful advisers are searching through the Bill. It will be interesting to ascertain whether they have found a case of the term being used as it would provide Senators with an opportunity to examine it.

We should not have a completely gilded view of the services currently available. My distinguished colleague, Senator Callely, referred to St. Mary's Hospital in the Phoenix Park and suggested Senators should visit the facility. He also noted that somebody had spoken about the hospital in less than glowing terms — I believe it was in the other House — and when questioned on the matter it transpired the person in question had not been to the hospital for 30 years. I have been to St. Mary's Hospital in the past two years and I raised conditions in it on the Adjournment. I pay tribute to the remarkable professional devotion shown by its staff. Some aspects of the hospital have been renewed and I understand that process is continuing, which I welcome.

An Leas-Chathaoirleach: The Senator is drifting from the subject of the amendments, which refer primarily to the assessment of need.

Senator David Norris: I am aware of that. The Senator opposite engaged in an extensive flight of rhetoric about the issue. I am simply putting the matter in context in order that someone reading the record in subsequent years will not be misled. As far as I am aware, the older sections of St. Mary's Hospital, which are Dickensian, are still in use. Let us, therefore, not have a glowing view of the hospital, which is not to criticise its staff. It is a fact, however, that some of the plant in it leaves a great deal to be desired.

That the Minister of State appears to be becoming more and more flexible is welcome. Before we wear her out, perhaps we should move on to subsequent amendments. I understand she is examining the position and will return to the matter on Report Stage.

Senator Ivor Callely: I was interested in the Minister of State's comment that the evaluation will be a physical assessment. In what setting will assessments be carried out?

Senator Nicky McFadden: The Minister of State used the term "cognitive ability" in response to the issue I raised about the mental health needs of the elderly. Cognitive ability does not necessarily cover mental health. I refer specifically to people with depression or psychosis and those who may be psychiatrically unwell. None of these areas is covered in the evaluation.

Subsection (6) sets out that the evaluation will include an assessment of a series of areas, including whether a person is able to dress and bathe, is incontinent and so forth. However, it does not cover the issue of mental health. Given that subsection (7) explicitly refers to the professionals who may be involved in an assessment, I ask the Minister of State to consider inserting a reference to a geriatric psychiatrist in this subsection.

I do not need to expound on the wonderful care centres in my area where care services for the elderly require substantial additional funding. In the Mountmellick area, for instance, two

[Senator Nicky McFadden.]

physiotherapists in one care centre must deal with 140 patients, including outpatients. I am concerned about budgetary constraints.

Senator Rónán Mullen: I thank the Minister of State for her response. I know she is a caring person. Senator Bradford's motivating speech encouraging her to consider her legacy may partly explain the flexibility she has shown. I welcome and appreciate her commitment to examine the use of the plural form.

On the guidelines which will be subject to examination by HIQA, will appendix A of the HIQA nursing home regulations as it relates to the minimum data set be implemented in full? This will be necessary if the individual's needs are to be addressed in full and the detail recorded in such a way as to allow the data to be entered into a system and used to assess our performance at national and international level.

Senator Mary M. White: Having listened to Senator McFadden's comments on this issue, I share the view that dealing only with the physical aspect is a form of housekeeping. Each human being is unique. This faces all of us in the future. We discussed in the Seanad a report done by NUI Galway that the practical needs of older people in nursing homes were being looked after reasonably well but there is a holistic need which makes a person happy in his or her situation.

There are geriatricians, a relatively new medical profession in the country. Providing for a general practitioner is narrow. The section would want to be more defined on who is experienced in dealing with people who need care. This Bill is not only about older people. It is about any person of any age who needs long-term care.

I agree with my colleagues that "cognitive ability" has nothing to do with the person's emotional health——

Senator Nicky McFadden: Hear, hear.

Senator Mary M. White: ——and whether the person is happy that he or she is living in the nursing home as a home from home. The person wants to be at home but he or she must be in the nursing home. The happiness part, how the person feels, is the most important part. I would prefer to be happy and have the place untidy, but my emotions, my feeling about myself and whether I am happy in the place would be predominant.

Deputy Áine Brady: In reply to Senator Norris, the term multidisciplinary is not used because it is not defined in the legislation. I stated already that the use of both singular and plural is consistent with the Disability Act 2005, but I have agreed to consider this amendment in terms of the person and persons.

The care needs assessment will be carried out by a person suitably qualified. As defined in section 3, "suitable" means that "the person has the necessary qualifications, training or experience, or combination thereof, to perform that function", and that would include the holistic approach to this person as an individual, not only looking at the physical.

Section 4(7) is only an enabling provision relating to the physical examination if it is necessary. It is a safeguard that is in place and it will be carried out after consultation with the particular individual. These assessments are undertaken in any setting, acknowledging that some people will enter a nursing home from an acute setting while others will enter from the community. It will be after discussion with the individual or, obviously, the carer.

Senator Mullen referred to the minimum data set. It is not part of the standards approved by the Minister; it is an appendix. There are serious resource and logistical issues around

selecting and implementing an agreed national minimum data set and my Department will be examining this once the new inspection regime is up and running. That addresses many of the issues raised.

An Leas-Chathaoirleach: We have given those amendments a good airing.

Senator David Norris: If I may make a positive final comment, and this is a serious matter, I can recall a case in which I was involved where an elderly woman was living in conditions of considerable untidiness which I will not describe as squalor as they were not unclean. She had a serious problem with her eyesight and, eventually, with her co-operation I arranged for her to be hospitalised for a short time. She was never brought back home. I had arranged for the place to be done up and various things put in for her and it was really rather sad because she was transferred, after assessment, to a State facility. With the best will in the world I am not sure the care was adequate because this elderly lady eventually succumbed to the effects of very serious bed sores. It was a horrible way to go. If she had been assisted after assessment involving social workers and a multidisciplinary team, it might have been possible for her to go back and live her untidy life as she wished in her tiny house and she would not have died in agony from the bed sores. That is where Senator Mary White on the Government benches is coming from.

This is my last word on it. The Minister of State said I was correct in stating that the term “multidisciplinary” is not used in the Bill. The reason she gave was that there is no definition of “multidisciplinary” in the Bill. That is a circular argument. Of course one does not need a definition if it is not included. An important opportunity has been missed to include that definition and it is not adequate to state that it does not occur in other Bills. This was a moment to include it because this is the Bill where it is most appropriate.

There is a perfectly adequate definition of “multidisciplinary” from the HSE and from the correct support services, and we could have included it in the legislation. As the Minister of State says the aim is to get multidisciplinary assessment, let us have it and let us include it. We need not be shy. We all are grown-ups. We can face it on the page. All the Minister of State need do is insert the definition. If she and her advisers are not too exhausted by this, let them look at my definition, which is the HSE’s definition, and let us insert it in the Bill. The Minister of State will not have to do any homework. We have the definition ready for her.

Let the Minister of State not say we cannot have it in the Bill because there is no definition. There is no point in having a definition of something if it is not included in the Bill. Let us put it in. We have given her the definition. That is being helpful.

Senator Ivor Callely: I was interested to hear the Minister of State say it could be in either setting. Is that either-or or either?

Deputy Áine Brady: Either.

Senator Ivor Callely: Rather than push her on the issue now, perhaps she and her officials might write to me. My understanding of the current position is that the assessment is carried out in a hospital setting and that is why I state “either-or”, and in a number of cases where the person’s desire is to return home, it is carried out in the home as well. This is why I stated earlier that we could get bogged down in the entire assessment process. When the opportunity arises, perhaps the Minister of State would pencil a note to me on that issue. In my initial contribution I also mentioned the participation of family members in a case conference on such assessment, their role and how they will be accommodated in that regard, and I ask for clarification on that.

Senator Nicky McFadden: While I accept that the Minister of State aims to include a holistic approach to the care of the person, I do not understand why she will not include the phrase “mental health” as well. I ask her to consider including that phrase. She has spelt out all the other physical needs of the person and it would be important to include the phrase, the “mental health” of the individual.

Senator Mary M. White: I agree with that.

Deputy Áine Brady: There is no amendment asking me to insert those words.

Senator Nicky McFadden: In all these amendments we have been discussing the needs of the person. While neither the Minister of State nor we have not spelt it out, it seems extraordinary we have not included it.

Senator Mary M. White: It goes back to the proverbial problem that there are not enough women in the Oireachtas, either in this Chamber or in the Dáil. Most of the legislation is drawn up by men and they are missing out on the emotional aspects and the feelings. Naturally, women, as politicians, go for it. There is no question about it. In countries where there is an equal number of men and women legislators the legislation is much more socially minded and far more advanced. It brings us back to the same issue again.

From my document on suicide and my document on older people, my view is that the emotional needs should have equal priority. The list in the section is cold-blooded, factual and bureaucratic. No matter what argument is put up against that, if a few more women were drawing up this legislation, it would be much better.

Senator David Norris: Senator Mullen and I have highly developed feminine sides.

Senator Rónán Mullen: Steady on.

Deputy Áine Brady: I made the point that we do not want to have a situation where applicants have to be assessed by a whole series of professionals and have assessments they do not need, but I will take on board what the Senator said about mental health issues. The multi-disciplinary teams currently being piloted around the country include geriatricians, social workers and many other disciplines. They are already in place. I will get legal advice on the use of the term.

An Leas-Chathaoirleach: Is amendment No. 6 being pressed?

Senator David Norris: Not at this stage.

Amendment, by leave, withdrawn.

Amendment Nos. 7 to 9 inclusive, not moved.

An Leas-Chathaoirleach: Amendment No. 10 is deemed to be out of order because of a potential charge on the Revenue.

Amendment No. 10 not moved.

Amendment Nos. 11 to 13, inclusive, not moved.

Senator Nicky McFadden: I move amendment No. 14:

In page 13, subsection (7), line 36, after “or” to insert “a social worker or”.

An Leas-Chathaoirleach: Is amendment No. 14 being pressed?

Senator Frances Fitzgerald: The Minister of State did not respond to this amendment. Is she willing to consider it?

An Leas-Chathaoirleach: We have completed the discussion on this. Is amendment No. 14 being pressed?

Deputy Áine Brady: The amendment relates to physical examinations only, so social workers are not necessary.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 15:

In page 14, subsection (8), lines 3 to 5, to delete all words from and including “that” in line 3 down to and including “lifetime.” in line 5 and substitute the following:

“that it is likely the person will require care service for a period of not less than 30 consecutive days or periods in the aggregate amounting to not less than 30 days within a period of 12 consecutive months.”.

This is to delete a certain number of words in subsection (8) and replace them with “that it is likely the person will require care service for a period of not less than 30 consecutive days or periods in the aggregate amounting to not less than 30 days within a period of 12 consecutive months”.

I recollect the sense of this amendment. The intention of it is to ensure that immediate care is effected and that we reassess the situation where the Bill, as currently phrased, appears to assume that there will be a necessity for lifetime care. That closes the option of hope and optimism and the idea that there will be a rehabilitative element in nursing homes and after a brief stay a person may come out again. It is a rather grim assumption that people will have to stay in a nursing home for an extended period.

The phrase in the Bill to which the amendment refers reads:

Where the Executive receives a care needs assessment report in respect of a person, it shall, after considering the report as soon as practicable after its receipt, make a determination—

(a) that the person needs care services, or

(b) that the person does not need care services as it thinks appropriate in the circumstances of the case.

My amendment would insert the phrase “that it is likely the person will require care service for a period of not less than 30 consecutive days or periods in the aggregate amounting to not less than 30 days”.

The Bill as currently framed reads, “as it thinks appropriate in the circumstances of the case, and where the Executive determines that the person needs care services, the Executive may also make a determination that it is unlikely that the person will ever cease to require care services during the person’s lifetime.” The offending phrase is “that it is unlikely that the person will ever cease to require care services during the person’s lifetime”. It is like a deferred death sentence as far as I am concerned and the phrasing provided by me, that is, “that it is likely the person will require care service for a period of not less than 30 consecutive days or periods in the aggregate amounting to not less than 30 days” and so on is a much more open approach to this difficult and complex situation.

Senator Rónán Mullen: I thank Senator Norris for tabling the amendment and expressing his objections to the original wording so eloquently because I agree with him. What turns on the executive's ability to make a determination regarding a person on foot of a care needs assessment report that is it unlikely the person will ever cease to require care services during his or her lifetime? Why does that need to be there and why does the executive need to be able to make such a predictive statement? What mischief does that enablement of the executive seek to address? What good does it seek to achieve?

Senator Nicky McFadden: I hear where Senator Ross is coming from.

Senator David Norris: I am Tweedledum. The other old Prod is Tweedledee.

Senator Nicky McFadden: I read this differently. In my experience of elderly people, if they are in the system and are well cared for on a long-term basis it gives them great security, and their families are free from anxiety. I hear the point Senator Norris is making, namely, that it is almost a sentence for life and one never gets out. I am interested to hear what the Minister of State has to say.

Deputy Áine Brady: At present the Bill provides that the HSE may determine that a person is likely to require care services for the remainder of his or her life. This provision, in conjunction with section 3(2) of the Bill, acknowledges that the definition of "long-term residential care services" contains a minimum time period of 30 consecutive days. Its underlying intention is to enable the HSE to commence payment of financial support from the date the person enters the nursing home rather than after the expiration of 30 days.

I appreciate the intention of Senator Norris's amendment, which is to provide for the same effect without the need for a determination regarding the likelihood of a person's care needs over the remainder of his or her life. However, I can reassure the Senator that the existing wording was the subject of very careful consideration by the Office of the Attorney General. It achieved the Government and the Senator's policy intention of ensuring that financial support can be paid from the first day of a person's time in care. However, it also ensures that the HSE may take into account whether the person is likely to require nursing home care for the remainder of his or her days or whether rehabilitative care for a period of more than 30 days would be more appropriate.

It also acknowledges the second part of the definition of "long-term residential care services", namely, that such services should exclude rehabilitative care for a period of 12 consecutive months or period aggregating 12 months within a period of 24 consecutive months. For this reason I do not propose to accept the amendment. However, I hope my response has offered the Senator sufficient reassurance on this matter.

Senator David Norris: I welcome the Minister's response. I am not completely satisfied. I shall mull it over. I would like to address a point made by my colleague, Senator McFadden. She is dealing with the issue in a very humane manner and feels that people might be reassured by the prospect that an elderly relative would be catered for for the rest of his or her life. My understanding is that no such guarantee is given and it is all dependent on funds being available. If the funds suddenly become unavailable, there is a problem. We cannot be content that indefinite prolonged residency is assured.

Deputy Áine Brady: It will be open to anyone in residential care to at any time leave that residential care or to seek a review of their care assessment. This provision enables the HSE to pay financial support from day one of a person's time in care rather than his or her having to wait until the 30 day period specified in the definition has expired. The provision is technical

and is aimed at assisting people in obtaining support from day one. This matter has been the subject of careful consideration by the Office of the Attorney General.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 16 has been ruled out of order as it involves a potential charge on the Exchequer.

Senator Frances Fitzgerald: Perhaps the Leas-Chathaoirleach will repeat that.

An Leas-Chathaoirleach: Amendment No. 16 is deemed to be out of order as it involves a potential charge on the Exchequer.

Senator David Norris: Will the Leas-Chathaoirleach explain that?

Senator Nicky McFadden: Yes.

Senator Frances Fitzgerald: I do not agree that this amendment should be withdrawn.

An Leas-Chathaoirleach: The Cathaoirleach has deemed the amendment to be out of order as it involves a potential charge on the Exchequer. The Senator can raise her point when we come to deal with the section.

Senator Frances Fitzgerald: Yes.

An Leas-Chathaoirleach: The amendment is deemed by the Cathaoirleach to be out of order.

Senator Frances Fitzgerald: I find this extraordinary because the whole point of the Bill is to provide financial support to people who need residential care. The paragraph concerned states that the Executive does not have any obligation to provide a service.

An Leas-Chathaoirleach: Senator Fitzgerald is questioning the ruling of the Cathaoirleach.

Senator Frances Fitzgerald: I will speak to the matter when we come to discussing the section.

An Leas-Chathaoirleach: I call Senator Fitzgerald on amendment No. 17.

Senator David Norris: I would like to register a protest. This is a complete nonsense and the ruling is a bad one. I ask that the Leas-Chathaoirleach take back to the Cathaoirleach a demand from this House that the CPP be convened to discuss these rulings——

Senator Nicky McFadden: This is absolutely outrageous.

Senator David Norris: ——which are blatantly absurd.

An Leas-Chathaoirleach: The ruling has been made in accordance with Standing Orders, a document drafted by all Members of this House.

Senator Nicky McFadden: On a point of order, amendment No. 16 is the crux of the whole debate we are having today.

An Leas-Chathaoirleach: Senator McFadden——

Senator Nicky McFadden: We are speaking about issues concerning mental health, the needs of individuals——

An Leas-Chathaoirleach: Senator McFadden, the Cathaoirleach has ruled on the matter.

Senator Nicky McFadden: ——the Executive will provide for the provision of any service identified——

An Leas-Chathaoirleach: Senator McFadden can deal with the matter under the section.

Senator Nicky McFadden: It is ridiculous.

An Leas-Chathaoirleach: The Cathaoirleach has deemed the amendment to be out of order. We are moving on to amendment No. 17.

Amendment No. 16 not moved.

Senator Frances Fitzgerald: I move amendment No. 17:

In page 14, between lines 25 and 26, to insert the following subsection:

“(13) The content of a care needs assessment report shall be provided to a nursing home in advance of the subject residing in and receiving care from said nursing home.”.

This is a straightforward amendment. This is good practice and is already incorporated into the code of practice for integrated discharge planning published by the HSE this year. That document states that patients being discharged should receive a seamless transition from one stage of care to the next. It makes the point that one service cannot work in isolation from another and that all stakeholders must accept their interdependency and must work together to ensure there are no gaps in services or duplication of effort.

It refers also to integrated discharge planning relying on knowledge being passed between the different service providers and states that family carers, general practitioners and other service providers should be contacted at least the day before discharge to confirm the patient is being discharged and to ensure that services are activated or reactivated as appropriate. It further states that upon discharge the patient should receive an information pack, a carer's plan, medication record and so on and suggests that receipt of a referral must be tracked into a patient's record within 24 hours of that referral.

All of this is extremely practical. It puts in place in the code of practice a system that will ensure that patients' care needs are passed on efficiently between the different services used by the patient. For example, the details of an elderly person leaving hospital to go to a nursing home should be passed on. The amendment seeks to put into statutory form that the contents of a care needs assessment report shall be provided to a nursing home in advance of the subject residing in and receiving care from the said nursing home. As I stated, this is good practice. It is a good idea to include this in the legislation. It will ensure this happens automatically and that such matters are not left to the code of practice but are a requirement.

Senator Nicky McFadden: I support the amendment. It stands to reason that a database would be *in situ*. Where a person is moving from an acute hospital it is important that his or her medication and blood details, including their requirements, be available on an intranet within the HSE. I cannot understand why in respect of ordinary medicine this is not the case. Currently, individuals must outline their details to a doctor who must write a letter in respect of medication required and so on. It should be possible to transfer such information automatically from one facility to another.

Deputy Áine Brady: Section 7(13) provides for the content of a care needs assessment report to be provided to a nursing home with the prior consent of the subject of the assessment. I hope this clarifies the position and addresses Senators' concerns.

Senator Frances Fitzgerald: I am suggesting that it should be obligatory practice that where a person is moving from one setting to another, the care needs assessment report should be forwarded to the place to which he or she is going. That makes sense. I am not sure the section referred to by the Minister deals adequately with this matter.

Deputy Áine Brady: I cannot accept the Senator's amendment because it does not respect the rights of the individual being assessed. The provision of a care needs assessment report to a nursing home is ultimately a matter for the individual or, where relevant, the individual's representative and the nursing home. A care needs assessment report will contain sensitive information regarding a person's health and well-being, and it would not be appropriate for the HSE to ignore a person's right to confidentiality in this regard.

Specifically, it is considered that the provision of the care needs assessment report to a nursing home without a person's prior consent would be in contravention of section 2(b) of the Data Protection Act 1988 as amended by the Data Protection (Amendment) Act 2003 in respect of the processing of sensitive data. Section 7(13) was introduced on Report Stage of the Bill in the Dáil at which time Deputy Reilly welcomed the introduction of this provision, noted that it addressed his concerns that care needs assessments could be shared with nursing homes and acknowledged the absolute need for prior consent.

Senator David Norris: The Minister of State has made the effective and humane point that one must reflect and respect the wishes of the patient who may well believe there is something untoward going on or that matters are being disclosed that they do not wish the matron of the nursing home or administrator to know about. While that is an issue that must be considered, what is the position in respect of those who are incapable of giving informed consent? It appears to me that no provision is made in the Bill to look after the interests of people who cannot give consent.

The current provision relates only to people who do give prior consent. It might well be particularly valuable for the nursing home to have access to the assessment in the case of somebody who is incapable of giving consent owing to intellectual disability, illness such as stroke, and so on. I believe this to be a case where it would be particularly valuable for the nursing home to have the care needs assessment report.

Perhaps the Minister of State will give an undertaking to re-examine the amendment which may require rewording to provide that while respecting the right of individuals to withhold consent we must consider situations wherein they are incapable of doing so and it is determined that it is in their best interests that the nursing home should have access to these documents.

Senator Rónán Mullen: I agree with Senator Norris. While I accept what the Minister of State said in regard to the issue of consent, that does not deal with the whole problem. It may be the case that there should be a requirement that the content of the care needs assessment report should be provided, subject to the consent of the person involved and to incorporate Senator Norris's concerns by including, "subject to the consent of the care representative".

There remains the separate issue that subject to that consent, there be a requirement as distinct from an option on the part of those who carry out the care needs assessment report, to provide the information to the relevant facility. In other words, it is a separate issue to consider moving from "may" to "shall". We must ensure that the report is provided, subject to the consent of the person who is the subject of the report.

[Senator Rónán Mullen.]

We are trying to reach a situation in which the care regime demonstrably addresses previously identified needs. Apart from the issue of consent from the person in need of long-term residential care or his or her care representative, it should be more than optional for those who provide care.

Senator Frances Fitzgerald: I thank the Minister of State for her response. She has clearly tried to address the issues raised on Committee Stage in the Dáil and I accept that consent is very important. It is interesting, however, that the code of practice for integrated discharge planning by the HSE, which is supported by Age Action and everyone else with an interest in this area, emphasises the need for sharing information between services. It is common sense that a care assessment should be passed on in the interest of the patient. As Senator Mullen noted, this should be done subject to consent. Perhaps the Minister of State will consider that on Report Stage, at which point we may table a new amendment.

Deputy Áine Brady: The new standards and regulations will require the assessment of an individual care plan for every resident in a nursing home from 1 July. In devising such a plan, the care needs assessment report will be required. Senator Mullen seeks to replace the word “may” with “shall” but it is contradictory to use “shall” in the context of consent. The care representative under section 21 or the specified person under section 47 can give prior consent to the nursing home.

Senator David Norris: From what the Minister of State says, my support for the original amendment is growing. She implies that the care plan depends on access to an assessment. It would be daft to allow a couple of bloody-minded patients to gum up the works. I am afraid to say that I am turning against human rights and becoming authoritarian in this regard. She agreed with Senator Fitzgerald that it is vital to have this information for the sake of patient welfare.

I know a little bit about awkward patients. I do not mind saying they sometimes waste public money, time and space because I know something about the way they behave. The overriding interest of the State is the welfare of the citizen. The issue should be reviewed before Report Stage, particularly if case histories can be found that would make us more sympathetic. People at this stage of their lives are in need of care and supervision. They may well be fractious but there is nothing to suggest that the reports would be disastrous for them. Exceptional circumstances would be required for the assessment not to be delivered.

The question of the State’s resources also arises because there could be considerable duplication of efforts. If the receiving team in the nursing home does not have access to the relevant information it would have to start from scratch, which is a waste of time, money and resources. I am not unsympathetic to the needs of elderly and difficult patients. There have been some difficult personalities in my families but I have been authoritatively told by close relatives that I will be worse than any of them when I am older. I look forward to that glorious day and to being as difficult as I possibly can be.

Senator Rónán Mullen: That seems strangely predictable.

Senator Nicky McFadden: The Senator could not be that wicked.

Senator David Norris: I will be wicked. The State should take a somewhat paternalistic role in this because there are occasions when, to cite Senator Mullen, Mammy and Daddy know best for Mammy and Daddy. Perhaps the Minister of State will consider framing the Bill so that material is not transferred except in exceptional circumstances in view of the additional

burden created for the State and health care personnel by wasteful duplication. It may not be in the interest of patients to deny this other than in exceptional circumstances. The provision could be tweaked in that direction. The Minister of State has shown great sensitivity to the human rights of patients but we do not need to be overly politically correct.

Senator Rónán Mullen: I have no objection to the subjection of the report to consent but it is not contradictory to suggest that the word should be “shall” rather than “may” because the State should be required to provide a report irrespective of whether the subject of the care assessment or the specified person wishes to withhold consent. My concern is that the provision as it stands might let the State off the hook in terms of its obligation for providing carers with the information they need.

Deputy Áine Brady: As the assessment under the fair deal will be holistic, it will include details such as family circumstances and other matters that may not be appropriate for nursing homes to know. We will need to exercise discretion in this regard. The section allows aspects of a care needs assessment which are necessary for the purpose of individual care plans to be shared with the consent of the patient’s representative or the specified person.

Senator David Norris: I ask the Minister of State to reassure me that the specified person has the legal capacity to consent. The specified person organises applications, reviews and appeals for people without the capacity to deal with these matters. I do not see how they are empowered to consent to the dissemination of this information. Perhaps the Minister of State can indicate the provision in the Bill which enables a specified person to consent on behalf of somebody without capacity.

Deputy Áine Brady: Section 47 gives a specified person the authority to act on behalf of another.

Senator David Norris: I will read the section with interest and I thank the Minister of State for the clarification.

Senator Rónán Mullen: Even if the specified person consented to the dissemination of the report, the question remains of whether an obligation exists on the part of the authorities to provide a care needs assessment report. Assuming consent on the part of the subject of care or the specified person, is it the Minister of State’s intention to impose such an obligation? The word “may” suggests otherwise.

Deputy Áine Brady: I give a commitment that the Health Service Executive will share that assessment once the person has given consent.

Senator Rónán Mullen: Will the Minister consider, therefore, changing the word “may” to “shall”? Once it has been subjected to the issue of consent could she not do that?

Senator David Norris: The Minister has been extremely helpful in directing my attention to section 47, which I have read. There is nothing whatever in section 47 that gives the right to a specified person to provide consent. I will read it into the record because it states exactly what I said earlier. It states: “Subject to *subsections (2), (4) and (9)* a specified person may act on behalf of another person in relation to any application, appeal or review under this Act”. There is a possibility that if a specified person purported to give consent in this instance based solely on section 47 it would be open to a challenge in the courts, if that is what the Minister is relying on, because the giving of consent on behalf of a third party is a very considerable power and

[Senator David Norris.]

it is not articulated in this paragraph. I bow to the Minister's superior knowledge, temporarily, if she can flatten me with further information.

Deputy Áine Brady: The care needs assessment is part of the application.

Acting Chairman (Senator Cecilia Keaveney): How stands amendment No. 17?

Senator Frances Fitzgerald: I withdraw the amendment but I would like the Minister to come back on it on Report Stage if she can.

Amendment, by leave, withdrawn.

Question proposed: "That section 7 stand part of the Bill."

Senator Frances Fitzgerald: We have discussed very important issues in this section on which we have not got full clarity. The question of the multidisciplinary team assessment is a critical one but it is not sufficiently addressed.

There was no specific amendment on referring to the mental health of the individual but the Minister might consider it.

On the naming of a social worker in regard to the multidisciplinary assessment, the word "multidisciplinary" is not used anywhere in terms of the care assessment. Senator Norris made that point. Why not use this Bill to define it, even if we do not have an addition in regard to that. Those points are well made.

I want to speak primarily about subsection (11). Will the Minister inform the House what precisely this means? Our entire discussion has been about the meaning of "care services" in the Bill and what exactly a person is entitled to for the 15%. Subsection (11) of this section states: "Where a care needs assessment is carried out, this shall not be construed as meaning that the Executive will provide or will arrange for the provision of any service identified in the assessment as being appropriate to meet the needs of the person or that the Executive has an obligation to provide or arrange for the provision of any such service". Why does such a section need to be put into a Bill like this one? The whole Bill is about the State's obligation to provide services for elderly people primarily in need of residential care and it outlines the financial provisions that would be needed. I refer to page 14, subsection (11).

Acting Chairman: Of section 7.

Senator Frances Fitzgerald: Yes.

Acting Chairman: Was it discussed earlier on the amendment?

Senator Frances Fitzgerald: No, it was not discussed but we are discussing the section and this subsection is in this section. The amendment I tabled was ruled out of order but I want to hear from the Minister the reason this section is in the Bill. It is reasonable, in discussing this section, to ask the Minister and her advisers for an explanation of subsection (11). What does it mean? Is it a type of general indemnity clause that the State does not have to provide anything? It seems strange to me. I do not understand why a Bill dealing with how the State will provide for people has a blanket declaration that the State, even if a care assessment is carried out of a person deemed to need care, does not have an obligation. Subsection (11) states: "Where a care needs assessment is carried out, this shall not be construed as meaning that the Executive will provide or will arrange for the provision of any service identified in the assessment". It is a blanket get-out clause and I want to know the legal advice that states that

is necessary. Was that contained in the disability legislation as well? Will the Minister contextualise the reason it is necessary to insert a paragraph that states that the Executive has no obligation to provide for any service, even though the whole Bill is about the way services are defined and the Government's obligation to provide such services. That is the purpose of the entire Bill. I want an explanation from the Minister for the inclusion of this subsection in this section.

Acting Chairman: My understanding is that it was ruled out of order at the outset. The Senator can discuss the content of the section.

Senator Frances Fitzgerald: May I clarify that once I am discussing a section I can discuss any subsection——

Acting Chairman: The content of it.

Senator Frances Fitzgerald: ——even though it has been ruled out of order as an amendment? That is the reason I raise it under this section. I want to know why it is included, what it means and if there is any precedent for inserting a subsection that states the State does not have to provide any services, even if the care assessment indicates that such a service is needed. What is the legal advice that states that must be put into this legislation?

Senator David Norris: I strongly support Senator Fitzgerald. This is the core of the issue. The fact that this is not rights based was referred to briefly earlier. This is the get-out cause but it was not put in by the Minister or her Department. We all know that. We know from where it came. This is the Department of Finance at it again, and it is extraordinary.

The Minister has correctly invoked humanity. No doubt there are people in the House who would invoke Christianity, the Christian response to the elderly and that society is judged by the way it treats its most vulnerable. We make an assessment of the needs and then say we might or might not cater for them, and the governing criterion will be financial. We assess the need and then say we will reserve the right to ignore it. That is astonishing. It calls into mind the parable from the Gospel: "I was sick, and you took care of me. I was in prison, and you visited me", and then nothing was done. He knew he was sick and in pain in hospital but said, "That is just too bad". We know about that but we will do nothing about it. That might be understandable in the financial circumstances we are in, but it is a great pity.

On this section, I ask the Minister to look again at the question of the capacity to give consent because I am not certain of it. I am not a lawyer and I believe the Minister, with all her intellectual distinction and charm, is not a member of the legal profession either. Her advisers may well be but perhaps the body language suggests they are not. It might be no harm to refer that section of the debate to the lawyers to determine if there is something in the question of consent.

Whatever else we might get some movement on, I do not believe we will get movement on subsection (11), the get-out clause, because we have had so many battles. Senator Fitzgerald is correct. This is the disability Bill all over again. We fought tough battles in a previous Seanad led, I acknowledge, by my colleague, Senator Joe O'Toole, to try to force it on to a rights based condition, but we failed. If we failed then, when there was, to mix a metaphor, air in the tyres of the Celtic tiger, it is very likely now that the Celtic tiger has sprung a leak, to use another mixed metaphor.

Senator Rónán Mullen: Would the Senator not say the tyres are gone a little soft?

Senator David Norris: I was trying to reproduce the eloquence of Senator O'Toole in his wonderful comment about the flat tyres of the economy, the lack of oil, the need to put water in the engine and so on, which reduced the newscasters on the RTE News to helpless laughter in the studio. I get the impression the Minister may refer this for further legal advice.

Senator Nicky McFadden: I tried to raise this issue earlier because we were going round in circles and having a good discussion on what all in this Chamber believe in, namely, the holistic care of people. Then we read the Bill and find that the HSE, the Department of Finance and the Government are completely renegeing on their responsibilities to look after the elderly. The Bill states: "Where a care needs assessment is carried out, this shall not be [there is no ambiguity here] construed as meaning that the Executive will provide or will arrange for the provision of any service". What is the point of us discussing any of this if the Department has the right to do this? It is outrageous.

5 o'clock

Senator Phil Prendergast: Hear, hear.

Acting Chairman: On that poignant note, as it is 5 p.m. I must ask that progress be reported. Progress reported; Committee to sit again.

Information and Communications Technologies: Motion.

Senator Jim Walsh: I move:

That Seanad Éireann welcomes Government initiatives to support the further development of sustainable information and communications technologies in Ireland with a view towards creating sustainable economic opportunities in new information and communications technologies sectors.

Cuirim fáilte roimh an Aire Stáit agus molaim an rún atá os ár gcomhair anocht. In proposing the motion from the Government benches, I note it concentrates on an area that will be critical to our economic well-being in the future. I am disappointed by the amendment that has been put down. I am sure my esteemed colleague opposite, Senator O'Reilly, for whom I have the highest regard, was not instrumental in the wording of the amendment. That amendment in a critical way homes in on a narrow aspect of this issue, namely, the roll-out of the broadband network, which is obviously very important but is only one part of the overall thrust of what the proposal is about.

We are in interesting economic times and there are many challenges across the global economy to various states in regard to ensuring that the economic basis they have built will survive the current recession. In addition, the challenge for Ireland is to ensure we position ourselves in the right areas in order to advance the unprecedented economic growth which we have seen here in the past ten to 15 years, which brought us almost full employment and one of the highest GDPs in the Western world. While we are taking a cold shower at present with the global downturn, at the same time we must focus in a positive way on ensuring not only that we meet the current challenges but that we lay the foundation stones for our future economic well-being.

It is fair to note that our expertise in the area of information and communication technology and the pharmaceutical industry was a significant part of the fuelling of the growing economy we enjoyed in the past decade or two. This came about through investment in research and education going back to the 1960s, when we laid heavy emphasis on secondary education in particular, as well as the taxation policies which were a driver of so much of the foreign direct

investment we saw coming into Ireland. The fact we were members of the EU was also critical to the attraction of that foreign direct investment.

In the past, Ireland would have been noted for its emigrants and for how well they worked, often in unskilled areas because they had little education. Much of Britain and the United States was built on the toil, effort and commitment of those workers. Today, I see a more educated cohort of young people who work extremely diligently and over long hours, applying themselves to their duties and responsibilities. This gives me confidence as we move forward and will provide a significant impetus to restoring our economic fortunes and building on them in the future.

It is important to acknowledge that the factors which helped us in the past to achieve the success we achieved may not altogether be sufficient to deliver the vision of the knowledge economy we are now targeting. Competition within the area is fierce and many developed economies share the same vision. Therefore, we should continue to focus our investment in the areas of research and development and higher education. They will be essential in attracting new enterprises and laying good, solid foundations in future. We have also targeted the green agenda and renewable energies which are fundamental to future success. There is a link between information and communication technologies, ICT, and renewable energy and it is critical to marry these areas. There would be potential benefits from such a move.

Our over-dependence on fossil fuels must be reduced because it is affecting greenhouse gas emissions which is a significant factor but not the only one. There is a body of evidence which shows clearly that fossil fuels are a finite resource and will not be with us past the end of the century. Therefore, there is a compelling force, not only on us, but on all developed economies, to ensure alternatives are available.

The White Paper on energy in 2007 set ambitious targets for the development of sources of renewable energy in Ireland. A range of Government actions, including the ocean energy strategy published in 2008, form a very important part of the plan. Opportunities taken will raise Ireland's profile in this area. The emphasis on research will make it attractive for companies and corporations to view Ireland as a location for research and development and other high technology developments. Hopefully this will not only apply to overseas companies and we can develop our own entrepreneurial spirit within the country. It is important to ensure an indigenous presence in this developing area as well. We have developed this area very successfully, especially in the last tranche in which we laid such emphasis on the whole area of computer technology. There is an onus on us to develop a lower carbon economy and mobile communications.

Every day we read in the newspapers and see on television examples of the current doom and gloom and sometimes we lose sight of the many success stories here. There is in the order of 210 foreign-owned ICT companies in Ireland, including some of the major world players such as Microsoft, Intel, IBM, Dell, Google and many others. However, there are also 660 indigenous software companies from a wide variety of sectors including financial services, security, animation, health care, education and so on. Turnover in this sector in Ireland is approaching €55 billion, which is substantial. The ICT industry accounts for half of all Irish business investment in research and development. The Government allocated €8.2 billion in 2006 for research for the period 2006 to 2013. There will also be a significant sum spent on sustainable energy and research. It is important to ensure enough money is spent on research and development, which is fundamental to positioning ourselves properly to avail of this area in future.

However, the mobility of multinational companies and their ability to move from one jurisdiction to another is something of which we must be mindful. While many companies carry out research and development here because of financial supports, the taxation system, our educated

[Senator Jim Walsh.]

workforce and to avail of our expertise in these areas, it is crucial that we hold the subsequent downstream development arising from the successes to ensure it generates employment here. This is a separate challenge for us and this is why restoring and regaining our competitiveness is of such crucial importance.

I have stated many times in the Chamber that our wages are exceptionally high and I am concerned about the level compared to other countries. We must ensure we can meet the competition from abroad as it positions itself to attract such industry.

The impact of information and communication technology on emissions reduction is at the embryonic stage. The calculation of our greenhouse gas emissions reductions using ICT has involved the OECD, the EU and other bodies. It is imperative that this marriage is successful. If we can position ourselves as one of the primary drivers in this area on the global stage I have no doubt the fruits of the investment and the vision will become apparent. I wish the Government well and I hope all sides of the House will support its thrust in this regard.

Senator Larry Butler: I wish to stay away as much as possible from my colleague's contribution. We must consider the new sustainable energy available in the country which is vital. I refer also to the smart economy document because it was not sufficiently publicised or talked about in the media but it is probably the most important document since Seán Lemass's contribution to the country.

I recognise Senator O'Reilly is very interested in the renewable energy sector. While he was working on other campaigns we invited the Spirit of Ireland to an all-party meeting. I have provided some information to the Minister of State which will form a very important part of the prospects of our economy in future. We could create a whole new industry based on our energy resources and we could make ourselves totally self-sufficient in energy.

The west was often seen as a place where one would not normally invest but it is now key to ensuring we have an independent supply of energy, an indication of how important it has become. It will be our saviour because with new technology we can produce energy from there, thanks to the good offices of the people of the Spirit of Ireland. If there was no downturn in our economy such people would not have come together. They work on a voluntary basis. An organisation in Shannon has offered it a premises to use as a headquarters which is fantastic. It is very much in touch with the future and I believe such bodies represent the future.

We are examining what we can do for ourselves in the next five years. If within the next five years we have four stations on the west coast we could be self-sufficient in electricity supply. Wind energy is an important source but the problem is that it is intermittent and we have not been able to store wind energy because the technology has not been available heretofore. These people have explained how this can be done. A hydro system is used which is similar to Turlough Hill. If Turlough Hill were to be reconstructed, it would cost an absolute fortune. Ireland is only one of six countries in the world which can undertake such a project and this is because of the geology of the land. Ireland's land has three main sides to it. We need to build a front and it would entail only the cost of building the front which can be flooded from the sea. We have the water to do it and we can plug into the existing system of wind energy. Two lakes will be formed and water will be pushed up into the higher lake when the wind is blowing and the energy is then stored to ensure supply when needed. This is new technology. This can be done but politicians will have to support it. Legislation will be required to be changed and it can be changed in this House. The group will come back to give a full update to an all-party meeting in September. A complete check will have been carried out with all the local authorities along the west coast to ensure that the draft development plans are in line with what they are looking for. We should create a permit system for them. It is in the national interest

to have independent power. We could be an exporting country within five years. This shows the importance of this project.

I wish to speak on the subject of education as it is connected to this technology document. Ireland is a very good English-speaking country with highly skilled teachers who provide very good education. We are not exploiting this resource to the full. Ireland earns about €800 million through the teaching of English but a similar country, New Zealand, earns €4 billion. Our nearest neighbour earns €7 billion by teaching and upskilling people in the English language. This is a huge opportunity for us and one wonders what we are doing wrong. We would need to relax our visa system. There are many fields of expertise in which Ireland could become a leader but we need to have foresight. We need to tie in this new energy system into the smart economy and push our new English teaching system into that smart economy. If we do that, we will be on the right tracks and we will recover quickly.

Senator Joe O'Reilly: I move amendment No. 1:

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

criticises the Government for its failure to adequately roll out next generation fibre optic broadband networks in Ireland which will be essential to attract additional foreign direct investment and to foster new enterprise start ups within Ireland.

On a positive note I acknowledge the achievement to introduce broadband into our schools. This was a good achievement and a very important and necessary educational tool and it has gone well.

The national broadband scheme is welcome but there are three issues which I wish to raise with regard to the scheme. First, it is regrettable that the Minister keeps putting back the date when there will be blanket cover — it is now back to the end of 2010. Second, large areas of rural Ireland are not being covered and Irish Rural Link tells us that 12,000 homes and businesses across the country cannot currently receive broadband and will not be fit to receive it. We are creating a rural-urban divide on the provision of broadband and a technological apartheid in the country. Third, it is based on mobile technologies and the jury is out on whether they can adequately ensure that rural Ireland will be ready for second generation broadband. Next generation broadband is absolutely essential to the economic recovery of this country. The amount of information being created and stored and transmitted digitally worldwide continues to expand at an exponential rate. Industries such as services and research are becoming more important than the traditional industries. They are also green industries and not reliant on fossil fuels, which is significant.

We need fibre-optic ducts and communications interchanges to ensure that we can develop second generation broadband. The Government performance to date in the provision of second generation broadband stands condemned by recently published OECD statistics. Ireland has the fifth slowest Internet speed in the OECD. We are only better than Hungary, Poland, Turkey and Mexico. Ireland is 21st out of 30 OECD countries in the numbers of broadband users per 100 people and remains below the OECD average.

Fine Gael's recent jobs plan, which was acknowledged by Government and all economic commentators as a very good plan and which has not been essentially challenged, proposes that the new economic recovery agency would establish a new State company, Broadband 21, to amalgamate and build on the diverse telecommunications assets of existing State companies, including Bord Gáis, CIE, the ESB and MANs, to create a new generation broadband network. The key to a high speed broadband network is fibre cable, even if wireless solutions have a role, particularly in isolated rural areas. My party proposes that €2.5 billion will need to be

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expended over three years in building high speed fibre infrastructure. Eircom's capacity to invest in next generation broadband is a disappointment. Eircom's request last year for €150 million State investment was rejected. Eircom has a huge debt problem of €3.7 billion. The privatisation of Eircom has turned out to be a nightmare.

I refer to a disturbing aspect of the metropolitan area networks scheme. Under phase one of the scheme there are 27 urban centres. The scheme is working in those 27 centres and the management company is E-Net. MANS phase II has 60 urban centres, of which 59 are non-operational. MANS phase I is operational and is run by E-Net and MANS Phase II is non-operational because the management company, E-Net, has not yet been sanctioned. This has been the case since last summer. I am aware that the sanctioning of E-Net as the management company is imminent but this tardiness suggests a lack of urgency and a lack of awareness at governmental level of the critical importance of second generation broadband to Ireland's economic recovery. That is a disappointment. The total cost of the MANS programme is €80 million. This money has been left inactive since last summer and it would be criminal if it were left inactive for a further period.

I acknowledge the progress made in the provision of broadband to schools and some of the progress made by MANS. I also acknowledge the national broadband scheme as having correct objectives, although it is very slow in implementation and had a very checkered introduction.

I commend the Fine Gael amendment to the House on the grounds that the Government has not made adequate provision for second generation broadband and has not grasped its significance as the engine which will drive economic recovery in the future and create new sources of employment. The amendment is reasonable in the circumstances and I urge the Minister of State to reassure the House by injecting a level of urgency and impetus into the roll-out of broadband to the areas which do not have it yet and second generation broadband to the entire country.

Senator Paudie Coffey: I second the Fine Gael amendment to the motion. I welcome the opportunity to contribute to this debate. On many occasions since I became a Member of the House, Senators have called for debates on broadband infrastructure and information and communications technology. Next generation broadband will be essential in the economic recovery of Ireland. The amount of information being created, stored and transmitted digitally continues to expand at an exponential rate and future businesses will need high speed broadband services to continue to operate efficiently. Industries such as services and research are becoming more economically important to Ireland in the knowledge economy rather than the declining traditional industries. As a result, we need a new type of national infrastructure to meet the demands of these businesses. We need more than roads and bridges, we need fibre optic ducts, communications interchanges and the associated cabling and technologies.

It is appropriate to reflect on where Ireland is with regard to this technology and to gain a clear understanding of what broadband is, the penetration levels in this country and the quality of broadband where it is available. Northern Ireland has almost 100% broadband penetration. We compare very badly to that. Large areas of Ireland do not have broadband availability. That is an indictment of Government policy over many years and of failure to invest in this important technology.

There are many reasons for this failure. When Eircom was sold it was asset stripped and investment has not been made in the required areas. One need only drive through the countryside to see the state of standard telephone lines. I commend the ESB, whose networks and infrastructure are very modern. On the other hand, our telecommunications infrastructure, which was upgraded many times over a period of years, has suffered from lack of investment

since the privatisation of Eircom. One sees telephone poles leaning on ditches and lines lying on the ground. That would not have happened 15 or 20 years ago, when Eircom was in State ownership. I see Senator Martin Brady nodding. I know he worked for Eircom, where there was a proud working tradition. It must disgust people like Senator Brady and many others who worked for Eircom to see the present state of the networks. Eircom needs to review its investment. Our country depends on proper communications technology. Rolling investment in infrastructure over many years is very important if we are to maintain an adequate standard for residents, businesses and communities.

Large areas of rural Ireland are not yet broadband enabled. This is partly because exchanges in the Eircom infrastructure have not been upgraded and telephone lines are not capable of connecting rural areas to broadband. As a result, we see the development of small businesses providing wireless broadband to rural areas. Without them many rural people would be isolated completely. I compliment a company which began as a small incubator business in Waterford Institute of Technology. A small number of graduate students saw an opportunity because the State was not providing broadband to rural areas. They put together the technology and developed a product called Alphawave Wireless Broadband. The company delivers broadband to hundreds, if not thousands, of houses and businesses in the south east of Ireland. People like that are to be complimented. They will probably be bought out by a larger company, which will pick the areas where there are opportunities and develop them further. These people, acting on their own initiative and investing in their education and in the available technology, are providing broadband, which the State should be doing.

Ireland has the fifth slowest Internet speed in the OECD. We are only better than Mexico, Turkey, Hungary and Poland. Yet, we consider ourselves a leading edge modern society with well developed technology. Our position among OECD countries is an indication of how undeveloped we are. Not only is availability of and access to broadband important, the quality of broadband is also important. The average download speed of broadband advertised in Ireland is 6,000 kilobits per second. In Japan, the world leader in the provision of broadband services, it is more than 92,846 kilobits per second. A student here, whether studying for the leaving certificate or a degree, takes ten times longer to download information from the Internet than a student in Japan. Businesses in Ireland are similarly handicapped. Slow, low quality broadband access places us at a serious disadvantage.

Government has invested in the metropolitan area networks, MANS. This investment was welcomed in many areas but accessibility and interconnection of those networks needs to be looked at. Further examination is required. Infrastructure, ducting and cabling has been installed in those metropolitan areas but access to the wider web is limited and costly compared to other countries. Although the infrastructure is available it is not interconnected with the worldwide web. Financially, there are no incentives for small businesses to connect to that infrastructure due to the high costs involved. Some countries, in an effort to incentivise business, offer free access or incentivised access to broadband. In this country, however, people are charged, which makes it unviable or unfeasible for them to operate on the networks provided.

There is much room for improvement in communications technology in this country. The Government, to a large degree, has let the country down by lack of investment, as has Eircom. It is only through proper, targeted and productive investment in these areas and the provision of proper broadband infrastructure that business and, in turn, the economy and society, will flourish.

Senator Phil Prendergast: I welcome the Minister of State, Deputy Trevor Sargent. I will not repeat what has been said already but I fully support the amendment. Despite the small improvements to broadband services there are still large parts of the country without access to

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broadband. I encountered an extraordinary level of frustration when I was canvassing recently among people living in rural areas in Tipperary who cannot access broadband. It has a huge effect.

People get frustrated when they see television advertisements offering great services in other countries at very competitive rates from different providers. During both the general election campaign and the more recent local elections a huge number of people expressed great frustration about this. I heard many uncomplimentary comments about the Irish provision of services. There is a feeling that Ireland is the worst country in Europe in terms of the delivery of broadband services.

The targets in the plan appear to be reasonable, but I am concerned about the aim to achieve 100% broadband access nationwide by including satellite and wireless providers. They provide a service that is adequate for most domestic users, but the two platforms are generally regarded as less reliable for business than a copper wire based service. A high bit rate fast DSL service delivered through existing copper wire telephone lines would probably work quite well. Members have proposed the establishment of another agency to co-ordinate broadband roll out. Such a proposal could be a problem in the current climate. It is already the job of the Minister and ComReg. The proposal of an agency to create a national broadband network could be used to take the heat off them when the targets are not achieved.

Broadband is significant and important infrastructure and top priority should be given to putting a system in place that will meet the country's ever-changing needs. It is needed by the many people who, for various reasons, are working from home, trying to maintain a business or to create a small or medium enterprise. They need the best services. We also need to attract jobs from abroad and to have a system in place that can compete favourably with other countries. It is a vital aspect of our communications strategy. The system we have at present is not working. At a time of recession it is vital that we have proper systems in place to meet the current needs.

Senator Martin Brady: I welcome the Minister of State, Deputy Trevor Sargent. There has been much emphasis, and rightly so, on broadband. I worked in the business sector before I became a Member of the House and I am aware that the first thing foreign investors ask about in this country is infrastructure such as roads and, most importantly, a good telecommunications system. If a country does not have a good telecommunications system, it will not secure foreign investment.

I worked in Telecom Éireann, and the company is now on its fifth owner. It was a mistake to sell Telecom Éireann for a pittance in the first place. I hope I do not sound ludicrous but I believe we should now nationalise Eircom and bring it back into State ownership. The four owners of the company to date took the money and ran. They took millions out of the company; some of them paid themselves as much as €3 million and €4 million per year. I do not believe anybody is worth that amount of money. In fact, there should be a ceiling on the salaries of people in chief executive positions of approximately €200,000 per year. If anybody cannot live on that amount, they must be doing something terribly wrong. Nobody is worth any more than that.

Broadband is important for the future of education. If the correct speed of broadband is available, Irish schools can link up with schools in other countries and link to programmes taking place in other schools. Unfortunately, broadband is not our only problem. We also have a problem with telecommunications in general. We are not up to speed in the level of service being provided to the public, business people, people who do remote working and people who are disabled. They do not receive an adequate service. As was mentioned by Senator Coffey,

the infrastructure in this country is falling apart. Simple things such as poles and cables are not being properly maintained. If one's line is out of order, God knows when it will be fixed. There is not even priority for doctors or emergency services personnel.

The provision of appropriate broadband connections to schools is of particular importance. I do not see anything in the amendment proposed by Senator Joe O'Reilly that differs from what the Government is proposing other than the complaint that it is not being provided fast enough. That might be so but these things take time and the relevant research must be carried out.

Senator Larry Butler referred to sustainable energy. He has done a great deal of work on this. A great deal can be done to harness our rivers and lakes. This happened successfully in previous years throughout the country, particularly in my native Cavan, Monaghan and the surrounding area. There were corn mills in those counties that employed 50 to 60 people; there was plenty of business. The energy was generated from small streams and lakes. That infrastructure is still in place. It could be harnessed and up and running again at very little cost. It could be environmentally friendly.

In addition, we should return not necessarily to organic farming but to traditional farming, the old methods of farming. Everybody would be better off with that. I often think that good things can come from this recession or events that are perceived to be bad. Eventually, good comes out of that. We probably would not be discussing this issue if the country was not in a recession.

It was a scandal and disaster that Telecom Éireann was privatised. The fat cats ran away with everything and put nothing back. They are still around. It is a disgrace it was allowed to happen. What is wrong with nationalising Eircom? I believe it is the way to proceed.

Senator Shane Ross: I hope Senator Martin Brady's words do not carry to the Fianna Fáil Parliamentary Party, and further. The Senator will be joining Mr. Joe Higgins MEP if he continues in that vein. I am sure it is not a particularly popular view on the Government benches but it is welcome to hear such fresh opinions from those benches and I congratulate the Senator on expressing them.

Senator Martin Brady: Thank you.

Senator Shane Ross: I welcome the Fine Gael amendment. The issue of broadband has only recently been discovered in this House and I see very little evidence of it being debated in the other House. It is possibly the most important technological issue facing Ireland today. I find it difficult to approach this motion and the attitudes of Fianna Fáil and the Green Party to it because I tabled two Bills in this House on broadband, one of which was rejected some months ago by the Minister of State's colleague, the Minister for Energy, Communications and Natural Resources, Deputy Eamon Ryan. It was a very modest, limited and inexpensive project that proposed the speedy roll-out of broadband and the acceleration of the process. The Minister rejected it even though the offer was made to him that, as proposers of the Bill, we on the Independent benches would be prepared to amend it to his liking if he were prepared to accept the simple principle of the Bill, namely, to accelerate broadband in this country as quickly as possible.

For some reason, the Houses of the Oireachtas are paralysed regarding this issue. It never excites any great interest and as far as I know the first time it was mentioned in a motion in this House was about three years ago. The issue is building up, partly because of constituency pressure. As a House, as a body and as representatives, once again we are very slowly in catching up with the demands and needs of people in this area. People can say all they like

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and hear all they want from the Government benches and we can talk about all the emerging broadband network projects and everything the Government is doing, but I shall take the anecdotal evidence first. That is the real evidence. All of us, day after day, particularly but not exclusively in rural areas, meet people who ask why, in the name of God, they cannot get broadband in their house or area. This reaction does not come necessarily from small or any businesses but from individuals scattered all over Ireland. What is happening is simply not adequate. It does not meet the needs of the people.

In his contribution Senator O'Reilly produced a figure of €2.5 billion for the cost of ducting. I do not know whether it is right or how much this will really cost, although I suggest the total cost will probably be somewhat more. In terms of the sums we have been asked to find recently, it is a very small amount of money and in terms of the return we will get, it is an absolutely minute amount of money. The Minister of State will be aware, as will everybody else in the House, of the €4 billion the Government must find immediately for Anglo Irish Bank. Presumably that will come, in part, from the €1 billion it got on the markets yesterday and the few billion euro it got earlier. It will come out of borrowings, from the NTMA and from the Pension Fund, which will be raided again simply and solely to throw down a hole. That sum will almost certainly go up to €7.5 billion, will probably reach €11 billion and may go a great deal higher when there will be what is termed the recapitalisation of the other banks. That simply means throwing money down a black hole. We do not know what the cost of recapitalisation will be but we know that sum will be a great deal more than what we will have to pay for broadband, if we get it going. We know we will get very little return, if any, on that money.

If one talks about broadband overseas, or even in Europe, people cannot understand how Ireland can be, or was, such an advanced prosperous nation when it has such primitive broadband. One of the great miracles of the booming economy of the time is that we did it without having adequate broadband facilities. We attracted all those multinationals without having adequate broadband facilities because we had a particularly attractive tax rate. The companies could live with the broadband inadequacies and locate in particular areas where they had broadband access. They tended to centre in towns and cities which was entirely counter to Government policy but IDA Ireland had to live with that.

I wonder what IDA Ireland will say when it tries to sell Ireland in current or future circumstances. It will not be able to offer competitive broadband facilities. Companies will say the corporate tax rate is good and they will come here for that, but there is no doubt the Irish corporate tax rate is under threat. If we do not have broadband to offer and do not have the corporate tax rate of 12.5% we will not have much to offer. I do not know what IDA Ireland will be able to sell.

That 12.5% tax rate is under threat for two reasons. First, in his very well signalled recent speeches, President Obama made it clear that the United States requires an increase in its tax take and countries involved in transfer pricing will be examined. Transfer pricing is a taboo subject here. We all know it is a rather dubious activity whereby one party prices goods at an arbitrary and subjective level to suit itself and ensure that the tax collected and the trade, register and location of deals suit that nation rather than any other.

I believe strongly that the European powers are looking every day at that 12.5% tax rate. I hope this message goes out, particularly in view of the new referendum on the Lisbon treaty. If Ireland shows signs of weakness, which we must do and are doing, that will become a negotiating weapon with Europe. I do not wish to paint an appalling scenario but it is important to point out that at present we are very dependent on the European Union and the European Central Bank for the survival of liquidity and the banks in this State. If Europe wishes to take a hard line on this and if we get into even more trouble and become more dependent on

Europe, that pressure point will increase. I have no doubt that our so-called friends in Germany and France will be able to put pressure on that part of our economy and on those measures we take which they find offensive and inconvenient. Then we may be faced with a situation in which we can no longer sustain the 12.5% tax rate. That is a bit of a red herring but I wished to say it. It will leave us in a very vulnerable situation. Concerning broadband, Senator O'Reilly and other speakers told us where we stand in the league. If we are near the bottom of the European league at that stage we will have very little to offer.

It is timely to debate this. We should accelerate broadband roll-out and should spend money on it even if it has to be borrowed. Borrowed money, well spent, is worthwhile. Borrowed money, disposed of and thrown after the banks down a black hole, is a completely different matter.

Senator Brian Ó Domhnaill: Having listened to some other Members, I note broadband is the core element raised in the discussion on the ICT sector. Ireland has a very strong ICT sector. In generic terms, there are 210 foreign-owned ICT companies in Ireland, including most of the global leaders such as Microsoft, Intel, IBM, Dell, Google and others. Other companies are considering Ireland as a potential location. There are approximately 600 indigenous software companies whose activities include financial services, security, gaming, health care and educational solutions. This represents a massive turnover for the Irish economy, amounting to approximately €50 billion.

The sector accounts for half of the total Irish business investment in research and development. The Government allocated approximately €8.2 billion for research and development in 2006 for the period 2006 to 2013. ICT will be the largest sector benefiting from this investment. Significant sums will also be spent on sustainable energy and research.

Many of the approaches to sustainability that are outlined by the Government's paper require high-speed broadband and appropriate digital content. Broadband is crucial to regional development and to making Ireland a competitive location for attracting foreign direct investment and ICT-linked companies.

The national broadband scheme, benefiting from the funding for next generation broadband, accounts for approximately €220 million. Great work has been done to make progress on the scheme and the project was put out to tender. Two companies tendered and one was successful.

6 o'clock A contractual agreement for approximately 18 months is in place and extends from the end of December 2008 to the end of September of 2010. I am not sure whether any of the work has begun on the ground yet, nor am I sure whether the company awarded the contract, Hutchinson 3G, has started any of the work. Many parts of the country are anxiously awaiting the outcome of the work. There are many areas with no broadband availability at present. It is a failing on the part of Eircom and other providers not to provide broadband to all areas of the country. Just because there may be insufficient critical mass does not mean companies such as Eircom, which have been given State assistance, cannot treat all areas and all people equally. Someone in a rural area deserves the same service as someone in an urban area.

The importance of ICT and sustainable development are underlined by the European Commission's recent communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled "Addressing the challenge of energy efficiency through Information and Communication Technologies".

A number of innovative projects are under way in Ireland or are under active consideration. Ireland has always had an active renewable energy generation programme focusing on wind energy. Ireland has an island economy and our European neighbours view us as one of the

[Senator Brian Ó Domhnaill.]

best countries in Europe for wind energy generation, both on land and offshore. Energy generation from waves and tidal streams must also be borne in mind. The White Paper on energy calls for 33% generation of electricity from these variable sources by 2012. Grid integration of such a high ratio of variable energy sources requires smart solutions. Work has already commenced on a variation of a smart-grid approach which aims at enhancing the ability of the grid to accept more diverse energy sources, such as renewable and micro-generated energy, at minimum cost while maintaining the same, or enhanced, reliability or performance standards. One of the key objectives of the scheme is to identify the smartest locations on the grid to connect for renewable energy. This is linked to the area of ICT and to meeting the White Paper objectives of creating one third of our electricity from the aforesaid sources by 2020.

In addition to realising benefits in the transport and flexi-work area and adopting a range of energy efficiency measures, Ireland is planning a state-of-the-art sensor-mediated environmental-marine research programme, SmartBay. This programme will provide new information on marine ecosystems and will be instrumental in predicting changes to the north Atlantic drift. Flagship infrastructure includes deep-water sensor array tended by a remotely operated vehicle and a floating test and demonstration unit. Wireless elements of this include a directional wave rider located at the ocean energy test site. In addition, a tide gauge network and a hydrodynamic modelling system are included in the wireless system. A fibre-optic system will be located in Galway Bay linking the shore to an underwater hub. This will provide crucial information, especially to the Department of Communications, Energy and Natural Resources on tidal patterns. It will prove to be key to the fishing industry, in particular, in that it will indicate shoal patterns. Anyone linked to the salmon industry is told salmon shoal patterns are changing and the salmon are not entering Irish waters but remaining in deeper waters. The new system will provide fishermen and the Department with crucial information.

The provision of broadband on the island is key in the ICT sector. Reference was made to broadband availability in the North. A higher percentage of people may have broadband in the North by comparison with here but I am not sure of its quality. The national broadband scheme, as proposed, will be vital to meeting the broadband needs of the Republic. The Government should not allow companies such as Eircom to walk away and hide from the scheme given that their responsibility is to their customers. Senator Brady called for the renationalisation of Eircom. This could prove productive but, even without doing so, the company must honour its obligations. In this regard, it must be taken to task by the Department of Communications, Energy and Natural Resources in respect of fulfilling its commitment to develop the hubs in various small towns nationally.

Senator Paschal Donohoe: I welcome the Minister of State to the House and support the amendment of my colleague, Senator O'Reilly. I was in secondary school when I began to understand how to debate and speak in public and did so through my debating class. My teacher used to give me the tip that it is good to begin a speech with a personal anecdote of some kind to show one is engaged with one's subject and to try to gain the attention of one's audience. Therefore, I will take a brave gamble in this debate and begin with a personal anecdote to illustrate a broader political point. I must declare my prejudices from the start. I am an absolute gadget nerd, I love technology and I use it all the time. Its effect on personal development and effectiveness is magnificent.

I was slow to come to the phenomenon of Twitter, a service about which I am sure Senators will have heard that users use to communicate with other people via messages of 140 characters or fewer. Nine months ago, before I was distracted by other matters, I decided to establish a presence on Twitter and connect with people in new ways. As a complete nerd, I first asked

myself who I should seek out first. I did not choose Senator Daly, although I may get around to contacting him later this evening. The first person I looked for was Mr. Tom Watson who at that time was the minister in the British Government with responsibility for the digital society. Mr. Watson recently left office because, I understand, he was involved in certain political machinations which went beyond his ministerial portfolio. Having looked him up, I sent him a message to which he responded within about five seconds. He stated it was great to see an Irish politician taking an interest and broadcasting across the water and we then engaged in dialogue for a few minutes on the effect of technology on politics. When I mentioned in a message that I had become interested in new technology through reading a particular book, he replied immediately inviting me to join him at dinner that evening with the author of the book in question. I had to decline his offer as Senator Cummins, as a party Whip, would not permit my absence and my wife was loth to have me travel to the United Kingdom at short notice to attend a dinner.

I raise this personal anecdote to illustrate the broader point that governments in other countries are leaps ahead of our Government in embracing new technologies. Senator Butler referred to the smart economy document published by the Government at the end of last year to show how economic recovery could be led by technologies such as those referred to in the debate. Having taken time to read the entire document, I found it among the most dispiriting Government publications I have read recently. It contained little that was new and where issues were notable or different, the document did not provide deadlines or timetables for delivery or mechanisms by which people could be held accountable. The Minister may quibble and argue that the document bundled a range of important issues but he cannot deny its complete absence of accountability.

The contrast between the Government's position and the positions adopted by other countries is notable. Earlier this week, the British Government published the Digital Britain report, its road map for economic recovery through the use of digital technologies. I examined the document while preparing for this debate and was stunned by the scope of the issues considered and timetable for realising them. The final report details areas for legislative change, highlighting intellectual property protection, a broadband universal service commitment, public service content and action that can be taken in the areas of video games and radio. It also includes a detailed plan by Government departments indicating when various actions will be implemented. The other most telling aspect of the report is the commitment and culture surrounding it.

I noted while browsing a website earlier this week that a road show will travel to the North this week to meet members of local authorities and politicians and explain the role of Northern Ireland in realising the recommendations of the Digital Britain report. Having been published just this week, road shows are already under way in the various regions of the United Kingdom aimed at explaining what is required to achieve the report's objectives. Published by Lords Mandelson and Carter, Digital Britain is a high quality document which embraces technology.

While broader questions may arise regarding the use of a Minister's time in responding to messages sent using the Twitter service, my point stands regarding the manner in which new technology has been embraced in Britain and the willingness of people there to engage with it. Before retiring to the back benches, perhaps to ponder the future of his party, the Minister, Mr. Tom Watson, published a report by the power of information task force. Its recommendations, which focus on creating employment by using technology, are stunning in the scope of their ambition and in the minimal cost of implementing many of them. They include a proposal that the Ordnance Survey make available on the Internet all information available to it to enable it to be used by members of the public and commercial entities. It also recommends that the Chief Scientific Adviser's Committee make data mashing a Government

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priority. While I am not sure what such a process involves, I am stunned to find these recommendations at the core of the British Government's plans. It also highlights how little progress Ireland has made in the use of information technology and underscores the crying shame that is the lack of broadband delivery across this country.

I encourage Senators to read a report published by the Institute of International and European Affairs entitled *The Next Leap: A Competitive Ireland in the Digital Era*. The broad scope of its recommendations is a move in the right direction. The report refers to branding Ireland as a green data centre location and recommends establishing niche exploration groups to examine small areas of technology which could be exploited for high commercial return and employment. It also outlines how the leaving certificate could be changed and the digital curriculum quickly rolled out at primary level. While money is scarce, the money invested in implementing these recommendations would soon be justified in terms of the commercial and social return secured. The enthusiasm with which technology has been embraced by other governments puts the Irish Government to shame.

Minister of State at the Department of Communications, Energy and Natural Resources (Deputy Conor Lenihan): Ireland has heavily invested in information and communications research. Science Foundation Ireland has provided funding of more than €500 million in information and communications technology, ICT, since 2000 and will continue to prioritise such research. The output of skilled researchers is vital to the future of the country's ICT industry. The strategy for science, technology and innovation, for which I am responsible, recognises the importance of research in new technologies in the ICT area.

Ireland has a strong and highly innovative information and communications technology industry. This is an important strength which is relevant to the development of Ireland as a smart economy. Some 210 foreign owned ICT companies are located here, including most of the global leaders, for instance, Microsoft, Intel, Google, Apple, Facebook, EMC and others. Despite the negative overtones to the previous speaker's contribution, these companies continue to invest in Ireland and embed their investment by backing it up with research and development investments. Clearly there is an appetite among foreign companies which invest here to reinvest resources precisely because we have tripled expenditure in research and development in the past ten years, at Government, university and, most important, private sector level.

The Government prompts and funds about one third of expenditure on research and development, with the balance of two thirds provided by the private sector. Public sector investment is vital because it is the seed capital which prompts the private sector to do more. Ireland was highly successful in attracting multinational ICT manufacturers, which formed the first wave of ICT companies. After the Government made the crucial investment in the transatlantic fibre optic cable, Global Crossing, we had the necessary infrastructure in place to attract the subsequent wave of ICT companies, which includes Google and Facebook.

I omitted to mention that Ireland has 660 indigenous software companies ranging in activity from financial services, security, gaming and animation to health care and educational solutions. We have evolved a highly sophisticated ICT sector ranging from the global leaders to the indigenous competitors and players.

We are continuing to invest in the telecommunications network and I and my Department will shortly publish our policy paper on the next generation of broadband. The Government is investing €80 million in the national broadband scheme which will involve overall investment of some €220 million and will ensure Internet access throughout the country. The uptake of

broadband continues to increase rapidly and 43% of households now use broadband compared with just 3% in 2004.

My Department has recently published a spectrum policy paper for consideration and will publish a final paper later this year. Meanwhile, ComReg is consulting on the opportunities that will arise when we switch from analogue to digital television in 2012. The freed up spectrum will support the development of new telecommunications and broadcasting products and approaches.

In 2008, my Department was given the responsibility for the knowledge society and we will publish in the next few weeks the first action plan on technologies to support the smart economy. Building Ireland's smart economy underlines the strategy of Ireland in developing its economy via low carbon approaches and high technology uptake. This is logical taking into account Ireland's dependence on imported fossil fuel and our commitment to lowering our greenhouse gas emissions.

We also face the fabled leap up the value chain in the next few years. This is something we would have had to do irrespective of whether we were in recession. We would have had to jump or make the great leap to produce more higher value manufacture and services, whether for export or for servicing domestic consumption. That is a significant challenge, at the heart of which is the smart economy document published by the Taoiseach in December last and being developed and rolled out by line Ministers and the Government as a whole, principally through the Cabinet Sub-committee on Economic Recovery of which I am the only Minister of State to be a member.

A good example is the development of the smart electricity networks grid. We are following an integrated approach involving smart meters, electric vehicles and the optimum use of ICT to ensure a smart generation and transmission of electricity. Ireland has a target of 42% integration of renewable energy into our grid by 2020. This is the highest target anywhere in the European Union and to succeed we will need to develop the smartest grid in the world. I am confident we will achieve this challenge and in doing so, we will develop world leading expertise which we can also export.

Ireland is a world leader in a technology related to the transfer of images and data using coloured light, what is called tunable laser technology, which requires significantly less energy than current technology. It also allows fibre-optic data to be transferred at much higher speeds and much more efficiently. The images and data are transferred in an ultra-fast manner with state-of-the-art quality.

This technology will underpin new advances such as mobile television, interactive video and a range of other technologies. Ireland has been granted worldwide patents relating to this technology and my Department, together with the development agencies, is working with the inventors of this technology, Intune Networks, with a view to developing a world-first communications network in this area. This is truly ground-breaking stuff. The promoters of this company, Intune Networks, set themselves the objective of becoming the Irish version of Nokia, whose impact on the development of the then challenged Finnish economy is well known. This will give Ireland a great advantage of having the first such network, which will attract worldwide industry to Ireland to develop and trial their products on this unique network.

We are also considering the establishment of an international content services centre which would allow Irish and international content owners in film, video, music and multimedia to distribute their content in a fair and equitable manner.

We are also aiming to establish Ireland as an energy efficient world centre for data and what is described as cloud computing centres. In the future most computers and company data systems will be housed externally in such centres. These centres will support international and

[Deputy Conor Lenihan.]

European headquarters activity. This is where much of the innovation in the ICT sector is occurring at present.

We have developed a concept of intelligent travel and workflow where commuters will be able to pick the most rapid commuting time to and from work. This will lead to significant increases in work efficiency and a decrease in greenhouse gas emissions.

We have developed a pilot real-time ecosystem and marine monitoring system called Smart-Bay with the aid of advanced communication technology.

We are promoting the use of ICT in energy efficiency. A good example is where smart heaters coupled with motion sensors lead to high energy savings in the home and workplace. An Irish company called Glen Dimplex is the world leader in this technology.

We are promoting Ireland as a test bed for trial and further development of new products. Our size and young educated population, the availability of test and trial licences from ComReg and our planned advanced communications network make Ireland an ideal centre for such activity.

I have presented examples and approaches of how ICT technology can support Ireland's development as a smart economy, a sustainable low carbon economy where we will develop and export products based on our own ideas and creativity.

We must look beyond the current recession. We must plan now in terms of the imbedded investment we make in science and technology and our ability to innovate and be creative about the solutions we produce in the technology space. This is a significant challenge for Ireland. Nobody ever said it would be easy. We knew before the current downturn happened that we would face this challenge.

Over the past ten years we saw the departure of certain classes of manufacture to other cheap low labour cost locations. We knew this was coming and we planned for it accordingly. The Government followed a policy which was believed on a cross-party basis over the ten years that we needed to upskill our people and move to the production of higher value-added manufacture and services. It is not easy to re-tool an entire population. According to Forfás's studies, there are 300,000 people in Ireland who left school without the leaving certificate. Those are the people we need to target in the years ahead, particularly now that we are in recession and unemployment is rising. We need to target those people so that they will get access to state-of-the-art training and the knowledge that adds to ability to progress in the new forms of employment that will come in the years ahead. This will not be easy and I suspect that no matter who was in government, they would face a difficult challenge in this area. However, we would point out on the positive side that only 300,000 people are in that position of not being skilled up or trained for the type of economy we are describing.

How important the area of science and technology is to all this effort is dramatised by the fact that 40% of the inward investment gains we made this year and 43% of the inward investment gains we made last year were directly related to research and development in technology. We can see the future now in the profile of companies and the types of investments we are managing to bring to Ireland in these difficult times. One of the positive aspects of this is that by placing such emphasis on research and development and by pitching ourselves as a knowledge economy of the future, we in Ireland are able to imbed much of the inward investment of recent years. That is the evidence from companies such as Facebook. Such companies are imbedding and I hope in the future the companies we managed to attract over the past ten to 20 years which intend to stay here will do so because they have made a strategic investment decision to locate their research and development facilities here and to use Ireland, not just as a gateway to the European market in terms of the raw production or transfer of products and

services into the euro currency zone or the wider European market, but also as a beneficial location within which they can situate leading edge research and attract people from their companies globally to come to live and work to produce and create in Ireland.

In many respects Ireland's advantages are enviable in this respect. A strong ecosystem is being constructed at present around innovation in the area of science and technology. Our universities are increasingly focusing their efforts on translating the academic and intellectual work of PhD students, scientists and technologists to hard product in terms of patents and discovered new inventions.

All the figures are available to prove this. Over the past five years there has been an effective doubling of the number of patents, spin-outs and new discoveries by way of new inventions by our university third level sector. That is directly as a result of the imbedded spend that we started ten years ago. As I stated, the research and development spend has tripled in the past ten years and we are now beginning to reap the rewards of the imbedded investment.

We must now go forward to 2013 and hopefully achieve the target we have set ourselves of improving the 1.66% of GDP spend on research and development to 2.5% by 2013. That will be a major challenge, not least because other countries, including the United States, South Korea and Israel are already ahead of us and are pledging to go well ahead of where they currently are. Some countries, including Israel, already spend 5% of their GDP on research and development and that explains many of the demonstrable industrial successes such as research and development, higher value added services, software and other areas Israel has achieved in recent years.

South Korea has committed to increasing by 10% every year the figure it spends on research and development for the next number of years. It aims to achieve figures of 4% or 5%. We are aiming for 2.5%, but should the economy come out the other end of the current difficulties of the recession and international downturn, we should look for even more ambitious targets in the area of research and development because our universities are in favour of it.

UCD and Trinity College announced recently that they will scale up their efforts, spin outs, PhDs, commercialism and participation in PhDs, especially in science and technology, and will create conditions for participation in those with strong business or commercially focused inputs into PhD training courses. That is an important part of this initiative so we can maximise, optimise and fully realise the potential of highly intelligent individuals in the area of science and technology and harness such intelligence for commercial and attainable gain by way of a patent and product that can ultimately be sold to the public in Ireland or abroad.

We have a very strong future in this area. We have a population that is well equipped for the challenge. However, we have a significant problem in what is described as the "pipeline" in our schools and universities. Only 16% of those who take the leaving certificate opt for higher level mathematics, which is a small number compared with other countries across Europe and the world. One would imagine those who take the subject are high achievers, but the reality of the results in higher level mathematics show a different story and despite the fact that a very small elite number of people take the subject, they are not high achievers within the scores they achieve in the leaving certificate.

It is presenting a significant problem as we try to move up the value chain in terms of the challenge we face competitively with the goods and services we export and produce. We have a significant problem in schools. The Minister for Education and Science, Deputy Batt O'Keeffe — I am also a Minister of State in his Department — will roll out project maths from September. We need to look creatively at other things we, as a Government, a society, parents and citizens, can do to encourage more people to take up mathematics and science related subjects and how we can improve the results and teaching in this area.

[Deputy Conor Lenihan.]

Many, perhaps the majority, of those who teach mathematics in secondary schools are not fully qualified in it to deliver the teaching required, which is a significant issue we have to address. It is not just a question of getting more volume or people taking higher level mathematics through the system, but there is also a challenge to improve the quality of those who come out the other end after the leaving certificate.

Some universities and inward investors are privately very concerned about the standard of the university graduate we produce in the area of mathematics and science. Yesterday I spoke to people in NUI Maynooth who expressed great worries and concerns about the measures they have to take to improve the quality of computational and mathematical ability of graduates already on mathematics and science courses. They are investing a lot of their time in improving the quality of the people coming in so they can respond to the courses in which they have enrolled. That illustrates the challenges we face. They say they must take these measures to improve the quality of the people they produce with degrees in the subjects and areas to which I referred. The answer is to go back to primary and secondary level and improve the results there because we cannot expect universities endlessly to provide extra tuition or training to people who have already qualified for a particular course. It is a challenge. I look forward to hearing what Members have to say.

Senator Joe O'Toole: It is difficult to listen to this level of “make it up as you go along” comments from the Minister of State, Deputy Lenihan. He is living in a different world. I will give him some examples——

Deputy Conor Lenihan: On a point of information, the Senator was not in the House for my speech.

An Leas-Chathaoirleach: Senator O'Toole, without interruption.

Deputy Conor Lenihan: I resent his remarks. I thought very carefully about what I said and I object to that kind of glib remark about making it up as I go along.

An Leas-Chathaoirleach: Senator O'Toole, without interruption.

Deputy Conor Lenihan: Senator O'Toole is one of the greatest exponents of that.

An Leas-Chathaoirleach: Senator O'Toole, without interruption.

Senator Joe O'Toole: I thought the Minister of State did not like that kind of remark. I heard every word he said.

Deputy Conor Lenihan: I am responding to the bluster.

An Leas-Chathaoirleach: Senator O'Toole, without interruption, please.

Senator Joe O'Toole: I felt I should come to the House and explain a few things to the Minister of State, such as cloud computing, which he discussed in an off-hand manner. I use cloud computing wherever I can get broadband. My problem is I live 16 miles from here and cannot get broadband. That is one difficulty we need to talk about. While the issues of mathematics, teaching and teachers' qualifications have been before the Government for ten years, the Minister of State has come to the House and told us he is looking at it now.

We can go through all the other issues mentioned in the Minister of State's speech. He discussed how advanced we are regarding renewables. Only 3% of our energy output comes

from renewables. The Minister of State spent a lot of time telling us what we need to do about research and development. I will tell him about “scaling up research and development” in renewables. Last year, people in Galway and UCC who are working on wave energy were passed out in research and development by Scotland because they do not get the support from Government for the development of Wavebob and other initiatives. That is a reality.

They are now on a——

Deputy Conor Lenihan: On a point of information, Wavebob is funded by State agencies.

An Leas-Chathaoirleach: Senator O’Toole, without interruption.

Deputy Conor Lenihan: I was down there yesterday talking to the promoters who are very grateful for the assistance they are receiving. Let us stick to the facts.

An Leas-Chathaoirleach: Senator O’Toole, without interruption.

Senator Joe O’Toole: I assure the Minister of State I have been down to Wavebob more than once and spoken to the people there. They have been fighting for support. They have been passed out by Pelamis in Scotland in wave energy, which is already connected to the grid there and is powering thousands of homes in north-west Scotland while we are sitting on the greatest wave energy resource in western Europe and are not harnessing it. That is a fact the Minister of State should take with him and think about.

Senator Butler referred to west coast local authority areas. The next time the Minister of State is in the west he should have a chat with the local authority in Mayo. It is pleading with the Government to change the legislation so it can make available to the rest of the country its plans for harnessing wave energy and tidal energy and build a 500 MW output wave energy farm in Bellacorick. All that depends on decisions being taken by the Government which are not being taken. Let us get real and look at what is really going on.

The climate change committee of this House was the first to produce a Bill which had all-party support and it presented it to the Government. It was to ensure issues such as wave energy, offshore energy farms and energy generators of all types could be brought ashore. They cannot currently be brought ashore because there are difficulties about who owns the foreshore, who is entitled to develop it, planning and many other issues. The Government is sitting on the issue.

The Minister of State referred to advances in research and development. This week the UK Government decided to make advances in photovoltaic solar panels. It is the way forward, just as wave energy is. Ireland is the best placed country in Europe to take advantage of photovoltaic solar panels. What support is the Government, through Sustainable Energy Ireland or any other agency, giving to the development of photovoltaic panels in this country, a source from which we can be assured on a bright day we would be able to obtain energy which in turn could be fed into the energy grid system, which is crucially important?

The Minister of State spoke about the smart metering experiment which is due to begin at the end of next month having been promised for three or four years. I am delighted, as one of those who asked for this, that it is finally going to happen. This should come into play with the support of micro-generation use by households so that photovoltaic generators on the roofs of Irish houses can feed into the energy system.

The Spirit of Ireland scheme while a good idea is nothing new. The problem with it, in terms of its presentation, is that it is not necessary to do all that is suggested. The wind energy aspect

[Senator Joe O'Toole.]

of the Spirit of Ireland scheme could be commenced tomorrow morning. This would help to deal with the storage issue. Other projects that could assist with the storage issue are the development of electric cars, the most efficient storage mechanism available, and the interconnector bridge. We do not have to wait until enormous hydroelectric lakes are built in order to make this work. The three interconnectors — one to the North of Ireland and two across the Irish Sea — when in place will ensure we can at all times export our excess energy. There is a huge amount that we can and must do.

As regards broadband, the reality is that we have dropped down the scale. The European figures show that in terms of advances in broadband we are way behind. We are also falling behind in terms of next generation broadband. These points are being made on a weekly basis by delegations attending the Joint Committee on Climate Change and Energy Security. The fact is that we are way behind in terms of storage. We have not yet had a debate in regard to how we would use micro-generation or how we can take advantage of tidal energy in places such as Achill Sound, Blasket Sound and the Shannon estuary. Approximately four or five knots of water flow at least twice a day on the tides in all of these places. The same is true of parts of the Irish Sea. These are issues that can be addressed. The reality is that most tidal and wave energy is silent and does not affect navigation. While wave energy may affect it, tidal energy does not. Much depends on how it is harnessed.

There is much to be done. I hope the Minister of State has some understanding of where I am coming from on this issue. I have spent many years speaking on this issue, trying to get Government interested in it. We have fallen behind in research and development and in terms of progress. While I support the efforts of Sustainable Energy Ireland, SEI, it took it a long time to support the development of wind generation domestically. Many of the difficulties in terms of dealing with planning related to domestic generation of more than ten kilowatts have not yet been addressed. There are decisions that could be taken by Government tomorrow morning in terms of the Foreshore Act, connecting to the grid, micro-generation and wave and tidal energy. The classic example is Wavebob which the Minister of State visited. The Polamis project off the west coast of Scotland is currently connected. We should have been ahead in this regard. Just as we have fallen behind in terms of broadband we have fallen behind in terms of the development of wave energy.

There is much that can be done. The Minister of State should ask the Mayo county manager what are the delays in establishing the 500 megawatt wind energy for Bellacorick. As the Minister of State well knows, 500 megawatts would be one tenth of our peak demand and this could be produced in a couple of fields in Mayo. There is a great deal we could do tomorrow morning.

Every third level institution in this country should be undertaking research and development of nitrogen fuel, which is the future. There are already in existence nitrogen cars yet we are doing no work in this regard. The Minister of State said we have many bright people. We should be giving them work to do on research and development and should provide fellowships in every one of our colleges in order to make this happen. There is a great deal that can be done. We have fallen well and truly behind in many of the areas referred to by the Minister of State.

Senator Mark Daly: Senator O'Toole said that decisions have to be made and that we could make it all happen tomorrow morning. Of course, if we made it all happen tomorrow morning we would then be accused of riding roughshod over every law in the country. While I agree

with him on the issue of foreshore licences, a particular problem in Kerry, decisions have been made.

Senator Donohoe stated he spoke of Twitter many moons ago. One would think we had made no progress in this area. In a by-election in Kerry in 1966 — I am sure Senator O'Toole was canvassing for one side or the other — a Minister, while canvassing outside a church in Barradubh, promised he would have a telephone box installed in the area. The newly elected Member as a result of that by-election was former Deputy John O'Leary who had to deliver the phone box. In 1966 a ministerial order was required for the provision of a phone box in the village of Barradubh. Today, one can purchase a phone in any shop. That is how far we have come. I accept, however, that we can do a lot better. It is great that Senator O'Toole was, while walking around the House, able to listen to the contribution of the Minister for Finance, Deputy Brian Lenihan. I fear had he not heard it, he would have rebutted it *ad nauseam* anyway.

On broadband, mobile phone technology and all other technologies, often such technologies once installed become obsolete because of improvements in this area by the day or even the hour. Senator O'Toole spoke about renewable energy and the possibilities in this regard, which he states are endless. However, people's rights must be taken into account. A particular renewable energy that is coming to Ireland and was launched only last month by Governor Schwarzenegger is the micro-fueler, which is being promoted by Mr. Thomas Quinn. The micro-fueler is a home ethanol producing system, a highly technical piece of equipment into which one puts raw ethanol which then turns to pure ethanol for use in one's car. This raw ethanol can be found in waste beer and is a by-product of fruit and algae. It can revolutionise our form of transport. No longer will we have to rely on fuel or oil from the Far East, the Middle East, Africa and Central America; we will be able to produce our own. This can be done if we manage to crack how to produce raw ethanol from algae. As Senator O'Reilly knows we have plenty of bogs all over the midlands and in Kerry. One acre of ground, which produces 500 litres of ethanol from maize could produce 5,000 litres of ethanol from algae. This, sold on to the owners of micro-fuelers, would supply all our petrol and diesel requirements. We have so many bogs cut out that we could become an exporter of ethanol. These are possibilities that along with the Minister of State, Deputy Kelleher, we are discussing with Bord na Móna which has set aside €100 million to invest in new technology and new forms of fuel. It has many bogs in which it cannot even grow trees and as such are wastelands. We can turn algae into fuel.

Earlier today I raised my concerns about mobile telephone masts with the Minister for the Environment, Heritage and Local Government, Deputy Gormley. The Committee on Communications, Marine and Natural Resources of the 29th Dáil recommended that masts should not be located beside hospitals or schools. I am sure many Senators have listened to families expressing their heartfelt concerns about this issue. There is growing evidence on the link between brain tumours and mobile telephones. Over the past ten years, which is the maximum latency period for tumours, mobile telephone usage has increased significantly.

We must be careful even as we encourage and embrace technology, although if Senator O'Toole had his way we would ride roughshod over safety and health concerns. His points in regard to rural broadband access were, however, valid. In Kenmare, 100 people had to be signed up to broadband before Eircom would supply a service. Milltown in County Kerry is not yet fully supplied with broadband. These issues will be addressed in the fullness of time and we will soon be able to provide world class broadband services to the entire country.

Senator John Hanafin: I am glad the debate has digressed from the content of the motion. In the past several years, new businesses and industries have been created due to the Internet, information technology and mobile telephony. Facebook, Twitter, Bebo, Google and e-mail are examples of how new technologies have changed our lives. However, we are only scratching the surface of the possibilities of these new technologies. For example, fishermen in India who heretofore may have thrown fish overboard because they did not know whether to travel north or south to sell their catches can now ring their onshore contacts to determine where they can get the best prices.

People can use their mobile telephones to get directions through Google Maps or check their e-mail accounts. For those who are interested in maps and mapping, Google is available over the earth. This has created difficulties for repressive regimes such as North Korea because people can view the labour camps and lavish palaces of those who supposedly govern the country in the name of the people. President Obama's campaigners made good use of Google Maps in identifying areas which had previously been canvassed.

It is ironic that just over 50 years ago one of the people responsible for the first IBM computer predicted it would be too expensive to build more than two computers. In fact, practically everything we possess, whether telephones or televisions, have the chips and necessary support to ensure we can communicate better.

This Government realises the need to turn Ireland into a leading knowledge based economy. Even in the most difficult of circumstances, it has ensured our tax regime allows for extra spending on research and development. Indeed, even though the last budget was one of the most difficult in the past 50 years, it nonetheless increased the tax credits available for research and development from 20% to 25%. We will create secure and highly qualified employment through research and development. Our corporation tax rate and outreach efforts have persuaded Google and Facebook to establish operations in Ireland. We must encourage other firms to expand or locate operations in Ireland. In the past decade, the amount spent in this economy on research and development has tripled. That is a positive trajectory given that the most progressive economies, such as Israel, Singapore and the United States, all spend high percentages of their GDP on research and development. We are currently spending 1.66% of GDP in this area and our current trajectory indicates we will meet the Government's target of 2.5% of GDP by 2013. The amount we spend will undoubtedly inspire others because we are a beneficiary of foreign direct investment.

Senator Butler is promoting the excellent Spirit of Ireland project, which is being developed from the ground up by people who are giving their free time to help the nation and provide sustainable energy. The project has practical application to our natural resources. A number of Senators have made useful comments in this regard, including the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Conor Lenihan. His contribution was not off the cuff and it would be somewhat foolhardy for anybody to assume he would speak in that manner.

Senator Jim Walsh: We have had an interesting debate. The comments of Senator Donohoe and others regarding Twitter highlight the need to create awareness in this area if we are to reap the benefits.

I remind Members that €80 million was spent in 2008 as part of an overall investment package of €220 million for broadband services. Significant improvements have been made and, while everyone would acknowledge that more must be done, we should also recognise that we have a dispersed and largely rural based population. It is essential, therefore, that we develop wireless

broadband in addition to fixed line services. I am aware, however, there are shortcomings to wireless broadband.

These issues are perhaps not as new as we think. As a small child in the 1950s I recall spending time with my grandparents and an uncle by marriage John Doran, who had his own windmill in the days before rural electrification reached his part of south County Carlow. The windmill produced electricity for his house and charged his neighbours' wireless batteries. He always kept a large inventory of batteries under his stairs. He was a talented man who was ahead of his time and his genius was evident to the community in which he lived. That micro approach to energy generation and renewable energy is something we should encourage and not lose sight of in our attempts to address the question of the macro initiatives needed in this area.

The Opposition may have lost sight of the thrust of the motion. It was not about the narrow issue of broadband or any other such narrow point but to integrate the information and communications technology with our energy initiatives, especially renewable energy, and our need to cut our CO₂ emissions. That challenge presents us with an opportunity for a great deal of job creation in the future.

In his comprehensive address to the House the Minister of State dealt with the smart economy area and what has been done in the areas of smart electricity, smarter homes, smarter travel and the sensors which will assist people to commute at the optimum times in terms of their jobs and therefore have a very beneficial effect on our CO₂ emissions. Video-conferencing will be a huge component in terms of where we are heading in this area. All of that will bring about a substantial benefit in reducing our CO₂ emissions but will also ensure we are well placed in the smart economy area for the future development of our country in terms of job creation and our economy.

I listened to some of the comments made on the other side of the House. The Government has invested €8.2 billion in research and development. That is done to attract private sector investment in research and development. The entire area is very high-risk capital and therefore inducements are needed for the private sector to participate. The Government has done that rather wisely. I have no doubt that will bring its rewards in time but as I said earlier, the real challenge for Government and for all of us will be to ensure the successes we achieve in research and development are implemented here at home which will ensure the downstream jobs and the development of the entire area will accrue to this economy and not elsewhere. That is a challenge for us and a challenge to our competitiveness.

We face another challenge in this area. I noted in the weeks I was campaigning that there were many messages, not only for us as a Government and a party but also for politics in general. One of them was the disenchantment with the partisanship which exists, particularly in the Lower House but also as it manifested itself tonight in the Upper House in the way we approach these issues. The challenge we face is to work constructively to assist in building the foundations and the platform for the next economic resurgence, and an especially important component of that vision is that we make Ireland a world leader in ICT and in the renewable energy field. I would like us all to share the vision set out by Government and work together in Ireland's interest constructively and without the kind of partisan politics which may have a place in certain debates but have no place in us trying to position ourselves to ensure future generations of young people will have an economy in which they can fully participate, get jobs and build careers and achieve successes for future generations.

7 o'clock

An Leas-Chathaoirleach: Is the amendment being pressed?

Senator Joe O'Reilly: Yes.

Amendment put.

The Seanad divided: Tá, 19; Níl, 23.

Tá

Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.

Healy Eames, Fidelma.
McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Reilly, Joe.
O'Toole, Joe.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.

Níl

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

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

Tellers: Tá, Senators Maurice Cummins and Joe O'Reilly; Níl, Senators Labhrás Ó Murchú and Diarmuid Wilson.

Amendment declared lost.

Motion put and agreed to.

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

An Leas-Chathaoirleach: Before we resume on section 7, I welcome Councillor Declan Flanagan to the Visitors Gallery.

SECTION 7.

Question again proposed: "That section 7 stand part of the Bill."

Senator Frances Fitzgerald: I spoke on section 7 and I await the Minister of State's response to the points made on amendment No. 11 to establish the general legal advice received.

Deputy Áine Brady: The amendment, which has been disallowed, proposes to delete subsection (11), which states that a care needs assessment shall not be construed as conferring an entitlement to services. The inclusion of the subsection is considered important by the Attorney General because it supports section 5, which stipulates that the scheme is resource capped. The

resource cap is a key feature of the scheme and any amendment would have serious financial consequences. For that reason, I am not in a position to accept amendment No. 16.

Senator David Norris: I am surprised it is financial.

An Leas-Chathaoirleach: We are discussing the section.

Deputy Áine Brady: The response is the same.

An Leas-Chathaoirleach: Is the section agreed?

Senator Frances Fitzgerald: May I respond to the Minister?

An Leas-Chathaoirleach: On the section.

Senator Frances Fitzgerald: Will the Minister of State spell out the implications? Earlier I called on the Minister of State to do so, but it also arises in this section because we are discussing care assessment. Will the Minister inform the House of the Government's understanding of resource capping and the meaning of it in the context of the Bill?

Senator Nicky McFadden: I refer to resource capping and, bearing in mind this would be 15% of people's property and inheritance, it is extraordinary the sentence is in place.

Deputy Áine Brady: The view of the Government is the scheme is resource capped. This year the cap is €55 million. It simply means the scheme is resource capped.

Senator Nicky McFadden: The legislation will be in place for a good deal longer than this year.

Deputy Áine Brady: That is correct but it will be capped every year and this year the cap is €55 million.

Senator Frances Fitzgerald: Will the Minister provide some information on the €55 million and how it will meet the need for the scheme and the need for places? What is the Department's estimate of the total required or of the numbers currently requiring care who would be eligible for the scheme?

Deputy Áine Brady: I cannot provide the numbers requiring care. Under subhead B16, the total cap is €909 million, which will be reviewed every year. This year the cap is €55 million.

Senator Frances Fitzgerald: Will the Minister of State repeat that?

Deputy Áine Brady: Some €909 million is the total allocated under subhead B16. This year the cap is €55 million.

Senator Frances Fitzgerald: To what does the €909 million refer?

Deputy Áine Brady: Of the €909 million, €55 million is for the fair deal.

Senator Ivor Callely: Senator Fitzgerald asked about the breakdown of the number of people in receipt of care. Earlier I asked about the number of private and public beds. I do not know whether the Minister of State has such information to hand. If the mix is not available, will the Minister of State indicate the number of people in receipt of long-stay care who would qualify for this money?

Deputy Áine Brady: At present, it is estimated there are 23,000 people in long-term residential care in Ireland and of these, 7.5% are under 65 years of age. This indicates 21,275 people in long-term residential care are over 65 years of age, which equates to 4.6% of that population. The total number of beds in nursing homes, including long-stay and respite beds, is 29,000, of which 10,000 are public and 19,000 are private. The total number of long-stay beds in nursing homes is 25,985, including 8,235 public beds and 17,750 private beds. The total number of occupants in nursing homes is 23,000, of which 7,500 are public, an occupancy rate of 91%, and 15,500 are private, an occupancy rate of 86%. That is the number of beds at present.

Senator Ivor Callely: Did the Minister of State say there were 23,000 occupants and 29,000 long-stay beds?

Deputy Áine Brady: That is correct, and there are 29,000 long-stay and respite beds.

Senator Ivor Callely: To what do the figures of approximately 25,000, 8,000 and 17,000 refer?

Deputy Áine Brady: There are 25,985 long-stay beds and, of these, 8,235 are public and 17,750 are private.

Senator Ivor Callely: It was the case that there were three levels of subvention as well as enhanced subvention for private beds. Does this remain the position? My understanding is that it does not, but I seek clarity on the matter.

Deputy Áine Brady: There is only one level of subvention now.

Senator Ivor Callely: Is it currently in place?

Deputy Áine Brady: Yes, and it will continue.

Senator David Norris: I simply wanted to say, "I told you so". It is perfectly obvious this has to do with the Department of Finance and it is because it is not rights-based legislation.

Question put.

The Seanad divided: Tá, 23; Níl, 18.

Tá

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

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

Níl

Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.

Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Healy Eames, Fidelma.

Níl—*continued*

McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Reilly, Joe.

O'Toole, Joe.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.

Tellers: Tá, Senators Labhrás Ó Murchú and Diarmuid Wilson; Níl, Senators Maurice Cummins and Nicky McFadden.

Question declared carried.

Sections 8 and 9 agreed to.

SECTION 10.

An Leas-Chathaoirleach: Amendments Nos. 18, 19 and 27 to 29, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Senator Frances Fitzgerald: I move amendment No. 18:

In page 16, subsection (1), line 3, to delete “a suitable person” and substitute “an independent third party”.

The Bill gives very little scope for an independent review by a third party. The phrase “suitable person” occurs in the Bill and I propose that it be substituted with the words “an independent third party”. The Bill should allow an independent third party to be involved in the assessment of means. The Bill allows the HSE to seek an assessment of means, which would be conducted by a suitable person of the HSE’s choice. In establishing the market value of any item, the HSE is not bound by a valuation accompanying an application for State support but is empowered to select a suitable person to conduct the valuation.

A number of issues arise in relation to the assessment of financial means. It is not clear what is meant by “suitable person”. Will the Minister of State clarify what is meant by this very wide term? Will it be further defined in regulation or will it be left as broad as it is? Will the means test be carried out by the HSE, State officials or an independent third party?

If there is a discrepancy between the market value of an asset established by the HSE and that submitted with an application for support, the HSE is not bound by the valuation submitted with the application. Such a disparity could have significant implications for the applicant or the State. I will make further points as the debate on this section proceeds. The key issue is the need for the involvement of an independent third party in the assessment of means. What is meant by “suitable person” and will it be defined further?

Senator David Norris: Amendments Nos. 28 and 29 refer to section 30. It is essential that a person carrying out a review of care needs or of financial assessments is independent. The phrase used in the Bill is “suitable person”. The Minister of State may agree that in order to be suitable a person should be independent. It is not a great leap of the imagination, or of a draftsman’s pen, to include the phrase about independence. I support Senator Fitzgerald and I urge the acceptance of my amendments to Part 7, section 30, which deal with reviews and appeals. It is important that any person carrying out a review is independent.

Senator Ivor Callely: The Minister of State is probably aware that the families of people in long-stay care can come under immense pressure with regard to the level of subvention being

[Senator Ivor Callely.]

paid. Section 30(7) states that a person other than the Executive may not request a review of a determination relating to a financial assessment unless 12 months have elapsed since the date of the initial financial assessment. People's circumstances can change rapidly. For example, a person who is currently dependent on a rental income might find his or her income changing by the quarter. Indeed, in certain instances there could be default in payment of the rent. How quickly can an issue of that nature be addressed in the context of the assessment?

I am aware interested bodies have made submissions. I am happy to work with bodies such as Nursing Homes Ireland and other groups. Has the Minister consulted them or is there a user group to feed information to the Minister on the user aspects of the legislation? The user groups could be a soundboard on the legislation.

Senator Nicky McFadden: I support the amendments. It is important to have people who are independent of the Executive. That is the bottom line. They are people who would not have a vested interest. Given that old people are vulnerable and, perhaps, have assets, it is crucial there is somebody involved who is independent.

Deputy Áine Brady: Amendment No. 18 proposes that financial assessments should be undertaken by an independent third party. However, as the HSE would still be making and financing the arrangements, it is questionable how this independence could be achieved or guaranteed. This amendment is also impractical in terms of the use of public resources. It would require a dedicated budget to be provided to finance an independent third party organisation. It would also result in the existing officers who administer the subvention scheme and the public long-stay charges system, and who have received some preliminary training for the new scheme, having to be redeployed by the HSE. In short, we would be failing to utilise efficiently existing administrative resources while simultaneously funding additional administrative posts, albeit through a third party organisation.

It would result in another layer of bureaucracy, with applications being submitted to the HSE but processed by a third party. This is likely to prove inefficient and to raise issues around governance and data protection-confidentiality for applicants to the scheme. To whom, for example, will the individual complain if an application is lost or mishandled? In addition, the HSE is subject to the scrutiny of the Ombudsman in terms of the requirement to follow faithfully all procedures set down in statute. With an independent third party, this layer of protection would be closed off to applicants. For these reasons, I cannot accept the amendment.

Similarly, amendments Nos. 28 and 29 propose that reviews should be undertaken by an independent third party, while amendment No. 27 further proposes this third party should be appointed by HIQA. As already stated, an independent third party would have to be financed. It would require a dedicated budget and would effectively duplicate the administrative work of the HSE relating to assessments. Given that reviews are undertaken on the same basis as assessments, such an inefficient use of resources cannot be justified. The governance and data protection issues which I outlined earlier also apply to reviews undertaken by an independent third party. This is because a body undertaking reviews will naturally need access to the person's data and records. For these reasons, I cannot accept amendments Nos. 27, 28 and 29.

Amendment No. 19 proposes to remove the right of the HSE to appoint a suitable person to value assets and stipulates that any valuation must be undertaken by an independent third party. It should be noted that individuals will submit their valuations with their application for State support. As such, this provision is merely a necessary safeguard within the legislation. It provides for the right of the HSE to undertake valuations at its expense, which is imperative from the perspective of accountability and the HSE's audit functions. Furthermore, this amend-

ment would be problematic as the HSE will meet the costs of any valuation requested under section 10. As such, it is questionable whether the valuer authorised and funded by the HSE could be deemed to be an independent third party. It is, therefore, not proposed to accept the amendment.

“Suitable” person as defined by the HSE, which is in section 3, is the person who has the necessary qualifications, training, experience or combination thereof to perform a function. For evaluations it will be a qualified auctioneer.

Senator Callely raised the review of a financial assessment. The review of a financial assessment can be undertaken earlier than 12 months if the HSE is satisfied that there has been a material change of circumstances. That is dealt with in the next section. With regard to consultation, the Minister for Health and Children and-or her officials met all the interest groups that requested meetings with her about this Bill. These included the social partners, Senior Citizens Parliament, the IFA, the ICMSA, Age Action Ireland, the National Federation of Pensioners Associations and other groups.

Senator Frances Fitzgerald: My concern is that it is a closed system. There appears to be no provision in the Bill for independent review. We propose that a financial review, for example, should be conducted by an independent third party so a fair and reliable estimate could be established in which both the applicant and the HSE could have faith. An important way of doing that is to insert independence into the scheme. That is the reason we propose these amendments. The HSE is a big organisation. It would be in the person’s interest to be able to access and use independent advice on the variety of issues that arise under this legislation, whether it is to estimate the market value of an item or to review it. There should be an opportunity to do that under the legislation. If it is not built in as part of the process, there should be some discretionary opportunity to access independent review to a greater extent than is available.

Senator Nicky McFadden: There is also the concept of the HSE having so much control over elderly people. These people will contribute 15% of their estate but nothing is outlined regarding what they will get for that money. Let us not forget that the HSE is responsible for many debacles under Professor Drumm. One matter that comes to mind is the €50 million he was short in his budget a couple of weeks ago. PPARS and Leas Cross are others. Now we intend to hand over 15% of people’s legacies and estates to the HSE. That organisation will make the final decision, with no independent person to oversee or review the situation. The people concerned are vulnerable in the first instance due to being sick, infirm or incapacitated. This course is really dangerous and will lead to legal situations in the long run.

Senator Ivor Callely: Perhaps the Minister will outline how the system will work from the time the person goes into care with regard to the level of contribution and the physical means whereby that contribution is made. We are aware of the current system and the subvention application form. We know how the assessment takes place in the nursing home section and about the appeals process, which is separate. I have every faith in the current system, which appears to work well.

I certainly have concerns about the HSE, and my position on a single organisation running services on a Twenty-six County basis will not change. I am not satisfied with the provision of services, for example, by private operators. We should not lose sight of this. We are talking not only of HSE services but also private operators who provide a fantastic array of services in certain instances where the statutory authorities have failed to provide them. I say that in light of what was just said.

[Senator Ivor Callely.]

I would like to know how the contribution will work, whether for a private or public bed, and, in the case of a need for a review of the structure to be put in place, how quickly this will be made. Most of us in this Chamber are aware of circumstances in which a family will make an approach, arising from a situation in which the level of payment coming from the HSE is insufficient to meet the need. This is usually in circumstances in which a person is in a private bed. Only because of the goodwill that exists with the private operators will the family be accommodated for many weeks and months. In certain instances an operator will be at a loss at the end if the assessment is not made favourably to meet the need of the individual at the level of charge being made. This happens time in time out and we wait for weeks for cases to go through the appeal process. I ask the Minister to outline how the scheme will work in comparison to the existing system.

Senator David Norris: I welcome the Minister of State's engaging honesty in stating that her principal reason for not accepting the first amendment is that it would require a separate budget. If it creates a charge on the Exchequer that would have been a reason for ruling the amendment out of order. This further highlights the completely chaotic state of rulings on admissibility of amendments. It is daft. Some important amendments have been ruled out because they created a charge on the Exchequer but in this case the Minister of State informed us a separate budget was required. Some jesuitical fluting around might happen to justify this but it is perfectly obvious there is a lack of coherence and we must examine this point.

I was very interested that the Minister of State suggested an independent review would be inefficient. Perhaps so, but this comes from a Government which seems to believe in the free market, privatisation and the franchising out of matters. What is wrong with franchising out a bit of independent scrutiny?

The principle with regard to the need for a separate budget clearly means a charge on the Exchequer.

Deputy Áine Brady: I understand the Senator's concerns regarding the independence of the various assessments. However, the scheme contains a number of important safeguards. Care needs assessments will be undertaken by health care professionals who will all be subject to their own scope of practice and their professions' respective codes of ethics. A common summary assessment record has been developed and rolled out nationally for use within the care needs assessment process. This ensures a standardised basis for determining whether a person requires care services. The legislation is highly prescriptive with regard to the basis for undertaking financial assessments. The schedule even sets out a list of rules governing financial assessments.

This highly prescriptive approach within the legislation removes the scope for any discretion or inconsistency in the application of the financial assessment and therefore undermines the justification for an independent assessment body. Reviews must be carried out on the same basis as the original assessments and therefore the same prescriptive, consistent and unambiguous approach will apply. The legislation explicitly stipulates that a person must receive copies of the reports relating to all assessments or reviews. This is not provided for in the current subvention scheme and represents increased transparency.

A person can appeal to the Ombudsman if the HSE does not follow the procedure set down in the legislation for assessments and reviews. There is an appeal mechanism. Appeals officers must be independent in the performance of their functions. This is stated in section 32(1)(a). A panel of appeals officers will be established which must be approved by the Minister. The

legislation also requires the appeals officer to consider every matter afresh, as if they were deciding the matter for the first time.

Senator Callely asked a very large question regarding how the scheme will work. I have a great deal of information, including——

Senator David Norris: Send it to him.

Deputy Áine Brady:——examples to show how the scheme will work. It is available on the website but I shall organise to have it forwarded to the Senator.

Anybody under the present subvention scheme who wishes to remain in that scheme can do so. People who are in a public facility at present do not have to sign up to the fair deal.

An Leas-Chathaoirleach: Is Senator Fitzgerald pressing the amendment?

Senator David Norris: I have a final comment. I do not believe the principle of independence has been understood fully. There is a slight narrowing of scope in this Bill that is unattractive. In her speech in the Dáil, the Minister, Deputy Harney, argued that the Bill was centred not on entitlement, but on eligibility. I have made the point that it is not a rights-based Bill but there are certain rights which should be retained and the right to an independent scrutiny of one's position is one such. The person brought in to review should be independent because there can be a possible and very considerable conflict of interest between parties. The fact that the reviewer is employed by one of the concerned parties, namely, the HSE, calls into question the independence of that person.

It was suggested to me that the desire for independence is analogous to the request by the family in the Roscommon incest case who want an independent review with no input from the HSE into the inquiry. There appears to be a strong case for real independence. The HSE is to employ the person who will conduct the review in which it is one of the interested parties. That is my understanding although I might be misinterpreting it.

It is an important legal point. When I made certain political charges against a former Cathaoirleach of the Seanad I was dragged before a type of star chamber. I agreed to attend only on the basis that I could cross-examine, introduce evidence and witnesses and be legally represented. The then Cathaoirleach, Mr. Doherty, had to move aside from the Chair because he could not be judge and jury in his own case. We managed to bring that situation about which was quite difficult because it involved getting over the question of separation of power but the learned judge held that I was right on a number of instances, one being the matter of independence. Given that political charges had been made against the Cathaoirleach he had to move from the Chair because he could not be judge and jury in his own case under review. That was regarded as a fundamental element and strand in our democracy and I believe it relates to the issue of independence in the matter of review.

Deputy Áine Brady: I believe I answered Senator Norris's question regarding the independence of the various assessments. They will be undertaken by health care professionals. There is a common summary assessment record. The schedule even sets out a set of rules governing financial assessment. In addition, the reviews must be carried out on the same basis as the original assessments. As I said, it is a very unambiguous approach and there is an appeals mechanism via the appeals officer and the Ombudsman.

Senator David Norris: There is still the question of being judge and jury in one's own case.

An Leas-Chathaoirleach: Is amendment No. 18 being pressed?

Senator Frances Fitzgerald: No.

Amendment, by leave, withdrawn.

Amendment No. 19 not moved.

An Leas-Chathaoirleach: Amendments Nos. 20 and 21 are related and will be discussed together. Is that agreed? Agreed.

Senator David Norris: I move amendment No. 20:

In page 16, subsection (4), line 26, after “Act.” to insert the following:

“The percentage of the home owed to the Executive should never exceed fifteen per cent.”.

This issue is about the percentage value of the assets of the person going into the nursing home that should be distrained by the State. How is this estimated? This question of value arises from time to time and can be very unfair. I speak with some personal heat, because I inherited a small portfolio of shares from my late and beloved aunt and it took two and a half years to get the will out of probate. When I inherited the shares they were at the top of the market, but by the time I was able to sell them, they were at the bottom of the market. However, I had to pay the tax on the putative value of the shares at the top and got nothing like their value at the time I inherited them. I thought that grossly unfair, but I was able to sustain the loss and it did not matter a whole lot to me.

However, think of the situation of somebody who is in straitened financial circumstances. The situation may be slightly different, but the principle of fairness still applies. How and when is the value of a house estimated? For example, the property market is falling disastrously and rapidly. It may be decided that the value is estimated from the date of application, but then there may be a sudden catastrophic collapse in the value of property. Sometimes it can take a long time to get what one considers the proper value of the house and the person may hold out for as high a price as possible, but the value may continue to drop until, finally, the person is advised he or she must accept an offer. I believe people are entitled not to be caught in this trap. Therefore, my amendment seeks to establish the fairest valuation.

The language in this section is also a bit odd. I presume it refers to other assets besides the home. The language is curiously clinical, detached and cold when it describes the executive wishing to establish the estimated market value of any “item”. A house is a bit more than an item, but I am not sure how to get round the problem because the word may cover a situation where there are other assets to be disposed of. I accept there is difficulty in finding a user-friendly word, but “item” does seem clinical. I am not sure another word can be found to get round the difficulty. The principal point is that people should not suffer because of a variation in market value and we should address the question of the point at which a value is established.

On a Finance Bill some time ago, having considered the matter in the aftermath of the stinging effect of such procrastination when getting something out of probate, I suggested property should be valued at the market value at the nearest possible point to when the asset can be disposed of. I made that suggestion in terms of stocks and shares and suggest the Minister should consider a formula on those lines to ensure people get fair value. I am talking here about the discrepancy between the imagined or assessed value and the real, quantifiable value. People are vulnerable in this situation and I would not like to see them disadvantaged.

Senator Frances Fitzgerald: The Fine Gael amendment proposes that the percentage value accruing to the executive under this part should not exceed 15% of the estimated value estab-

lished under section 10. This would be a protection for people and is in line with Government policy. As we have seen, there is huge volatility in the markets and in valuations and a person's individual circumstances could fluctuate substantially within a short period and the person's or family's ability to pay could be seriously hindered.

If, for example, a house has lost value since its valuation when the individual entered a nursing home, will this section mean that upon probate the State could take more than 15% of the value of the home? In line with Government policy, we believe an individual should be guaranteed to pay no more than 15% of the value of his or her home back to the HSE. I would welcome a clarification from the Minister of State as to whether it is the intent to keep the percentage at 15%. Will there be ongoing valuations to ensure that remains the case or could we have a situation where, given current values, a person will be asked to pay what is, effectively, 20% or 30% of the value of the home?

Deputy Áine Brady: Amendments Nos. 20 and 21 both propose a different approach to that currently provided for within the Bill with regard to the cap on the principal residence. Amendment No. 20 states that the percentage of the family home to be repaid to the State should not exceed 15%. However, the amendment does not specify the market value on which this percentage is based. It could be equally argued that it is the value at the time of the original application or at the time of repayment of moneys owed. This renders the provision legally ambiguous and for this reason, but not only for this reason, I cannot agree to accept it.

Amendment No. 21 stipulates that the cap should stand at 15% of the market value of the principal residence at the time of the original application for State support. However, I consider that the current approach set out in the Bill is fairer and more favourable for applicants for the following reasons.

First, the cap is currently applied after the first three years of care. In the case of a single person, the contribution payable is a maximum of 5% per annum, resulting in a total capped contribution of 15% if the person spends three or more years in care. In the case of a couple, the maximum contribution payable by each member is 2.5% per annum, resulting in a total capped contribution of 7.5%. Thus, the three-year cap acknowledges the situation of couples by limiting the contributions of each member to 7.5%. Moreover, by capping contributions by reference to a time period, it has been possible to extend the cap retrospectively so that many people currently in care can benefit from having their existing time in nursing home care taken into account.

Second, the legislation provides for a financial review. Thus, in a climate of declining property prices, such as we are currently experiencing, a person can avail of this mechanism and reduce the contribution payable on their principal residence to take account of the declining value of the property in year two or year three. A straightforward 15% cap based on the original valuation of the property would not achieve this.

Third, while the Bill provides for the cessation of contributions after the first three years of care, it also takes account of the time value of money, namely, inflation or deflation. This is fair, since the taxpayer is effectively offering an interest free loan under this scheme. It is also important from the perspective of financial sustainability, particularly given the very generous system of further deferral offered within the scheme. The system of further deferral could result in families deferring the repayment of contributions for 50 or 60 years if they wished. In such circumstances, it is only fair and just that the time value of money would be acknowledged. For all of these reasons, I do not propose to accept amendments Nos. 20 or 21.

On a point of further information, the person submits a valuation with his or her application for State support. This is the point of valuation. However, a person can seek a review of the

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valuation at any time. The cap is based on three years rather than a percentage, although the effect of that is that the contributions are capped at a maximum of 15%, or in the case of a couple 7.5%.

An Leas-Chathaoirleach: Is amendment No. 20 being pressed.

Senator David Norris: No. The Minister of State made an interesting case and seemed to accept the principle with regard to fluctuations in value, the point in which I was particularly interested. She has made a good case for the Bill as it stands, taking that into account.

Amendment, by leave, withdrawn.

Section 10 agreed to.

Amendment No. 21 not moved.

Sections 11 to 20, inclusive, agreed to.

SECTION 21.

An Leas-Chathaoirleach: Amendments Nos. 22, 23 and 24 are related and may be discussed together by agreement.

Senator David Norris: I move amendment No. 22:

In page 28, subsection (5), line 39, after “person” to insert the following:

“and particular regard to the expressed, verbal or written wishes of the person”.

The amendment relates to the important matter of taking into account the expressed wishes of a person, whether verbal or written. It refers specifically to subsection (5) which states: “If the court is satisfied that the relevant person concerned is incapable, for the time being, of making a decision to which this section applies, and the court determines that it is in the best interests of the relevant person concerned having regard to the circumstances of the person, the court may appoint a care representative in accordance with this section”. The amendment proposes to insert the words “having regard to the circumstances of the person” after the words “relevant person concerned” in the subsection. I am not certain the legislation covers or envisages a case in which, for example, a person going into care has made the equivalent of a living will in which he or she indicated a wish not to be resuscitated. Such a wish is perfectly reasonable and should be taken into account.

Amendment No. 25, which also addresses a substantial matter, proposes to insert the following new subsection:

“(44) (a) The assessment officer should be obliged to provide an education service where it is guaranteed a person with appropriate expertise would assist in the carrying out of the assessment.

(b) The assessment officer should ensure that the person carrying out an assessment would communicate with the applicant in a manner which facilitates appropriate participation, promotes dialogue about the nature of the assessment and that note is taken of the views (if any) of the applicant concerning his or her needs or preferences in relation to the provision of services to meet his or her needs.”.

I referred to the possibility of somebody having a stroke or suffering aphasia. People with the latter condition retain their logical capacity but the speech sector of the brain is damaged and they are not in complete control of their capacity to express themselves. In other words, they are trapped and while they know what they want, they have considerable difficulty in expressing it, which does not mean it is inexpressible. What is needed is professional assistance to ensure the intention and wish of the person is discovered and, if possible, acted upon. The person should be someone who is able to conduct a professional assessment, is knowledgeable, has experience of working with people with these types of conditions and is able to pursue any method or contact that would be able to draw forth the information sought. While some conditions, for instance, mental difficulties, stroke and so forth, may be untreatable and irreversible, their impact can be minimised by ensuring this type of professional person is available. The capacity, for example, of a person with short-term memory deficit to make a particular decision can be improved, as has been demonstrated, if trained in suitable techniques by an occupational therapist or physiotherapist. This is a classic practical example of how a person who apparently cannot make an informed decision can be assisted practically by a professional to make and communicate a decision.

Many communication difficulties arise from physical disabilities and can be overcome. This emphasises the importance of recognising the true basis of what is only an apparent incapacity. There should, therefore, be careful assessment of speech, language functioning, hearing and, if appropriate, sight. One must choose the best location, as has been noted, and it may be appropriate to have assessments done in the person's home given that tension, worry, anxiety and stress can also be factors.

It is important that ancillary services are provided while the assessment is being made. The nursing and midwifery council's guidance for the care of older people, which was published in 2009, suggests there may be physical barriers to communicating with older people. These include hearing loss, visual impairment, cognitive impairment, aphasia and loss of ability to speak or understand words. As it may take longer for a frail older person to process information, it is vital to ascertain who is the main carer and inspect the carer's knowledge and experience of caring for the person concerned as the carer will be best able to explain how to communicate with the person. In other words, the carer will have had long experience of dealing with the person in question and will, therefore, know his or her quirks and how to understand the signals he or she is giving.

Many recent media reports have raised concerns about literacy and numeracy, specifically among adults. If one is trying to obtain information from people about mathematical concepts such as sums of money, percentages and so on, one must be certain they understand the issue and are able to provide rational answers. I have been provided with curious and worrying statistics in this regard. For example, research published in 2008 showed worrying numeracy trends. Less than 60% of those with a primary education or no education were able to give a correct answer to the question, "What is 10% of 1,000?" I failed arithmetic but even I know that 10% of 1,000 is 100. The Minister of State will confirm that is the case. Even a dodo like me could work out the answer to that question, whereas 60% of people with a primary education or little education could not do so. While it may be wonderful that 90% of those with third level education could answer the question, it is even more worrying that 10% of those with university degrees could not provide a correct answer when asked what is 10% of 1,000. These people have not had a stroke, suffered brain damage and so forth. It is important to examine the capacity to explain this issue to people and obtain a proper and appropriate response from them.

We must also take into account that difficulties are sometimes caused by inadequate education and information. People also become flustered under interrogation. For this reason,

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taking the advice of someone who knows the person is a useful suggestion. When people are cross-questioned on programmes such as “Mastermind”, “Today with Pat Kenny” or “Mooney”, they are often unable to answer simple questions. People in radioland ask what kind of eejits cannot answer simple questions. The problem is that they know the answer but find it impossible to give it because of stress.

We also ought to take into account that other, quite recent legislation contains these kind of provisions for providing an education service, for example, the Disability Act 2005, in which the assessment officer is obliged to provide an education service where it is guaranteed that a person with appropriate expertise could exist in the carrying out of these kinds of procedures. For that reason, it seems that the Bill, to which I have given a general welcome, is incomplete without a clause that copperfastens the capacity for people to have assisted decision making.

Senator Frances Fitzgerald: I support the amendment. I refer, for example, to the OECD report on older people and transitions which pointed out how difficult the move into long-term care can be for individuals, that they may have significant difficulties communicating their needs, as Senator Norris stated, and that they may need to be helped in this process by an appropriately trained person, for example, a speech and language therapist. The purpose of the amendment is to tailor the process of the capacity assessment to the individual’s need to demonstrate capacity successfully. It is important that there would be a provision such as this in the Bill. It would mean that the person’s needs would be met more effectively and that they would be catalogued and noted more effectively so that in terms of a court case or any review of the care, for example, the stated wishes of the individual would be clearly laid out at an early stage of the assessment. The more we can do that, the better.

It is really about human dignity and respect for the wishes of the individual. Clearly, if persons are somewhat incapacitated, whether physically or mentally, they need help, whether on the educational level of which Senator Norris spoke or on a capacity level such as where one might need a speech therapist. This amendment ensures such is the approach that would be adopted. I assume when the care assessment is done this would be incorporated to a degree but this spells it out in more detail.

Deputy Áine Brady: Amendment No. 22 obliges the courts to have regard to the wishes of the person who is the subject of the application when appointing a care representative. The care representative has a limited function under section 21 which extends only to matters relating to ancillary State support and the creation of a charge. However, the Senator’s proposal represents a further safeguard for the person and is consistent with the guiding principles contained in the proposed mental capacity legislation. As such, I accept this amendment in principle.

Amendments Nos. 23 and 24 seek to exclude explicitly from the categories of care representative any medical practitioner involved in the assessment of the person’s capacity. This is consistent with the overall policy intention of section 21 and I am happy to commit to considering its inclusion on Report Stage. I will, therefore, accept this amendment in principle.

Amendment No. 25 proposes to stipulate that an assessment officer must have sufficient expertise, must sufficiently communicate with the applicant and must note the applicant’s needs or preferences regarding the provision of services. On the final point, it should be highlighted that the assessment of capacity will relate only to the issue of ancillary State support and the placing of a charge against the person’s asset. This is the only aspect of a person’s capacity which is being examined. As such, a person’s power to state the preferences regarding services should not be affected by the care representative process. Moreover, the acknowledgement of

a person's preference regarding services is a much wider issue which extends beyond the scheme. The scheme is fundamentally a scheme of financial support. However, within the legislation this issue is acknowledged in section 5 which enshrines the principle of patient choice for all applicants.

On the issues of expertise and communication, I can assure the Senator that medical practitioners undertaking functional assessments of capacity will be bound by their own code of ethics and will ensure such assessments are undertaken in a thorough and robust manner. Moreover, the functional nature of the assessment requires that a person must be provided with all relevant information in a manner which is most easily accessible for him or her and that the person must be supported to communicate his or her decision in any way possible. For these reasons, amendment No. 25 is unnecessary. However, I can advise the House that the Department of Health and Children is working on guidance documentation which will support medical practitioners in undertaking assessments under section 21 and will highlight all of these important considerations associated with the functional test of capacity.

Senator David Norris: I thank the Minister of State for graciously accepting the principle. I am quite certain that she and her advisers will come up with a better wording than ours, but it is important to acknowledge that the Minister of State has clearly accepted two amendments and there will be ancillary material produced which will support the principle of the third amendment so that we are *ad idem* on the matters. I welcome that positive development.

Amendment, by leave, withdrawn.

Amendments Nos. 23 to 25, inclusive, not moved.

Section 21 agreed to.

Section 22 agreed to.

SECTION 23.

Question proposed: "That section 23 stand part of the Bill."

Senator Ivor Callely: On notification of death or discharge of a person provided with financial support, I note that the nursing home proprietor is requested to give notice in writing to the executive not later than three working days after such event. While I think I know the answer, on what basis is this request being made?

Deputy Áine Brady: To cease the payment.

Senator Ivor Callely: A nursing home proprietor would provide a bed for perhaps three, five or seven years and we give him or her three days after the death. Has this been discussed with service providers and are they satisfied with a three-day cut-off? It strikes me as being a short period. I do not want to put the Minister of State on the spot but I would ask that she discuss the issue with the nursing home representatives to see whether there is need for a longer period. A three-day period strikes me as being short. Perhaps it could be a seven, ten or 21-day period.

Deputy Áine Brady: Under the current subvention scheme, they must give notice within 48 hours. Giving them a three-day period actually provides a longer period.

Senator Ivor Callely: I would just make the point.

Deputy Áine Brady: I thank the Senator. I will take that.

Senator Ivor Callely: As I stated, a bed may be occupied for three, five or seven years. There is also a bond between the proprietor of a nursing home and the people involved in the provision of the services to the individual, and there is a mourning process in which they are involved. On providing for this cutting of the tie three days later, we should be more sensitive to those providing the service and a three-day period strikes me as just a little short. I am not pushing anything here. I am just asking the Minister of State to tease it out a tiny bit.

Question put and agreed to.

Sections 24 to 27, inclusive, agreed to.

SECTION 28.

Question proposed: "That section 28 stand part of the Bill."

Senator Ivor Callely: We are running through this quickly. Is there any part of these sections where we seek disclosure of information on the financial aspects of the nursing homes? There are no sections where we seek disclosure.

Senator Frances Fitzgerald: It is later.

Senator Ivor Callely: What section is it in? We are going through the sections very fast.

Senator David Norris: It is quite confusing.

Deputy Áine Brady: It is in sections 40 and 41.

Question put and agreed to.

Section 29 agreed to.

SECTION 30.

Senator David Norris: I move amendment No. 26:

In page 41, subsection (1), between lines 6 and 7, to insert the following:

"(b) where a person is assessed as in need by reason of categories outlined in *section 7(6)(c)* reviews will be carried out at a minimum of every 6 months and no later than every 12 months;"

This is a simple amendment requiring that reviews be carried out at a minimum of every six months and not later than every 12 months where a person is assessed as being in need under the terms of the categories outlined in *section 7(6)(c)*.

Deputy Áine Brady: I understand the intent of this amendment is to provide for situations where a person is in nursing home care but could return to their community if sufficient community based supports and services were in place. It stipulates that a review would be carried out every six months and no later than every 12 months to ascertain whether the person could move back to a community based setting. I can confirm that a person may seek such a review under *section 30* as it currently stands. Moreover, I consider it in the person's best interests to empower him or her to request this review should he or she wish to do so, rather than require a mandatory reassessment regardless of the person's wishes.

It is worth highlighting that a care needs assessment could take anything up to three months. Accordingly, a person may not wish to undergo an assessment of their care needs every six months and may consider it intrusive or even have a distressing experience. Moreover, a person may be settled and content in a residential care setting. As such, he or she may experience a mandatory review, the effect of which is to establish whether he or she should be moved back to a community setting, as coercive or disrespectful of his or her dignity. For these reasons I cannot accept amendment No. 26, but I hope my clarification addresses the Senator's underlying concern.

Senator Nicky McFadden: I understand what the Minister of State is saying. However, the other side of this is a situation where a person may have regressed and need a review, and be sent to an even higher dependency unit. It is something that also needs to be discussed. This is a very good amendment. An assessment or review is always a good thing.

Deputy Áine Brady: I said the review will be carried out no later than every 12 months and will work. If a review is carried out and a person needs a higher dependency unit that will be provided.

Acting Chairman (Senator Kieran Phelan): Is the amendment being pressed?

Senator David Norris: No.

Amendment, by leave, withdrawn.

Amendments Nos. 27 to 29, inclusive, not moved.

Section 30 agreed to.

Section 31 agreed to.

Amendments Nos. 30 and 31 not moved.

Section 32 agreed to.

Section 33 agreed to.

SECTION 34.

Senator David Norris: I move amendment No. 32:

In page 46, line 8, after "ailment" to insert the following:

"and there is an appropriate facility or service that could treat the individual."

This is to add in the phrase "and there is an appropriate facility or service that could treat the individual" which seems perfectly logical, practical and plain.

Deputy Áine Brady: Amendment No. 32 limits the power to charge people in acute beds who are no longer in need of acute care to situations where there is an appropriate facility or service that could treat the individual. The amendment is legally ambiguous as the interpretation of an appropriate facility or service could vary in the opinion of the HSE and the person or the person's family.

For example, if a person continually rejects all available nursing home places as being unsuitable, does this mean he or she may remain in an acute setting indefinitely without being subject to charges? This legal ambiguity undermines the basic policy intention of section 34(3), which

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is to ensure the legislation does not create a perverse incentive to remain in an inappropriate acute setting. It is therefore not proposed to accept the amendment.

Senator David Norris: This also relates, as I understand it, to the problem of people in acute beds and the fact they are seen as bed blockers. It is a question of the most appropriate place for them to go.

Acting Chairman: Is the amendment being pressed?

Senator David Norris: Not at the moment, but I reserve the right to put table it on Report Stage.

Amendment, by leave, withdrawn.

Section 34 agreed to.

Sections 35 to 38, inclusive, agreed to.

SECTION 39.

Question proposed: "That section 39 stand part of the Bill."

Senator Frances Fitzgerald: I want to ask the Minister of State a number of questions on section 39 concerning transitional provisions. I suggest existing residents need clarity regarding what is proposed under section 39. It is very important that existing residents are not disadvantaged under the Bill. Do the provisions contained in this section mean the subvention rates for existing residents will not increase? The measure will effectively force all existing residents in receipt of subvention into the scheme. It is important the Minister of State clarifies the matter.

If residents opt to remain in the subvention scheme, will annual increases be provided to ensure the shortfall between subvention and the cost of care does not escalate and financially disadvantage existing nursing home residents? It is a query on the transitional provisions, their effect on people who are currently in nursing homes, how the new scheme will impact on them and the cost they are paying. Perhaps the Minister of State could clarify that.

Deputy Áine Brady: Existing residents can stay as they are under the subvention, if they so wish. The Minister has given a commitment that no one will be made worse off. People already in public nursing homes can stay there in the same system they are currently. New admissions to public nursing homes will be different. Was that the question the Senator asked?

Senator Frances Fitzgerald: Yes. I also asked if increases will be given to people if the cost of care goes up and if they would not be financially disadvantaged. Is that allowed within the scheme?

Deputy Áine Brady: Not within the fair deal scheme.

Senator Frances Fitzgerald: What will happen to people who stay under this scheme? Will they not be effectively forced into the new scheme?

Deputy Áine Brady: The system will now be fairer across the board, in so far as nursing home costs will be made fairer and the inspection of nursing homes will take place by HIQA. The NTPF will bring fairer costs to nursing homes but there are no plans to increase the subvention.

Senator Frances Fitzgerald: It effectively means people who are already in nursing homes will have to move into the scheme because, assuming increased costs, the current subvention will not then cover the costs of their care. People will have to move into the scheme, given that the Minister of State said there will be no increases, even if costs go up.

Deputy Áine Brady: They have the option to remain in it and the Minister has given a commitment that no one will be made worse off. I cannot give the Senator any other commitment on subvention levels.

Senator Frances Fitzgerald: The Minister of State might return to the issue on Report Stage and see whether clarity can be provided on that aspect of the Bill.

Senator Ivor Callely: In light of the this section and the transitional arrangements, we are constantly referring to a two tier system and the anomalies that exist within it. Is this section accommodating anomalies? Of two people in very similar financial circumstances, could one who is currently in receipt of a public bed in a long stay institution without paying any contribution continue to enjoy that facility while the other, after the enactment of this Bill, is assessed as having a need and have to pay 15%?

Deputy Áine Brady: This section has been inserted to provide existing residents with a choice. Residents may choose to remain as they are or to opt into the fair deal scheme.

Senator Ivor Callely: It strikes me we may be accommodating anomalies and creating a two-tier system.

Deputy Áine Brady: The intention is to make the system fairer for everybody.

Senator Paul Bradford: I am not sure if the Minister of State answered my question in relation to a person's entitlement to switch from the current scheme to the new scheme. I am sure I heard the Minister of State say in response to Senator Callely that they can do so. However, the section states: "a person in receipt of a relevant subvention immediately before the commencement of this subsection shall continue to be paid the relevant subvention until...". The section provides that they "shall" rather than "may" continue to be paid. At what point can the switch or transfer occur when it is stated in the section that they "shall" continue to be paid the relevant subvention?

Deputy Áine Brady: People can apply to switch to the fair deal at any time. The option is theirs, it is a choice.

Senator Paul Bradford: Where is that particular option written into the legislation?

Deputy Áine Brady: It is in section 39(1)(b).

Senator Paul Bradford: Section 39(1)(b) states: "the date from which by reason of the determination of the Executive under *section 11(1)* State support is to be paid in respect of the person".

Senator Nicky McFadden: This is another cop-out.

Senator David Norris: It is the heat. We are all boiling in here. It is worse than a nursing home. At least, the television is not blaring.

Senator Paul Bradford: Does the person have to apply to transfer?

Deputy Áine Brady: Yes.

Senator Paul Bradford: The lodging of an application deems the person eligible to be considered under the new scheme.

Deputy Áine Brady: Yes.

Senator Ivor Callely: Perhaps the Minister of State will undertake to consider the matter which I have brought to her attention, namely, the anomalies that exist and will continue to exist under the new scheme. We are seeking to ensure fairness but the anomaly I have outlined exists. Perhaps the Minister of State will address the matter for Report Stage.

Question put and agreed to.

SECTION 40.

Acting Chairman: Amendments Nos. 33 and 34 are related and may be discussed together by agreement.

Senator Frances Fitzgerald: I move amendment No. 33:

In page 49, between lines 35 and 36, to insert the following subsection:

“(2) The Minister shall by regulations establish an arbitration scheme for resolving disputes which may arise under *subsection (1)*.”.

I am suggesting here that the Minister should by regulation establish an arbitration system to resolve disputes which may arise under subsection (1). The Bill, as drafted, does not make provision for an arbitration process in the event that agreement cannot be reached between the Minister designate and the nursing home. For example, if the negotiator is the National Treatment Purchase Fund, NTPF, and it fails or refuses to agree to include a nursing home on the list of approved nursing homes, can anything be done? Will the Minister of State consider the inclusion of an arbitration mechanism? I am not sure how often this would arise but it could arise occasionally. There is a need for some mechanism in the interests of fairness and justice. This is evident in a number of areas already, including the construction industry and the NRA or the Department of Transport and the IFA. One can build in arbitration provision. I believe this to be a worthwhile amendment to accept to ensure access to justice by a person who believes not enough reasons have been given or who does not agree with the reasons they had not been accepted.

I believe that the system being established in this Bill is a closed system. We are not building in much opportunity for independent reviews, appeals or assessments. All the power is very much in-house. I do not believe enough opportunities are provided to go outside a fairly closed system of HSE assessments, which is not good for the individuals in care assessment and in nursing homes who could find themselves at a disadvantage owing to a lack of arbitration. Perhaps the Minister of State will consider this matter.

Senator David Norris: I support both amendments. However, in deference to Senator Mullen, I like his amendment which spells out much. The amendment seeks to delete in page 50, lines 31 to 35, “(3) In performing its functions under paragraph (1)(*ba*) the Board may examine the records and accounts of an approved nursing home or of a nursing home the proprietor of which proposes to enter into arrangements under paragraph (1)(*ba*).” and to insert:

“(3) Where the Board has formed the reasonable view that the price at which long term residential care services is proposed to be provided by a particular nursing home is, all things being equal, materially in excess of the price at which long term residential care services are provided by other comparable nursing homes, the Board shall have the power to request, by notice in writing, that the said nursing home provide the Board with a written explanation of the calculation of the price at which long term residential care services is proposed to be provided by such nursing home. In the event that the Board is not satisfied with a written explanation received under the terms above it shall have the power to request that the Minister as soon as is practicable, by notice in writing to such nursing home, designate a person to examine the records and accounts of such nursing home and to subsequently report the findings of such examination to the Minister and to the nursing home in question. A refusal on the part of a nursing home to comply with any notice pursuant to this section shall be construed as a withdrawal on the part of such nursing home from negotiations.”.

I like the careful and legal way in which this amendment has been framed. In other words, the board must form a reasonable view that it is getting a bad deal, that the price is somehow inflated and that the services provided should not be valued at the level at which they are valued. In other words, an excessive charge is being made. The board will then have an opportunity to request a written statement or explanation for the price and the Minister, if the board is not satisfied, can designate somebody to examine the records and try to find out the truth. Where there is a refusal on the part of the nursing home to co-operate, this is construed as a withdrawal on its part from the negotiations. This appears to be a carefully thought out and accurately worded instrument to ensure neither the State nor the individual is defrauded by bad value. For that reason, I am happy to support it.

Senator Frances Fitzgerald: Section 41 provides that arrangements are made to publish the cost of approved nursing homes with no corresponding provision in respect of public nursing homes, which is an interesting point. What is the cost of public nursing homes and how do they compare? I ask the Minister of State to consider, in the interests of transparency, publication of the cost of public provision.

Section 41(b)(iii) which was introduced by the Minister on Committee Stage is at variance with the statements made by the Department of Health and Children in its publication, *A Fairer Deal*, the Nursing Home Care Support Scheme 2008, which states: “Prices around the country are already known to the HSE and the Department and can be reasonably estimated already.” It further states:

We are already aware of prices around the country and will not be obliged to reach agreement with any particular provider or nursing home if its prices or unreasonable. We will seek co-operation from the private nursing home organisation.

Perhaps the Minister of State will come back to us on Report Stage in regard to whether she thinks it appropriate for the NTPF, as a monopoly purchaser, to request information that is not in the public domain, specifically, commercially sensitive information in a competitive environment, an issue which Nursing Homes Ireland asked us to raise with the Minister of State. I am sure they raised the matter directly with the Minister of State. I am interested to hear the Minister of State’s view on the matter. I accept the question of commercial sensitivity arises. Without an arbitration process providers are put in a difficult situation. The NTPF also has the power to examine the records and accounts of such nursing homes and to subsequently report the finding of such examinations to the Minister and the nursing home in question. While I want to see transparency, I want to see it in the public as well as the private sector. I believe costs in respect of both should be published. We should be looking at the cost of public

[Senator Frances Fitzgerald.]

provision. In other words, how much is a bed in a public nursing home as compared with a bed in a private nursing home. This information would raise many interesting questions in terms of efficiencies and the provision of service.

If there is no access to arbitration, which is the point of this amendment, it would be heavy-handed to allow this in the absence of a corresponding provision in respect of publicly provided services.

Senator Mary M. White: We should leave this amendment until Report Stage to deal with the issue. It would be wrong to divulge commercially sensitive information to a monopoly provider.

Senator Ivor Callely: I can understand why one would seek this type of disclosure when drafting legislation. Progress has been made over several years on achieving parity between the voluntary, private and public sectors in the provision of services. As a former health board member, I was aware of demands that the private and voluntary sectors should provide higher levels of service. I felt somewhat uncomfortable in this regard because it was not fair for a statutory authority to seek higher levels from others than it was prepared to provide itself. For this reason, I welcome that the inspection regime under the Health Information and Quality Authority, HIQA, will be on a level playing field.

I would like to believe the Minister of State, in her wisdom, will see the merit of what is being proposed. The amendment proposed by Senator Mullen deals with a purchaser who demands sensitive commercial information. Perhaps the Minister of State will clarify how the HSE will demand similar information from the public sector. It would be in the interests of this House to receive an indication on whether the substantive content of Senator Mullen's amendment will be accommodated on Report Stage.

Senator David Norris: While we should listen with respect to Senator Mary White because she has practical experience in the world of business, I am not sure that her argument regarding commercially sensitive information holds much water. We are considering issues of comparability and it is reasonable that when charges imposed by a particular nursing home are "materially in excess of the price at which long term residential care services are provided by other comparable nursing homes the Board shall have the power" to do this, that and the other. It is reasonable to seek to determine whether a charge is excessive. Perhaps I am missing something but I do not see anything commercially sensitive about the matter. I accept, however, that what is sauce for the goose is sauce for the gander and that it would be wrong of the State to demand standards from the private sector which it is not prepared to meet itself. I am not convinced by the argument on commercial sensitivity because the amendment is clear that a materially excessive charge is anomalous within the marketplace rather than in a situation where there is one provider. The State should be entitled to inquire into the reasons for charges being out of line.

Deputy Áine Brady: Amendment No. 33 requires the Minister to provide an arbitration scheme for disputes between the National Treatment Purchase Fund, NTPF, and private nursing home owners. I reiterate that the scheme is voluntary. Private nursing homes can choose not to negotiate with the NTPF and they only participate in the scheme if they so wish.

Senator Frances Fitzgerald: That is not very likely.

Deputy Áine Brady: I do not consider that arbitration would serve a useful purpose in this context. Arbitration is a wonderful tool where disputes concern complex work projects or prolonged and detailed service agreements. However, the issue in question is the price charged

for the purpose of the scheme. The resident will decide which nursing home to occupy, the quality of the service will be governed by the new standards and supervision will be a matter for the Health Information and Quality Authority, HIQA.

The goods and services which constitute long-term residential care services will be effectively circumscribed by the information laid before the Houses of the Oireachtas by the Minister for Health and Children. As such, the NTPF and the nursing homes would not negotiate on the volume, range or quality of service to be provided. They will merely negotiate on price. If a nursing home cannot demonstrate to the NTPF that it is offering value for money, I fail to see the value of arbitration. The only possible role of an arbitrator would be to undermine the position of the NTPF, which effectively means undermining the taxpayer.

The issue of administrative costs also arises. The NTPF will negotiate with 400 nursing homes and the amendment would enable each of these to seek arbitration. The potential costs associated with such a provision would be significant both in terms of additional staff and the process of arbitration.

In framing this legislation, the Government has been mindful to place the person at the centre of every policy decision and to safeguard and protect the individual both as care recipient and taxpayer. It is not in the interest of care recipients or taxpayers to accept an amendment which would have the effect of undermining the NTPF's negotiating position before it commences its functions and diverting State funds away from the provision of financial support and towards an administrative procedure of questionable value. For these reasons I cannot accept amendment No. 33.

Amendment No. 34 limits the power of the NTPF to examine the records and accounts of approved nursing homes. This amendment is legally ambiguous because the interpretation of what is reasonable could differ between the NTPF and the private nursing home. It would be administratively cumbersome and time consuming because a number of written notices would be required from the NTPF, the nursing homes and the Minister. It would be necessary to designate separately an individual to examine the accounts of the nursing homes and prepare reports. The amendment excludes the board from receiving the final report and is unclear with regard to who determines the final outcome or agreed price. As such, it leaves a lacuna within legislation which would serve to undermine the entire scheme.

It should be noted that the existing provision states that the NTPF may examine the accounts of private nursing homes wishing to be part of the scheme. As such, the provision is enabling rather than prescriptive. It ensures the NTPF is legally supported in seeking prices for nursing home care which represent value for taxpayers' money and can guard against price collusion and cartel behaviour. I do not propose to accept the amendment, therefore.

Senator Frances Fitzgerald: The implication of the Minister of State's reply to amendment No. 33 is that an arbitration system should never be developed in case people decide to use it. The point of such a system, however, is that people can use it. That is the reason arbitration is used for labour relations and other areas. It is basic justice to allow arbitration in disputes. I do not think one should assume that all 400 nursing homes would rush to arbitration. Clearly, criteria would have to be met but this is a requirement in all systems of arbitration. The Minister does not accept the amendment on the basis that 400 nursing homes might go to arbitration. If the Minister took that approach no system would ever have arbitration within it and as we know, arbitration is a well defined mechanism that is used. Where there are varying views in industrial relations an arbitration system is set up. This is a basic measure that should be in the Bill.

Senator Ivor Callely: I asked the Minister about the assessment by the National Treatment Purchase Fund in regard to the provision of the public bed. We are bringing in legislation that we say will be better than what exists, fairer and so on but I have a serious “bogey” with this aspect. Regardless of what is said on the floor of this House, and I do not know how an official of the NTPF may use this measure with a nursing home proprietor, but subparagraph (iii) states: “the Board may examine the records and accounts of an approved nursing home or of a nursing home the proprietor of which proposes to enter into arrangements under paragraph (1)(ba)”. If that measure goes into legislation it may or may not be used by an official of the National Treatment Purchase Fund. We do not know the context in which he or she may use it but we do know the public nursing home around the corner will not be subjected to the same scrutiny as the private operator. There is something wrong in that. I may misunderstand this section, and I hope that is the case, but it would be remiss of the Minister not to accept that there is a difficulty in this respect, that there is an unfairness and an imbalance and that it should be rectified in some form or at least further considered on Report Stage.

Senator Mary M. White: I concur with my colleague, Senator Callely, that it is wrong to have any potential interference when people are trying to do business to provide a much-needed service and then allow information to be left around the place. It is not business like, and we have a responsibility in this regard. People are setting up nursing homes and doing their best to provide a service and this is too much intervention by the State. It is an extreme, left wing political view of somebody trying to do business and very dangerous.

Deputy Áine Brady: I am saying that the nature of the issue to be negotiated would not benefit from an arbitration system. The NTPF will need to obtain value for money because if it does not, the financial sustainability of the overall scheme will be undermined.

The ability to view accounts is only an enabling provision. We understand that accounts are routinely offered to the NTPF when negotiating with private hospitals. The NTPF will treat all information as confidential and commercially sensitive. Costs will be published also for public nursing homes. The Health Service Executive is audited every year.

Senator Ivor Callely: I have a serious difficulty in that the Minister has not quite answered how the HSE will obtain a public bed and the records or accounts it may be able to assess of the public facility. I appreciate what the Minister is saying. Nobody, including nursing home proprietors, would be unwilling to sign up to value for money. That is not an issue but an issue arises in terms of inserting in legislation the wording I read into the record, which is creating an imbalance between the players in the marketplace. If I am reading it wrongly I would like to be corrected. If there is fairness in the marketplace I would be happy to see that wording in the legislation.

Senator Mary M. White: Hear, hear.

Senator Ivor Callely: There is nothing the nursing home proprietors would fear in terms of their accounts but it does not seem to be fair that the private nursing home around the corner is not required to meet the same criteria as the public operator. We have come a long way in the past decade in bringing parity to the provision of these auxiliary services and facilities but this appears to be a step backwards. All I ask the Minister to do is give us some indication that she is listening to what we are saying and that she will provide some level of clarity on this issue before Report Stage. That is not too much to ask. We are simply seeking clarity. An issue arises in this respect. Anybody with a level of understanding of the marketplace would be sensitive to what is being requested from only one sector of the total sector of service and therefore this aspect is causing a slight difficulty for people like myself. All we are asking the

Minister to do is discuss this aspect with her officials and the other relevant players to determine if there is any other way to address it. If there is not she might come back on Report Stage and indicate this is the only way but I ask the Minister to try to ensure that the people we will be asking to sign up to this legislation, that is, the private nursing home proprietors, would be happy to have this wording in the legislation. That is important in terms of moving forward.

An Cathaoirleach: Does the Minister wish to comment on that or can it be looked at on Report Stage?

Deputy Áine Brady: The HSE will publish a list of its facilities and the cost of a bed in each facility. How that cost is arrived at will be laid before the Houses by way of the cost components under section 33. If the Senator wants to resubmit the amendment for further consideration on Report Stage it is up to him but I do not see how it can be clarified.

Senator Frances Fitzgerald: The Minister said there will be publication of the cost of a bed in public nursing homes. Section 41(1)(b)(ii) refers to arrangements to publish the cost of a bed in approved nursing homes but there is no corresponding provision in the legislation in respect of public nursing homes. Is that not correct?

Senator Ivor Callely: That is correct.

Senator Frances Fitzgerald: The Minister is saying that the cost of the public bed will be made known but she is making arrangements for the private nursing home to publish the cost. She is saying it will be provided but there is an imbalance in that one is in the legislation and the other is not, as things stand in the published legislation.

Deputy Áine Brady: The Minister is in a position to direct the HSE to publish a list of its facilities and the cost of the bed. How the cost is arrived at will come before the House by way of the cost components under section 33.

Senator Frances Fitzgerald: By way of what?

Deputy Áine Brady: By way of the cost components under section 33.

Senator Frances Fitzgerald: Would the Minister explain that?

Deputy Áine Brady: The Minister does not need this Bill to ask the HSE to publish a list of its facilities and the cost of a bed in each facility. Section 33 sets out the right to charge for public care. It states the charges may not exceed the costs. This means the costs must be publicly available.

Senator Frances Fitzgerald: In that case it makes perfect sense to put it into the legislation. In terms of relying on a Minister to ask the HSE to provide information, we have seen the difficulties that has led to in a range of areas in the past number of years where information has been very slow coming from the HSE. It has been very difficult to get accurate information and the health committee has frequently tried to get detailed information. I gave the example of where the Minister had directed that €25 million and €27 million be spent on implementation of A Vision for Change, but the €27 million disappeared down a black hole into other parts of the health service and was never spent on mental health services. With respect, the Minister having the ability to direct the HSE to publish is different from including it in legislation. There is an imbalance, as Senators on the other side of the House have pointed out.

Senator Ivor Callely: The Minister of State has indicated I can resubmit, but that is not what I asked her. I asked her to consult her departmental officials and indicate to us tonight that she would be prepared to reconsider this section. I will make a suggestion to her. I am aware the HSE's various service providers provide annual reports which are normally laid before the House. The wording refers to "the records and accounts". If a table is made available for public facilities, it should be exactly the same as that would be acceptable to the NTPF from the private operators, not the records and accounts. I know tables are provided by organisations such as Bru Caoimhin, St. Mary's and St. Clare's, but they are chalk and cheese in being different the records and accounts of a private operator. I am simply asking the Minister of State to tease out the issue when she leaves the House. We may or may not make progress. I am not asking her to give a commitment that she will come back to the House, but if she would accept there may be an opportunity to have parity and a level playing pitch between all the players involved — public, private, voluntary and charitable — by bringing forward a table, if we cannot come up with another solution.

With respect, I am concerned about how this may be interpreted by an official at a later stage. The content and context of what Members are contributing to the debate in this and the Lower House will not be in the record. What will be before a proprietor is that the NTPF will have the power to examine the records and accounts of the approved nursing home. All I am asking is that the Minister of State accept that there is an issue in this regard which all sides of the House have raised. There is a substantial amendment in the name of Senator Mullen and, while I am not saying it is fully correct, on reflection and following discussion with relevant stakeholders, we may be able to reach agreement to some degree, with the result that the position would then be fairly acceptable.

Senator David Norris: It is appropriate to examine these matters. Apart from anything else, this is State money.

Senator Ivor Callely: Nobody is denying that.

Senator David Norris: I know; I am just saying it. The Minister of State is defending the provision, as it stands, and seems to be subject to a degree of criticism from all sides. I have no difficulty with the board examining the accounts; it would be a scandal if it did not do so. Can one imagine what would happen if the newspapers were to get hold of this and found there was ridiculous overcharging and that we had been too paralysed to examine the matter? It is perfectly appropriate.

Senator Mary M. White: The market decides the price.

Senator David Norris: We should consider going along with Senator Mullen's amendment.

An Cathaoirleach: Is the amendment being pressed?

Senator Ivor Callely: Before moving forward, is there any indication from the Minister of State which might be helpful?

Deputy Áine Brady: I will certainly give thought to what has been said, but I cannot give any commitment.

Amendment put and declared lost.

Question put: "That section 40 stand part of the Bill."

The Committee divided: Tá, 22; Níl, 17.

Tá

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

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

Níl

Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.

Healy Eames, Fidelma.
McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Toole, Joe.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.

Tellers: Tá, Senators Fiona O'Malley and Diarmuid Wilson; Níl, Senators Maurice Cummins and Nicky McFadden.

Question declared carried.

Amendment No. 34 not moved.

Question, "That section 41 stand part of the Bill", put and declared carried.

Sections 42 to 48, inclusive, agreed to.

SCHEDULE 1.

An Cathaoirleach: Amendment No. 35 is out of order as there is a potential charge on Revenue.

Amendment No. 35 not moved.

An Cathaoirleach: Amendments Nos. 36 and 37 are related and may be discussed together.

Senator Frances Fitzgerald: I move amendment No. 36:

In page 64, lines 38 to 47 and in page 65, lines 1 to 3, to delete paragraph 7.

Senator Paul Bradford: I support the amendments. When the Bill was published, the initial response of most people was a general and guarded welcome to the proposal as it was felt it would put in place a system of care with a system of payment which was fair, reasonable, transparent and affordable to a reasonable extent. However, the fine print of the Bill was studied and in advance of the debate in the other House the issue came to light about the capping rule whereby the three-year cap would apply only to a private residence. This regu-

[Senator Paul Bradford.]

lation will have a negative effect and will impact on many people such as farming families and those with small businesses, who instead of having a repayment charge of 15%, 5% per annum for a maximum of three years, could instead have a repayment of 25% to 50% at the time of a bill finally issuing.

I appreciate that in response to the concerns and the arguments put forward, there was some degree of relief granted in the other House by way of a slight change in the technicalities of the scheme and it would provide that in a small number of cases where illness occurred in a sudden fashion, the three-year ruling would again apply. However, I am speaking about the majority of cases in so far as farming families and those with small businesses are concerned, who would not enjoy the relief offered by the Minister of State in the amendment put forward in the other House.

I am asking the Minister of State to reflect on the possibility of changing this section and the calculations as they are determined in the legislation to ensure that the 5% per annum with the maximum of 15% charge would apply in all cases. If this suggestion was not accepted, many people, farming families and those with small businesses in particular, could end up facing massive charges against their estate and this would be unfair. I hope the Minister of State will try to meet us some way on this issue.

Senator Frances Fitzgerald: Senator Bradford has pointed out the anomaly and injustice. The Bill as drafted has serious implications for farmers and small business owners. While nobody will end up paying more than the cost of care they receive, the deferred charge in the case of the principal private residence is capped at 15%, 5% for three years, but there is no cap on the deferred charge and other fixed assets such as land, farm buildings, commercial and investment property and small businesses which may not be hugely profitable. The situation could emerge where a person with a very valuable residence would be relatively undercharged. The Bill as drafted does not take into account the sustainability of farms or small businesses and it gives preferential status to principal private residences. This is a concern and there is also concern about the impact of the deferred payment on the viability of farms and small businesses.

The Minister of State introduced some changes on Report and Final Stages in the other House to the cap on farms and small businesses, but Fine Gael does not believe that these address the problem adequately. The Bill states that the three-year cap will not apply unless the person has suffered a sudden illness which caused the person to require care services, but there is no definition of what is considered to be a sudden illness. It may be that the illness is sudden but it may have been there for a long time and the person has only suddenly become aware of it. This issue is unclear in the Bill. It was a relatively late amendment from the Minister of State but I ask her to clarify that matter. The potential cost to people is significant.

The Bill requires the person to prove that a substantial part of the working day of the person requiring care services or his or her partner was regularly and consistently applied to farming the farm or carrying on the relevant business until the onset of the sudden illness or disability. This is a very strict criterion given the current situation in farming, with people sometimes working on farms and in the community. This is a very rigorous assessment.

We have concerns about the impact this will have, the cost to families and the viability of small farms and businesses, given the implications of the legislation and the lack of a cap on these assets.

Deputy Áine Brady: The Senator is proposing to delete paragraphs which I introduced on Report Stage in the Dáil. These paragraphs were introduced to address concerns expressed by

a number of Deputies on both Second and Committee Stages about the treatment of farms in the Bill. The effect of the amendments is to extend the three-year cap to farms and businesses in certain circumstances. The amendments provide that a farm or business shall be taken into account within the financial assessment for three years only in the following circumstances: where the person has suffered a sudden illness or disability which causes him or her to require long-term residential care; where the person or his or her partner was actively engaged in the daily management of the farm or relevant business up to the time of the sudden illness or disability; and where a family successor certifies that he or she will continue the management of the farm or relevant business. The policy intention underpinning the paragraphs is to safeguard the financial sustainability of family farms and businesses by ensuring that contributions from such assets are capped and fully quantifiable. As such, removal of these paragraphs would be detrimental to applicants to the scheme. I wish to highlight that the measures have been welcomed by the Irish Farmers Association. We envisage the majority of people would have transferred their farms or businesses more than five years before applying for the scheme, especially given that farming representative groups support early succession of farms. In this case, the farm or business will not be taken into account and no contributions will be payable.

The new measures I introduced on Report Stage in the Dáil address the situation where a person would not have had the opportunity to transfer such assets. For these reasons, I cannot accept amendments Nos. 36 and 37.

Senator Paul Bradford: The Minister of State said farming organisations have welcomed her proposed changes. Members of the Oireachtas take note of what representative groups say. It is my clear understanding that farming organisations welcomed her Report Stage amendments as a very small step in the right direction. They do not deal with the concerns of the 98% of farming families or small business owners who will not fall ill suddenly and have to take up places in a residential nursing home.

What was the thinking behind not having a cap? The Bill has been welcomed on the basis that care must be paid for and that a reasonable balance is struck by putting a 5% per annum charge, with a maximum 15% possible charge, on a person's private residence. Why was it decided that the 5% charge would be limitless as far as enterprise, business and agriculture was concerned? The Minister of State's response on Report Stage in the Dáil was to alleviate, to a very small degree, the difficulties caused by the original wording. When Deputies and farming organisations pointed out this anomaly, there was a reasonable degree of acceptance by the Minister for Health and Children that the matter needed to be addressed. The Government's response to the issue is inadequate. Nevertheless, I would like to know the thinking behind the idea of saying 5% of all assets could be charged with no limit on the size of the final bill.

I am not impressed by the suggestion that the threat of a huge nursing home charge will encourage farmers to transfer their farms at a younger age. While we all support the transfer of land to young farmers, everyone has a constitutional right to private property and we should not force people to transfer their assets. The Bill attempts to do that. Social welfare legislation uses the phrase, "for pension purposes", with regard to the transfer of assets to qualify for a means-tested payment. An asset which was transferred in the previous two to three years is taken into account when means are assessed. This Bill attempts to chart a new direction. It gives every possible wrong signal and it should be reversed. The Report Stage amendments deal with a tiny fraction of what could become a substantial problem.

[Senator Paul Bradford.]

When discussing an earlier section, I referred to the significant number of people who are afraid to grow old because of the financial concerns associated with doing so. This section will cause farming families, shopkeepers, publicans and owners of small businesses to fear that by the time they pass on to their eternal reward their asset will have a 100% charge due to the State. That should not result from this legislation. I hope the Minister of State will examine this matter and try to make genuine progress as opposed to the baby step which was the Report Stage amendment.

Senator Frances Fitzgerald: I agree with Senator Bradford. The Government has taken a very small step to address the serious issue of farm families confronted with having to pay for nursing home care. Such families could be exposed to huge costs and forced to sell the family farm to pay for nursing home care. A person who spends three years in a nursing home costing €800 per week will pay more than €124,000, which is 80% of disposable income. Despite the Government's amendment, the legislation has an unfair impact on such farming families or owners of small businesses. It could have serious implications for the ability of future generations to carry on the farming tradition.

Senator Bradford asked where the idea of not having a ceiling on charges on farming assets came from. Why was this approach taken to other assets when the limit on residences was clearly set at 15%? The Minister of State has not answered that question.

The question of transfer of ownership is of great relevance to farming families. The transfer of a family farm must have taken place at least five years before the time of the assessment of means to have it excluded from the assets for the purpose of the deferred charge. This presents difficulties. The Minister of State referred to the support of the IFA. That organisation's chief economist, Mr. Con Lucey, showed that where the value of the farm asset is excluded, the individual contributes 33% of the total cost of care and the State contributes 67% but where the farm asset is included, the individual carries 81% of the cost of care and the State carries 19%. That is not equitable. The five-year transfer rule will have serious implications for families and for the transfer of farms to a younger generation.

The amendments introduced on Report Stage in the Dáil do not address this serious issue. They go only a small way towards dealing with it. The interpretation of the sudden illness measure is far from clear.

Deputy Áine Brady: The measures are based on a proposal submitted to the Minister for Health and Children by the IFA. The 5% is consistent with the current subvention scheme. The interdepartmental working group on long-term care considered that this was a fair amount to contribute to long-term care. Bearing in mind that it is capped at the cost of the care, rich people may pay less than 5%. This measure gives owners of farms or businesses who have not had an opportunity to transfer their property to someone else an opportunity to cover the cost of their care at a capped cost of 5%.

Sudden illness and disability is not defined because it would be impossible to take account of all possible individual situations. As such, any definition could seem to exclude people who might otherwise benefit from these important measures.

Senator Paul Bradford: I wish I could say I felt the Minister of State had a sympathetic understanding of our argument. I feel she does not appreciate or understand the issue.

I repeat my question, which was also asked by Senator Fitzgerald. What is the thinking behind this proposal? Before any applicant comes to occupy a nursing home bed, a financial

assessment will have been made. The multimillionaires, be they captains of industry, huge landowners or even lottery winners, will not come within the system anyway because they will have been excluded by virtue of the earlier financial assessment. Every person who applies for and receives State support under this scheme will have already passed a type of means test so the super wealthy will have been excluded. That is not our concern. We have in mind the so-called ordinary people — a phrase I dislike — who might be the local shopkeeper, publican or farmer. I cannot understand how this idea of the 5% per annum, capped at 15%, does not apply to these people.

While the Minister referred to the farming organisations' request for particular changes, to which she acceded, she is absolutely aware that what the farming, business and other organisations sought was the application of the three-year rule. That is what we must try to bring about from the point of view of fairness and equity. Every applicant who is in receipt of support will have already jumped the hurdle with regard to the State's view of their cash, asset value and means. However, those successful applicants will be divided into two categories, the people who have a principal private residence which could be worth any amount and the people whose kingdom might consist of the old-fashioned cottage acre, which bizarrely would result in the 15% limit applying to the cottage and no limit applying to the acre. There will be such anomalies while this clause and thinking apply. We are not talking about the big stud farm owners but a person who might have just a cottage acre or a tiny shop. The Minister must reflect on this. If the legislation is about fairness and a fair deal, this is not fair or a fair deal.

Deputy Áine Brady: If I accept these amendments, there will be no cap because the Members proposed no alternative. The majority of people entering nursing homes are between 70 and 80 years of age and, as such, the majority of farms and businesses will have been transferred. These new measures will support people who enter at a younger age.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Senator Frances Fitzgerald: I move amendment No. 37:

In page 65, lines 4 to 16, to delete paragraph 8.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Question proposed: "That Schedule 1 be Schedule 1 to the Bill."

The Committee divided: Tá, 21; Níl, 16.

Tá

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

MacSharry, Marc.
Ó Domhnaill, Brian.
O'Brien, Francis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bradford, Paul.
 Burke, Paddy.
 Buttimer, Jerry.
 Cannon, Ciaran.
 Coffey, Paudie.
 Coghlan, Paul.
 Cummins, Maurice.
 Donohoe, Paschal.

Fitzgerald, Frances.
 Healy Eames, Fidelma.
 McFadden, Nicky.
 Mullen, Rónán.
 Norris, David.
 Regan, Eugene.
 Ross, Shane.
 Ryan, Brendan.

Tellers: Tá, Senators Fiona O'Malley and Diarmuid Wilson; Níl, Senators Maurice Cummins and Nicky McFadden.

Question declared carried.

Question, "That Schedule 2 be Schedule 2 to the Bill", put and declared carried.

Question, "That the Title be the Title to the Bill", put and declared carried.

Bill reported without amendment.

An Leas-Chathaoirleach: When is it proposed to take Report Stage?

Senator Donie Cassidy: Next Wednesday.

Report Stage ordered for Wednesday, 24 June 2009.

An Leas-Chathaoirleach: When is it proposed to sit again?

Senator Donie Cassidy: Ag 10.30 maidin amárach.

Adjournment Matters.

Domestic Violence.

Senator David Norris: I welcome the Minister of State. This matter concerns the Meath women's refuge and support services and the severe cutback in support made by the Government. I wish to give the context for this issue which concerns violence against women. The Minister of State, who is a cultivated, literate man from a cultivated, literate family will, I am sure, remember a very powerful work by Roddy Doyle entitled "The Woman Who Walked into Doors". This described a woman who was subject to consistent battering by her husband and who was in a situation of denial, which many women are. When they come out of that, they sometimes seek the support of services such as women's refuges. I have been aware of this issue for some time because one of the first times I did my James Joyce one-man shows was to raise funds for the women's refuge in Rathmines. At that stage, I was briefed by them and discovered the vital nature of the services in which they are involved.

Cutbacks in these kinds of areas, where people are very vulnerable, are a direct contradiction of what was said by a Government spokesman when people like me on this side of the House said we would support the Government in the difficult economic circumstances as long as the most vulnerable people were not targeted. It seems vulnerable people are targeted repeatedly.

It is for that reason groups such as the Equality Authority and the Combat Poverty Agency were systematically dismantled by the Government.

The facts about domestic violence in Ireland are very worrying. Some 146 women have been murdered in the Republic of Ireland since 1996. Of the 107 resolved cases, 50% were murdered by a partner or ex-partner. Last night a programme on RTE gave extensive coverage to the murder of a young Sligo woman who was murdered by a former partner, a man who was apparently in love with her. He murdered her and skipped across the Border. He was incarcerated in a mental facility but is now living within a short distance of the family. Some 50% of this large number of murders were carried out by a partner or former partner or spouse. Some 92 women, 63%, were murdered in their own homes. This demonstrates the nature or type of the murderer and the location.

In 2007, almost 3,000 children were accommodated in refuges around Ireland. The majority of women accommodated in refuges have at least one child. Some 64% of Irish women who experienced domestic violence reported that their children had witnessed the violence. There is, therefore, continuing damage. In such cases it is psychological damage, the damage of trauma and of seeing one parent savagely abuse another.

Since its establishment, the refuge in Meath has provided crisis accommodation to 1,377 women and 2,343 children to the end of 2008. The specific situation that affects the Meath women's refuge and support services is as follows. Recently a cut of 30% in funding has been implemented. The refuge was informed of this cut without notice or negotiation at a meeting on 8 April 2009. The budget cut, of the order of €10,000 per month or €120,000 per year, was implemented from 1 April and will continue indefinitely. If it continues, the services will be severely curtailed.

The Meath women's refuge and support service is a registered charity governed by a board of management. It has been in operation for the past 21 years, and provides a wide range of services to women in the Meath area who are victims of domestic violence. Such services include crisis refuge accommodation for almost 1,500 women and 2,500 children in that time. The refuge has a very good reputation and is highly regarded professionally. It has worked closely and positively with State agencies, community services and local businesses. The refuge takes referrals from a wide range of organisations in Meath, including the HSE, for example, social workers, public health nurses, general practitioners and accident and emergency units. It has a kind of semi-State function.

In 2008 the organisation received €331,167 from the HSE for refuge provision and accommodated 71 women and 90 children. Demand for the services is very high and increasing. The annual cost for providing safe accommodation and support to each woman and child is approximately €2,050. For many, and this is crucial, this is the cost of keeping them alive. It was for that reason I provided the statistics on murder and its context and the relationship between the murderer and the victim. The cost of keeping someone alive, at €2,050, seems to me pretty good value. The refuge also gives these very vulnerable women and children the support to live their lives safely. There is no alternative service in Meath. If the refuge is inhibited or closed, there is nothing to take up the slack. If this service was provided directly by the State, it is estimated the costs would be three times greater, about €6,000 per person. The 30% reduction in the budget of €10,000 per month will have serious implications for the vulnerable women and children from Meath who avail of these services. I ask the Minister of State to revisit this situation in light of the serious situation that has been precipitated by this severe cutback.

Minister of State at the Department of Health and Children (Deputy Barry Andrews): I am taking the Adjournment matter on behalf of my colleague, the Minister for Health and Chil-

[Deputy Barry Andrews.]

dren, Deputy Mary Harney. I thank Senator Norris for raising this issue and welcome the opportunity to set out the position on the matter.

The service in question is funded by the HSE, by Meath County Council and also by a vigorous local fund-raising initiative. I compliment the organisers of the service in this regard. I understand the service has a total of nine staff and provides services to a maximum of five women and their children at any point in time. Last year the HSE provided €408,000 towards the cost of running this service. In the context of the statutory requirement on the HSE to live within its financial allocation, the executive is reviewing the level of funding for this and other services. Currently, more than 100 local organisations are funded by the HSE in County Meath.

In regard to the Meath women's refuge and support services, the executive also wishes to discuss the service delivery model for the future. I am advised this service is primarily focused on providing a residential facility and that the HSE wishes to re-orient its services to operate on an outreach approach while at the same time recognising that cases can arise where a residential intervention is required.

I understand a meeting has already taken place between officers of the Health Service Executive and the representatives of Meath women's refuge and support services and that a further meeting is scheduled for 23 June. The level of funding and model of service delivery fall to be discussed in the course of this process. This dialogue between the HSE and Meath women's refuge and support services is the best way to take the issue forward. I am confident that, given constructive engagement, it will be possible to build on the success of Meath women's refuge and support services and address the genuine concerns of the executive about its statutory requirement to live within its allocation and provide a state-of-the-art service in this important area of social provision.

I understand the Health Service Executive is putting in place a system of service level agreement. This will be an important next step in establishing robust governance arrangements in the case of this service and across the entire range of services funded by the HSE. In the current economic climate it is more important than ever to ensure that while services are protected, we also achieve value for money and that services are underpinned by the best possible governance arrangements. The best way forward appears to be on the basis of constructive engagement and I am confident progress can be made on this basis.

Senator David Norris: I thank the Minister of State for his response which provides some, albeit very little, comfort. While I understand he spoke on behalf of the Minister for Health and Children, Deputy Harney, I welcome his acknowledgement that Meath women's refuge and support services provides a valuable service and enjoys an excellent reputation. However, as to his subsequent reference to fund-raising, it is truly awful that vital services such as the Meath women's refuge and other services such as schools and so on are dependent on people raising funds. This was the attitude taken even during the Celtic tiger. The worst aspect of the reply——

An Leas-Chathaoirleach: The Senator must ask a question.

Senator David Norris: This will eventually resolve itself into a question.

Senator Fidelma Healy Eames: At midnight perhaps.

Senator David Norris: Not quite. I will put a question if the Leas-Chathaoirleach requires that little flourish. I ask that the Minister of State request the Minister to justify the ideological approach evident in the statement that "the HSE wishes to reorient its services to operate on

an outreach approach". Are we honestly suggesting this should be the case? We are talking about women who are being battered in their own homes, while the Minister of State and the Health Service Executive are talking about outreach. The HSE wants to put vulnerable women where they can be battered again. That is one of the most disgraceful comments I have come across.

I note a meeting is scheduled for 23 June. The reply refers to dialogue which I hope will take place in order that vulnerable women will not be exposed to risk and danger. How will the people who are twiddling their thumbs and coming up with ideas about outreach and returning women to the community and all of this kind of stuff which is nothing other than crap when applied to this area respond if and when someone who has applied to be admitted to the Meath women's refuge is found murdered after her application has been denied?

Deputy Barry Andrews: The answer I provided encapsulates the Health Service Executive's view of how this matter should be addressed. It recognises that there are circumstances in which a residential service will be required because of the nature of the incidents which give rise to referrals to the service in question. It is clear to me, as Minister of State with responsibility for children, that children are involved in these cases. Removing a child from the family home should always be the last resort. This is recognised as best practice in social work.

When domestic violence occurs, one has a *prima facie* case for removal of the victim of violence and the children involved. Nevertheless, we must remember that when children are involved, the best outcome at all times is for services to be wrapped around the family and the interventions required are provided for. We have to move away from a fully fledged interventionist approach which results in the break-up of families. While I am not suggesting Meath women's refuge and support services is governed by such a philosophy, we must challenge ourselves to ensure children are kept in families and that every possible step is taken before a child is removed from a family. That is the consideration outlined in the response.

Senator David Norris: I thank the Minister of State. To make a final point——

An Leas-Chathaoirleach: There is no provision for further questions or any questions for that matter.

Senator David Norris: ——families are broken up only in the most exceptional circumstances. We are not breaking up families. I do not want to return to the days when people would not interfere in domestic disputes because they considered them a family matter. Women and children need to be protected from this type of damage.

Early Childhood Education.

Senator Fidelma Healy Eames: I compliment Senator Norris on raising the issue of domestic abuse and making a valid case for protecting women who are at risk of domestic violence. I am worried about how prevalent the circumstances he describes may be across all counties.

I welcome the Minister of State. It seems every issue I raise falls into his lap. When one considers that he is responsible for the issues of child protection, child abuse, adoption and the issue of pre-school education which I propose to discuss, he is clearly busy and has an explosive portfolio. I ask him to outline how he plans to address the current shortcomings in the pre-school education scheme planned to commence in January 2010. I refer specifically to the availability of places in the light of the funding cap; the availability of appropriate specialist teaching personnel, given that such personnel have not yet been trained in the curriculum; the proposed pupil-teacher ratio; and training in the pre-school curriculum which needs to be associated with the provision of quality pre-school education.

[Senator Fidelma Healy Eames.]

The proposed scheme has considerable merit. As Senator Keaveney will be aware from the deliberations of the Joint Committee on Education and Science, I am involved in a robust research project on early school leaving and drop-out rates. One of the best services we can provide is quality pre-school education. I refer, for instance, to one such scheme which has been in operation in the United States for many years. Empirical evidence shows that quality pre-school education with proper monitoring and qualified pre-school teachers give the best return on investment. One such scheme, the Perry programme in the United States, is associated with a low pupil-teacher ratio, group meetings with parents, specialised training for teachers and a specifically designed curriculum. According to conservative estimates, the scheme yields a return of \$2.30 on every dollar invested by the time participants are aged 20 years. By the time they were aged 40 years, this return had increased to an estimated \$12.90 for every dollar invested, giving a ratio of almost 13:1. Moreover, it resulted in sustained increases in achievement, higher graduation rates at upper secondary level, higher earnings and lower rates of arrest. The savings arise from increased tax revenue, health and welfare savings and reductions in costs associated with crime rates. This type of programme is of particular benefit to children from disadvantaged backgrounds.

We must aim to achieve these long-term outcomes. The Minister of State will be aware that one in six children in the State drops out of education before the leaving certificate. The pre-school scheme provides a wonderful opportunity to address this problem, but, based on the shortcomings of the proposals, I fear it is likely to fail. I respectfully propose to highlight these shortcomings as I know the Minister of State has an important meeting tomorrow with private pre-school providers who are also concerned about the scheme.

I understand that, on the basis of age, 81,000 children will qualify for the new pre-school scheme from next January. Based on a pupil-teacher ratio of 8:1, we will need 10,000 qualified teachers. I understand the Minister of State wishes pre-school teachers to attend training in Sólta and its associated curriculum, Aistear. However, I learned in the past 24 hours that this training is to be provided in 2010, whereas the scheme is due to commence in January. I ask the Minister of State to enlighten me as to how those who have FETAC level 6 qualifications and above will receive the appropriate training in the curriculum framework the Department wishes them to deliver if it does not provide this training in advance of the date of the start of the scheme.

Other concerns about the pre-school scheme include the cap of €64.50 the Department proposes to apply for five days pre-school education a week.

The first one is that due to the high cost base that these providers are already experiencing, they cannot afford to subsidise the scheme. They are operating within tight margins with, effectively, fixed labour and premises costs that they have little capacity to reduce. They are restricted by the size of the premises and the pupil-teacher ratio regulations. This scheme caps their fees at a level which does not cover their costs.

I am thinking of the children and the availability of places needed. I ask the Minister of State to allow these providers to top up their fees so that they can be financially viable for the sake of the provision of places.

An Leas-Chathaoirleach: The Senator has one minute.

Senator Fidelma Healy Eames: For example, there are providers in Galway alone who explained to me that, based on the Department paying them for 38 weeks and the fact that they need to operate for 52 weeks or, at worst, 42 weeks, giving the parents ten weeks off, they will lose between €13,980 and €34,180 a year. That is a great deal of money.

This scheme will result in a large loss in child care places. A five-day service requirement will result in places not being fully utilised. Parents will not use the five days, leaving classes partially occupied. Parents should be allowed the choice of a shorter week on a sessional basis for their children legitimately within the scheme and I ask the Minister of State to look carefully at the model in the UK of a daily subsidy-based scheme.

An Leas-Chathaoirleach: The Senator has gone way over her time.

Senator Fidelma Healy Eames: I also point out that the scheme will result in job losses in the system, will do lasting damage to the quality of child care and, critically, will take choice from parents. The scheme was implemented without consultation with the providers. I ask the Minister of State to seriously consider reviewing the scheme at this point so that it works to provide for the outcomes for which it has the potential to provide. I compliment the Minister of State on bringing it in, but there is no point in bringing in one that will not deliver on quality outcomes.

I look forward to hearing the Minister of State's answers based on the questions I asked in this debate.

Deputy Barry Andrews: I have responsibility for the implementation of the new scheme to provide a free pre-school year of early childhood care and education, to be introduced from January next. This scheme's introduction is one of the most significant developments in early childhood care and education which has taken place in Ireland to date. Building on the progress made over the past decade, we are now taking a major step in providing universal pre-school education for all children.

Children will be eligible where they are aged between three and a quarter and four and a half on 1 September of each year. Flexibility exists where a child has special needs, or to accommodate children due to the enrolment policy of a local primary school. Where children attend a sessional playschool, they will receive three hours per day each week over 38 weeks. A number of alternative options exist which amount to an equivalent level of provision over the course of the year.

An annual capitation fee of over €2,400 will be paid to participating services. This is equivalent to €64.50 per week where a service is participating for 38 weeks. Services will be paid in advance at the start of each term. Services may charge parents for additional services, provided these are clearly optional. These include additional hours and additional services in the form of activities or services such as outings, birthday parties, dance classes or food. However, these must be optional and appropriate programme-based activities must be provided for children not participating in an optional activity.

The precise number of children who will avail of the scheme in a given year will vary, with the birth rate approximately four years before enrolment. Children in the scheme in January 2010 will generally have been born between March 2005 and June 2006. While there are more than 70,000 children in the age range eligible under the scheme and provision has been made for this level of attendance, it is anticipated that 64,000 are likely to avail of their pre-school year in January 2010.

A sufficient number of places are expected to be available, based on capacity in the sector, and it will be open to almost 5,000 services to participate. Services started applying last week and the indications are that there will be a very high level of take-up. While some have argued for a higher capitation rate, most services have expressed strong support for the scheme. The level of capitation exceeds that proposed under the NESF's free pre-school year proposal and is far higher than the £30 per week paid under the equivalent scheme in Northern Ireland. For

[Deputy Barry Andrews.]

most services, this will see an increase in their income, allowing them to meet the higher standards required, relative to the existing requirements under the child care regulations.

The scheme was debated last month in Dáil Éireann. While some opposition Deputies acknowledged the great step forward it represents, there were also contributions from others, who while trying to claim that they supported a free pre-school year, simultaneously argued that services should be allowed charge fees from parents. If services could charge fees, many would do so, and the scheme could quickly become inaccessible for disadvantaged families. Given that research shows these are the children who benefit most from pre-school, this is not an outcome that I could stand over.

The same debate saw Deputies argue that there was too little detail available at the announcement of the scheme, yet too many of the details were set in stone. Of course, the budget announcement outlined the main details of the scheme and the following weeks allowed me and my officials to meet stakeholders to ensure that the operation of the scheme is fair and effective. I have endeavoured to respond to concerns raised in a flexible way.

The required staffing ratios are those provided for under the child care regulations, that is, 1:8 in full day-care settings and 1:10 in sessional services. The scheme will be delivered by qualified pre-school leaders and assistants.

In recognition of the complexity of the educational attainment of staff within the sector, in the first two full years of the scheme, where pre-school leaders have an appropriate award in early childhood care and education and have at least two years appropriate experience, they will meet the qualification requirement. Thereafter, all lead staff will be required to have achieved a major award in early childhood care and education.

Practitioners who currently cannot achieve this status will be facilitated by the workforce development plan, which will address issues such as access to education and training. A national consultation process on the plan was launched last week and will conclude this autumn, and the plan is to commence in early 2010.

There have been queries regarding curriculum. There is a variety of approaches to early learning, such as Montessori, Steiner-Waldorf and High/Scope. All these will be accommodated within the national frameworks for early education developed under Síolta and Aistear, both of which guide the scheme and the programme based activities which will be provided.

I am delighted that the Government has made the far-sighted decision to introduce this scheme. It will give equal opportunities to all children, particularly the most marginalised who would not otherwise be able to attend pre-school, as well as helping parents who up to now had to meet the cost of pre-school provision themselves. It will also benefit services which will gain certainty and sustainability in what are, for most, trying times.

Time and effort will be involved to ensure the greatest possible levels of participation in the scheme and to reach the highest standards of early years care and education provision. However, I am confident that the scheme provides the framework to achieve this ambition.

Senator Fidelma Healy Eames: The marginalised benefit from community child care provision. I am speaking about the fall-out from the private providers. The aim of this, I understand, is to reduce the cost of child care. However, the focus should be on reducing the cost in a controlled manner that avoids massive reductions in the availability of child care places or an unacceptable reduction in the living standards of those who work in the industry. Will the Minister of State allow for providers that qualify for the scheme based on reasonable limits to top up the fees so that they can remain viable because he will need them to provide the amount of places?

Deputy Barry Andrews: As I stated, I do not believe that would achieve the goals that the Government is seeking to achieve. It is clear from all the statistics that well-off people put their children through pre-school and it is the disadvantaged who do not benefit from it.

As Senator Healy Eames stated, the return for each unit invested in early childhood care and education is significant. She quoted \$12 from an American study. I have seen figures of over £7 for every £1 invested in the UK, for example.

There is still time to create as much flexibility for providers as possible. However, we cannot depart from the simple principle that it needs to be free pre-primary school education and, therefore, there will be equal access and children will be properly motivated and will have personal development at an equal level when they present at junior infants. Any junior infants teacher will tell you that he or she can almost tell a child's life plan when the child arrives in junior infants. We need to ensure that we take this crucial opportunity to provide universal free pre-school for every child in this country.

Senator Fidelma Healy Eames: I welcome the point on flexibility. I thank the Minister of State.

School Day Extension.

Senator Cecilia Keaveney: I thank the Minister of State, Deputy Barry Andrews, for taking my adjournment motion at this late hour, which relates to extending the school day. I suppose it may seem strange to speak about extending the school day at a time when many schools are under starters orders to close for the summer and some have already closed. I draw to the attention of the Minister of State and the Minister for Education and Science, Deputy Batt O'Keeffe, the initiative that has been in operation in some schools in the North so that we can explore the potential for a similar project in this jurisdiction. It could be argued that we have lot of it in Ireland already but perhaps it is not as co-ordinated as I would like to think and is not as far-reaching as it appears to be in the North.

Too often we bemoan the fact that the school day is over between 3 p.m. and 4 p.m. and the facilities are, in the main, left idle until 9 a.m. the next day. Often those bemoaning this fact are local sports clubs that are stuck for an indoor or outdoor training space or local community activity groups which need room for drama, band practice and so forth.

The project of which I have been made aware involves schools opening their doors for longer and bringing in outside organisations. Such extended school opening aims to improve the chances of pupils and parents in deprived areas. We have just discussed deprived areas and, as an aside, I ask the Minister of State to examine the issue of rates. If we can exempt preschools from rates we might have more scope for people to make money from the capitation they receive.

The out-of-hours learning service gives support to pupils who are reaching out to rather than rejecting education. It was initiated in the North in 2006 and 500 schools across the region, including 125 in Belfast, are supported. The funding has come from a source separate to the main education budget to support breakfast clubs, computer classes, after-school study, sports, counselling and other activities supported by the school, and transport is organised to pick the children up when they have finished their activities. The scheme assists pupils and their parents to gain self esteem and, in so doing, encourages them to achieve more. It is a win-win cycle, even in the fact that congestion at a particular time is now averted because not everyone is finishing school at the same time.

Two examples I have read about are the girls' and boys' model schools in north Belfast. Anyone who knows the area knows the pupils come from a deprived background and the

[Senator Cecilia Keaveney.]

statistics do not show such children as having significant employment potential. A full service programme is provided to students, their families and local people on a year-round basis in school and after school. It has raised expectations for a community whose expectations, given recent census information, would not have been high.

The extended schools are experiencing increased attendance, a reduction in drop-out rates and improved achievement. For example, some of the students can deliver lessons in subjects they are strong in. Non-national children can teach their classmates or community a new language. This has implications in terms of confidence for the young teacher and scope for understanding other cultures.

For those whose attendance is not good, the home links teacher, which I assume is similar to our home-school-community liaison scheme, can help identify underlying problems the student may be having and a counselling need, which is what makes a difference. If counselling is integrated, children who have been identified as needing it can receive it.

Parents can take GCSEs, which are similar to the junior certificate, in mathematics and English or courses in formal areas such as astronomy or ceramics. Such personal development is invaluable to their employability as they are encouraged in self-development and further study. It also enables parents to help their children with their studies because they understand the difficulties or have made themselves more proficient in a particular skill.

The transfer for students from primary to secondary school is focused upon and a transition teacher assists with the process, especially for vulnerable children with learning difficulties or physical disabilities who can be supported in coping with the change. Home link co-ordinators offer one-to-one parent advice to improve parenting skills. Parents also have their voice heard as they have an input into school decision making to a certain level.

This holistic approach is worthy of comparison. I understand we have many aspects of what I have outlined, but in my area it was recently announced that rural co-ordinators for schools, such as the one for five schools in Clonmany, have been withdrawn. I am aware the schools concerned had a person who was able to reach out into their community and was doing significant work with families and not just students. What is worse is that these schools are likely to re-qualify for full DEIS status when a review takes place soon.

I would like to see the year-round element of our school infrastructure being developed. I ask the Minister of State to promote the concept of national group insurance to overcome insurance difficulties that may be cited and work through all the issues that may be presented by unions and other people to ensure our opportunities are maximised and not minimised, whether we are discussing one part of the year or another.

Surely raising expectations, offering more variety, and keeping the students gainfully occupied while offering parents opportunities to develop themselves is more necessary now than ever. Have we started the process or are we well down the road? I listened to a recent radio programme about summer schools where there was an argument about whether children should be involved in them or free to do whatever they want to do. There was a strong argument for like-minded children, such as those who like football, chess or mathematics, to be given the opportunity during the summer to come together across all sorts of divides and barriers, be they economic or at any other level.

It has proven to be a very positive experience for children. We should not rule out the concept of having our schools and facilities open not only to the students but also to the communities, not just during the school time of winter, autumn and spring but also during the summer.

Deputy Barry Andrews: I am taking this Adjournment matter on behalf of my colleague, the Minister for Education and Science, Deputy Batt O’Keeffe. I thank Senator Keaveney for raising this matter. The requirements overall in schools are that children should be under the supervision of the school staff for the duration of the school day. While schools are encouraged to use visiting speakers and to promote integrated in-school and out-of-school links which enrich the curriculum, and while liaison between home school and community is encouraged, the policy is that the use of such inputs should be based on an educational continuum co-ordinated and planned by the class teacher.

The out-of-hours school learning initiative in Northern Ireland provides for additional funding of learning activities outside normal hours in which young people take part voluntarily. It includes activities such as homework and revision clubs, help with key skills, sport, games, creative activities, mathematics, information and communications technology, residential events, volunteering and community service, mentoring and specific hobby or special interest clubs. These are normally school-organised activities which take place before or after school, during lunch times, at weekends or during holidays.

In the South, many schools have traditionally provided extra curricular activities as a means of enriching pupils’ experience of the curriculum as well as providing a variety of means to extend learning during the school day beyond the classroom. Our schools have a long and proud tradition of developing sport outside of the school timetable.

In the arts, the Department of Education and Science and the Arts Council have jointly published artists in schools guidelines to promote arts in education practice. It provides for local artists or organisations from a wide range of art forms to collaborate with schools to enrich and extend children’s experience of the curriculum in school and out of school.

Under the DEIS programme the Department provides additional teaching supports and non-pay funding to schools designated as disadvantaged to support them in the implementation of a targeted action plan to promote the achievement of children at risk. Breakfast clubs, homework and after-school clubs, summer camps, literacy through the arts initiatives, youth work activities and collaboration with community organisations form an important part of the approach. Business in the community partnerships and mentoring schemes are also offered. These initiatives place a key emphasis on promoting confidence, self esteem and student engagement, and providing for active learning and success.

A student enterprise award scheme is run by the county and city enterprise boards in which 12,000 students participate annually. Some 5,000 students per year participate in the young social innovators programme which is designed to promote social awareness among students in schools providing transition year. In addition, the young scientist and technology exhibition is the largest and longest running science and technology exhibition for primary and second level students in Europe. It is visited by thousands of students each year and attracts wide-scale media attention.

Under the discover science and engineering initiative, schools are encouraged to take part in visits to discovery centres, field trips and science and engineering events designed to stimulate interest in career options in these areas. Our schools co-operate wholeheartedly in providing opportunities to extend the curriculum beyond the classroom. This involves extensive voluntary collaboration between schools and communities.

The Minister for Education and Science, Deputy O’Keeffe, is satisfied that our schools provide a range of stimulating and innovative opportunities for students which extend and enrich the curriculum, expand learning beyond the classroom and promote integrated community links. In view of this, there are no plans to replicate the out-of-hours school learning

[Deputy Barry Andrews.]

model in the South. I again thank Senator Keaveney for providing me with the opportunity to address the House on this matter.

Senator Cecilia Keaveney: I thank the Minister of State for his reply. I accept the Minister for Education and Science, Deputy Batt O’Keeffe, has outlined his knowledge of what is going on in the North. I ask the Minister of State to pass on to the Minister for Education and Science my belief that his answer refers to students and in particular high-flying students. I referred to families, communities and students in disadvantaged areas. We still have things to learn about what is happening in such areas and there are many things we could show them. I ask that the Minister talk more with his Northern counterpart about this matter. I accept the Minister of State is not responsible for this but perhaps he will pass on my comments.

Deputy Barry Andrews: There is a very interesting article in *The Economist* this week on the three-month holiday our schools have which refers to the fact that children from disadvantaged backgrounds fare worst as a result of them. President Obama is arguing very strongly against such long holidays. It is something we should all consider.

The Seanad adjourned at 11 p.m. until 10.30 a.m. on Thursday, 19 June 2009.