

SEANAD ÉIREANN

Dé hAoine, 3 Iúil 2009.
Friday, 3 July 2009.

Chuaigh an Cathaoirleach i gceannas ar 10 a.m.

Paidir.
Prayer.

Business of Seanad.

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

The need for the Minister for the Environment, Heritage and Local Government to provide support for the application by the Kilavullen housing association, County Cork for grant aid under the sheltered housing scheme.

I have also received notice from Senator Paschal Donohoe on the following matter:

The need for the Minister for Social and Family Affairs to review the back to education allowance scheme so that people claiming jobseeker's allowance, who have been accepted by third level institutions for a masters degree, will be considered eligible for this allowance.

I have also received notice from Senator Denis O'Donovan on the following matter:

The need for the Minister for Transport to make a statement regarding the withdrawal of the Bus Éireann service from Baltimore to Skibbereen in west Cork and the adverse affect it will have on the island community such as Cape Clear and Sherkin Island as well as to the village of Baltimore.

I regard the matters raised by Senators Bradford and Donohoe as suitable for discussion on the Adjournment and they will be taken at the conclusion of business. I regret I have had to rule the matter raised by Senator O'Donovan out of order because the Minister has no official responsibility in the matter, which is one for Bus Éireann.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, Criminal Justice (Miscellaneous Provisions) Bill 2009 — Second Stage, to be taken on the conclusion of the Order of Business and to conclude not later than 2 p.m. if not previously concluded, with the contributions of spokespersons not to exceed 12 minutes and those of all other Senators not to exceed eight minutes. Senators may share time.

Senator Liam Twomey: Fine Gael opposes the shortening of the Order of Business. There should be a full Order of Business in the House.

[Senator Liam Twomey.]

I ask the Leader to ask the Minister for Health and Children, Deputy Harney, to address the Seanad.

An Cathaoirleach: The Order of Business has not been shortened, it started earlier. That is the only change.

Senator Liam Twomey: That is fair enough.

Senator Donie Cassidy: That is good news.

Senator Liam Twomey: If the Minister for Health and Children is in a position to discuss with Fianna Fáil backbenchers the cuts of €1 billion proposed in the health services, surely she should address both Houses of the Oireachtas. In this way, we could all be aware of what is happening in services as sensitive as the health services. Cuts of €1 billion are significant in the health service. I seek an immediate debate on this issue and that the Minister for Health and Children address the debate.

I ask the Leader to examine the matter of legislation on IVF. We have discussed this many times, it has been raised at least every term for the past ten years. The discussion on Michael Jackson's children brought it to my mind. They say he might not be the biological father of his children, that the mother may not be the surrogate mother of the children and that a surrogate may have been involved in one or more of his children. Would any western country allow this to happen unregulated? There is no legislation governing this issue. If all these things about Michael Jackson's children were true and happened in Ireland, no regulation or rule would govern it. What about when the children grow up and read these reports? This country has no regulation governing IVF even though it has been raised consistently over the past decade. Something should be done about it.

Senator Rónán Mullen: I draw the attention of the House to the establishment of an important legal point, unusually, in the District Court. This is the ruling by Judge Harnett recently that a person cannot insult another person by communicating via an animal. It will be of interest to my Fine Gael colleagues to note that this arose in a dispute reported in *The Irish Times* between Councillor Bambrick of Bagnelstown Town Council and a fellow Fine Gael activist, Mr. Larry Byrne.

Senator Eugene Regan: No names.

An Cathaoirleach: We do not know where this will finish and I do not want names mentioned.

Senator Rónán Mullen: I will mention no more names.

Senator David Norris: Senator Mullen can mention the animal. Perhaps it was an ass.

Senator Jerry Buttimer: It is well suited if that is the case.

Senator Rónán Mullen: One man had instructed his dog not to approach the other when the two men crossed paths and to come away from the man or the dog would be contaminated. The judge says this comment could not be construed as an insult because he was talking to his dog.

Senator Eugene Regan: Senator Mullen is barking up the wrong tree.

Senator Rónán Mullen: The moral of the story for our Fine Gael colleagues is that they should keep some of their activists on a lead.

We discussed defamation law briefly last week in the context of the important award made against Independent Newspapers. I draw the attention of the House to an excellent article written by my colleague in the Law Library, Mr. James McDermott, which echoed a feeling I have expressed. My concern about the relaxation of the defamation laws in the proposed allowing of a defence of a fair and reasonable publication, which I oppose, is balanced by the strong case to be made for requiring judges and not juries to make awards in libel cases. I said this during our discussion of the Defamation Bill on Second Stage and Committee Stage. Mr. McDermott quotes Lord Bingham in a case involving Elton John about the problem of trial judges leaving juries to their own devices to pick out of thin air the appropriate figure for damages. This leaves jurors in the position of “sheep loosed on an unfenced common with no shepherd”. That illustrates the point very well. The Defamation Bill has not yet returned to the Seanad but I hope it is not too late for that point, that judges rather than juries make libel awards, to be considered.

According to a report in *The Irish Times* today the cost of running the Oireachtas is to be reduced by €40 million. This is welcome. It is clear it will be a leaner and meaner establishment, but could it also become greener?

Senator Terry Leyden: Join the Green Party.

Senator Rónán Mullen: In my office we are swimming in paper. Is it necessary to use quite so much paper? Legislation is sent to every person when it could be made available on-line and people could download it as they see fit. I am sure this matter has been raised and discussed previously, but it needs to be discussed again.

Senator Alex White: I have a simple question regarding the business of the House as we approach the end of the session. It has been asked in the House previously but I have never heard a satisfactory answer.

Senator Paul Coghlan: The Senator should not hold his breath.

Senator Alex White: Why is it that for many weeks there is little or legislation before the House but in the two or three weeks before the end of the session there is an extraordinary flurry of activity with measures being introduced and pushed through both Houses as is happening again now? Why is it that the Minister, the Department or those who manage the flow of business to the Houses cannot pace themselves a little better throughout the year? Why can legislation not be introduced in the House periodically in a manner that will allow it to breathe, as it were? The Leader often says he does not guillotine legislation and that is true, but that misses the point. It is not a question of saying we can have an hour or two to read the legislation but of allowing the public to consider important legislation over a period of weeks. I am not suggesting that the Government never makes an effort to do that. In fairness, it does. However, that should be the universal approach to legislation, unless it is genuinely emergency legislation which must be put through the Houses in a period of days.

I have in mind some of the criminal justice legislation we are dealing with this week. There are two Bills this week and I presume the Criminal Justice (Amendment) Bill will be introduced in the House next week. The latter includes proposals for the considerable curtailment of the liberty of the citizen. It may well be that this is justified and that Members of the House support it but it is one of the most serious actions a parliament can take. The guarantee of last September is probably the most serious action a parliament can take in that it mortgages the

[Senator Alex White.]

future and future generations. However, in terms of the liberty of the citizen the proposed legislation provides for the expansion of the use of the Special Criminal Court and removing the important protection that juries provide. I disagree with Senator Rónán Mullen regarding any further restriction on the use of juries. In the criminal context, in particular, it is a further restriction on the liberty of the individual, as is the introduction of secret hearings in the District Court regarding detentions and so forth. I appeal to the Leader to ensure, especially with legislation of this nature, that the public and the Houses be given an opportunity to consider such legislation over a longer time span. It should certainly be over a period of weeks and not days, as is now being proposed.

Senator Terry Leyden: Will the Leader invite the Minister for Health and Children to the House to discuss the swine flu problem which is occurring in different locations throughout the country? The principal of Roxboro national school in Roscommon was contacted recently by the parent of a child who had the virus. He speedily contacted the HSE and the parents of the other children. There was a meeting and this allayed the fears of the parents and pupils of the national school, which is just a few miles outside Roscommon town. I pay tribute to the speedy action of the principal, his staff and the HSE. The fact that they met with the parents to discuss the issue allayed the parents' fears. It is a worrying issue. People have died from swine flu in other countries but the flu is manageable. Perhaps the Minister could come to the House and outline what action is being and will be taken to prevent the spread of swine flu. There are approximately 100,000 cases in the UK at present, which is unbelievable. There should be an opportunity to put on record the fact that action can be taken speedily. The HSE, which usually does not get much praise, can be given credit in this regard.

Senator Paschal Donohoe: The Exchequer figures that were published yesterday will probably be debated in the Dáil today. Will the Leader ensure time is allocated next week to debate them in this House? There is a deficit of almost €15 billion halfway through the year. A total of €6 billion of that €15 billion was the cost of putting additional money into our banks. As a result of these figures one of the main rating agencies, Moody's, has again downgraded the rating of Irish Government debt. This has a crucial effect. It means the Government, on behalf of Irish taxpayers, will have to pay more to borrow money in international money markets. In all the debates that took place on the banking crisis and the solutions to it, the Government continually assured us that the taxpayer would not have to pay a single cent to save the banks. However, the figures released yesterday and the decision made by Moody's show that this is not the case. The taxpayer will pay. This shows that the Government is either not telling the truth about this or is looking to avoid the truth when it can. Will the Leader ensure time is allocated to discuss this next week and regularly in the new session?

Senator David Norris: Earlier this morning a press conference and briefing was held by the Irish Council for Civil Liberties on the Criminal Justice (Amendment) Bill. I was the only Member of the Oireachtas who attended, which is a pity. I hope Members will take the opportunity to familiarise themselves with the brief that has been made available to them on this important matter. What is happening is extremely dangerous. Senator Alex White is 100% right. It is proposed that people can be convicted on the word of a garda and that they can be detained and their detention continued as a result of an *ex parte* application. In other words, they are not necessarily informed and are not represented. The Bill proposes that applications for warrants must be heard in secret, regardless of whether the judge or the Garda want this. This type of legislation was thrown out by the House of Lords. One of the noble lords in Westminster said that the threat to democracy comes not from terrorism or gangsterism but from this type of law. Similar provisions were thrown out by a committee of the Houses after

the Hederman report because they are a violation of democracy. It is very dangerous to rush such measures through, with a guillotine imposed in the other House and probably no proper discussion of them in this House. I hope the Leader will make provision to deal with this.

Could the Leader approach the appropriate Minister and ask that the voluntary standards industry is supposed to observe in manufacturing venetian blinds be made mandatory? There was a tragic case before the coroner's court recently regarding a young boy who was strangled. His family was very caring and obviously took good care of the child but it was a dreadful occurrence. There has been a number of these cases. This tragedy could have been avoided by a fairly simple modification but it was not made. We cannot leave it to the manufacturers to do this. The jury asked us to attend to these matters.

Judges frequently make recommendations or comment that it is a pity the Oireachtas has not taken a certain action, that it should have done something or that it was negligent in some regard. I believe it would be appropriate to establish a channel of information between the Judiciary and the Oireachtas so judges can send us such messages. The message recommending that we take certain action could be placed on the Order Paper under the heading, "Message from the Judiciary". I accept there is a separation of powers but this proposal would be important and healthy for democracy.

Senator John Hanafin: I join the call for a debate on the economy, focusing on the banks, the Government's commitment and the necessary bailout the Government undertook for the Irish banks. Notwithstanding the bailout, NAMA is being established. There have been very successful turn-arounds in other countries whose Governments took a practical application to the value of the assets. Some 30% of Irish assets are held abroad, primarily in the United States and the United Kingdom, in many cases in New York and London, and these will be the first out of the recession. Before we call the loss on the banks we must wait and see what happens. In many cases, a profit has accrued to the nation state that undertook to invest in its banks.

I support the calls for mandatory manufacturing laws regarding safety.

The Judiciary often makes very practical calls on the legislative arm of Government, including, in the past, calls for expenditure. How do the many members of the Judiciary imagine this expenditure might be funded, except through taxation? We are still waiting for many of them to make their voluntary contributions which would help towards the expenditure their many members call the Legislature to make.

Senator Paul Coghlan: Now that we know the NAMA legislation will not be with us until September, perhaps the Leader will give the House an indication of the relevant dates, if they are known. This delay is creating further uncertainty, leaving too many, perhaps an increasing number, of serious questions unanswered. Undoubtedly, this legislation, once passed, will be referred immediately to the Supreme Court for a test to try to preclude people from attempting to delay it further in other respects. It is important we know this. It would have been preferable for the legislation to have been dealt with and passed this month, but perhaps the Leader will inform Members as to its drafting. I understood it had been completed.

On another matter — I shall try to avoid walking my dog——

An Cathaoirleach: Questions to the Leader now.

Senator Paul Coghlan: This question is for the Leader and it relates to the horse dung issue in Killarney National Park. I appreciate that during the tourist season the national parks and wildlife service is anxious to avoid confrontation, but if the Minister for the Environment, Heritage and Local Government, Deputy Gormley, did not have the power in law to do so,

[Senator Paul Coghlan.]

why did he make an order effective from 8 June when there was not a hope in blazes of it being put into effect?

Senator Feargal Quinn: When will the Criminal Law (Amendment) Bill, referred to by Senators Alex White and David Norris, be introduced in the House? I have a real fear that any rushed legislation is bad legislation and I fear this legislation is likely to be rushed. I take a different view from those who spoke about it because I believe in jury trials and in ensuring that juries operate successfully. There was a very interesting article in *The Irish Times* during the week in which a person who had served on a jury referred to the behaviour of some of the jurors, casting doubt as to the methodology practised by juries being accurate and worthy of consideration. Let us have that discussion but let us make sure the legislation is not rushed.

I hope the Minister for Health and Children, Deputy Harney, will come to the House, initially to discuss swine flu but also the pharmacy situation. The figures she sent the House during the week are startling. She stated she would take action to attempt to reduce the cost of pharmacies for which the figures she provided were enormous, namely, €1.68 billion in 2008 compared to €1 billion before that. That is a very substantial increase. Her point was that it costs €600 million to deliver and transport €1 billion worth of drugs. In other words, the drugs cost €1 billion from the factory but it costs in the region of €600 million to deliver them to the patient. That does not seem sensible.

Senator Donie Cassidy: The Senator is right.

Senator Feargal Quinn: The Minister made the case in favour of pharmacies, as have others in this House, including Senator Ross. Let us ensure we have an open debate on the matter.

Senator Jerry Buttimer: Like Senator Quinn, I reiterate my remarks of yesterday and ask the Leader to facilitate a debate with the Minister for Health and Children regarding the pharmacies issue. There is genuine fear among people who need pharmacies, particularly among smallholders. I speak for them, not for the big conglomerates.

I ask the Leader to facilitate a debate on public transport. In our metropolitan areas and, according to Senator O'Donovan today, in rural areas, there has been a cut in the provision of services. I would like to hear the views of the Minister for the Environment, Heritage and Local Government, Deputy Gormley, the Green Party and the Minister for Transport, Deputy Dempsey, on how they intend to create a more mobile community by means of public transport. Given that Bus Éireann is now slashing and cutting services in all parts of Ireland, it is important that we have a discussion on the country's mobility plans.

Is the House to have a debate on the report by the IMF, as Senator O'Donovan requested? It is an extraordinary legacy of Government that we have gone from a surplus of €3 billion or €4 billion to a deficit of approximately €14.7 billion. That is some way to manage the country. That is one of the Government's enduring legacies to the people. We must have a debate on the IMF report and on the Exchequer returns released yesterday. As Senator O'Donovan rightly pointed out, it costs us now more to borrow to pay for and service the debt and there has been no action plan from the Government despite the protestations of Members on the opposite side.

Senator Eugene Regan: I support the observations on rushed legislation which apply in particular to the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern. Last year there was the case of the Intoxicating Liquor Bill——

Senator Fidelma Healy Eames: Hear, hear.

Senator Eugene Regan: —which was rushed through during the last few days of the session. The Seanad debated that Bill in the full knowledge that none of its amendments would be accepted because the Bill would have had to be returned to the Dáil for final approval, and as the Dáil was in recess that was not possible. We face the same situation this year. At first the Minister denied that legislation was necessary in particular areas. Subsequently there was an atrophy, with a subsequent rush to legislate, and we have ended up in this position. Although we have supported the Minister in all his efforts to deal with the problems of organised and gangland crime, this form of legislating brings the entire Oireachtas into dispute.

I refer to the Lisbon treaty. Presumably, the House will debate the referendum Bill next week but there will not be a debate on the actual treaty, which means we will not have a full debate on it until after the summer recess. This is most unfortunate. However, a decision came from Europe this week regarding a particular issue, which was discussed briefly in the House and which is of fundamental importance. We can discuss the constitutional implications of the Lisbon treaty, all the related issues and the meaning of the treaty, but one practical, tangible and substantial benefit which came from Europe this week was the decision to put a cap on mobile telephone roaming charges, in respect of both receiving and making calls. We have all been shocked by the bills we receive after the holidays when we see the astronomical costs involved. We were ripped off by the mobile telephone operators, including those in Ireland, namely, Meteor, Vodafone and O₂, which have been making profits on telephone mobile charges that are 20% higher than elsewhere. This decision is the type of distinct benefit that Europe brings to consumers in this country and it should be acknowledged. The mobile operators refused to agree to take this action voluntarily although they agreed to do something else, namely, to standardise the chargers for mobile telephones. We face many charges every time we change our mobile telephones. There is now a commitment to standardise one aspect but I suspect that once again the European Commission will have to impose a directive to ensure that it happens. I ask the House to acknowledge that distinct benefit.

Senator Brendan Ryan: At least one financial institution, namely, the Bank of Ireland, operates a minimum property value of €175,000 in the greater Dublin area in respect of approving owner-occupier mortgages. It has turned away applicants for mortgages below that threshold. At present, brand new two-bedroom apartments and houses are available in north County Dublin for approximately €150,000. Young people who have a capacity to service those mortgages are being turned away. It is a scandal. At a time when the Government is encouraging first-time buyers and low-income earners to avail of affordable housing schemes, it is scandalous that the Bank of Ireland will not lend on these properties. It is unacceptable that our financial institutions, which have received vast sums of taxpayers' money, operate such a restrictive policy with regard to young people when there are clearly a number of properties available below that amount.

Senator Alex White: Hear, hear.

Senator Brendan Ryan: The policy's effect will be that prices will adjust to the higher level, resulting in a distortion of the property market. We cannot have upward price pressure on house prices due to arbitrary lending policies by State-supported banks. The Bank of Ireland has confirmed to me that the €175,000 threshold is one of its criteria in respect of mortgage applicants in the Dublin area. The other criteria are the applicants' capacity for repayment, the availability of a deposit and reasonable value. I pointed out to the bank's spokesperson that all of these criteria would be more easily met at the lower house price. I call on the Leader to bring the matter to the attention of the Minister for Finance and to have him investigate the matter and put pressure on the bank to change its policy.

Senators: Hear, hear.

Senator Paul Bradford: I support my colleagues who called for the maximum possible time to be made available next week and, if necessary, the week after to give due consideration to the criminal justice legislation that will be before the House. I noted with interest Senator White's comments and the phrase used by Senator Norris, in which he indicated his concern that people may be convicted on the word of a garda. This matter must be debated fully. However, we should not ignore the fact that, while people could be convicted on the word of a garda, people have been murdered on the word of criminal gang lords and gangsters in recent years.

Senator Jerry Buttimer: Hear, hear.

Senator Paul Bradford: Week after week and month after month, Senators have demanded a political and legislative response to gangland crime. I hope that, as a result of serious and due consideration of next week's legislation, we will ensure people will not be murdered on the word of gangsters.

Senator Mark Daly: I support Senator Bradford's comments. During the week, judges stated that they had no problem in getting convictions or people to testify in the courts and that they could not see a necessity for the Bill. However, these cases must appear in the courts in the first place and the Garda finds getting people to testify difficult. Convictions are possible when people testify, but the Garda cannot get them into the courts. As is evident from cases in Limerick, families have been murdered as a result of helping the State get convictions.

An emergency press conference was called today by the civil liberties organisations. I did not see them having any emergency press conferences when there were murders in Limerick on the word of criminals. Last Monday, the headline in the *Irish Independent* told of how eight year olds were being used by criminals to fire-bomb and threaten people in Limerick. When the Government took action on Wednesday, it was castigated. How does one tackle the problem of eight year olds? We are trying to tackle the instructions and those who are getting those eight year olds to do their bidding. On the word of a garda, such people can be convicted. There will be no convictions without this provision and those people will be unaffected.

I commend the Government and the Minister for the Environment, Heritage and Local Government, Deputy Gormley, on the proposed planning and development Bill, a new section in which addresses the issue of people who are in financial difficulties and have received planning permission, which can be a difficult process lasting two or three years. Where, for example, they cannot get mortgages or loans from banks or one of the spouses involved might have lost his or her job, a provision in the Bill will allow them to apply to their local authorities to get their time periods extended by up to five years without needing to go through the planning process again. It is a great sign of common sense in the Government that, in these difficult times, it will not force people to undertake the entire planning process or incur costs or hardships. I look forward to the Bill appearing before the House and I commend the Minister on his efforts. By the way, the Valentia cumann came up with the idea. Just to let the House know, the boys in Valentia are coming up with great ideas all the time.

Senator Fidelma Healy Eames: Yesterday, the Joint Committee on Education and Science learned of a clear link between homophobic bullying and self-harm and suicide. Up to now, we may have had a hunch about a link, but we now have evidence. This is serious information. In the United States of America, 30% of suicides are linked with bullying, including homophobic bullying. In light of this information, the Minister for Education and Science must act carefully and sensibly. It is not good enough to circulate documents. Teachers, schools and

youth clubs need appropriate training on how to create a climate of respect for sexual diversity. Will the Leader ask the Minister for a response in this regard?

Will the Minister for Health and Children and the pharmaceutical unions come together to solve the current impasse? Last year's mess went on for a long time. Pharmacies came up with solutions that the Minister ignored, so they took her to court and she needed to repay all the money. The last thing I want is another protracted situation. Allow the pharmacies to devise cuts — they know how to do it — and listen to them. The Minister should not impose her unworkable solutions. Will the Leader ask the Minister to address this issue? Given the inadvisable amount of legislation being rushed through, there are no signs that it will be debated before the summer recess, but I would appreciate it if the Leader brought my suggestion to her.

Senator Nicky McFadden: Yesterday, we read about the poor Malley family's terrible loss of Arran, their two year old son, who was strangled by the cord of a window blind. While there will not be time before the recess, will the Leader arrange for legislation to be put in place so that this child will not have died in vain, which would safeguard and protect children and to prevent other families from needing to live with such a tragedy. Yesterday, the Malley family asked that there be no further——

An Cathaoirleach: Mobile telephones off, please.

Senator Nicky McFadden: It was not me, actually. The Malleys asked that there be no further deaths.

(Interruptions).

Senator Donie Cassidy: Senators Twomey, Mullen, Alex White, Quinn, Buttimer and Healy Eames called for a debate on pharmacies. I have given the House an undertaking that the Minister will attend the House before the summer recess to provide an update on the serious challenge facing pharmacists, the Department and consumers. I hope to inform the House on Tuesday about when the debate will occur.

Senator Twomey referred to IVF and used the example of the late Michael Jackson's family. He had great friends in County Westmeath, especially Paddy Dunning, his family and everyone in the Rosemount-Mullingar area where he carried out——

Senator Nicky McFadden: And Athlone.

Senator Donie Cassidy: It was actually the Kilbeggan area.

Senator Paul Coghlan: It was the country and western part of the world.

Senator Donie Cassidy: Michael Jackson made some terrific recordings there, which the world will have the benefit of hearing in the coming years. I accept Senator Twomey's point on there being no safeguards or regulation. We must consider the issue as a matter of urgency.

Senator Mullen referred to the defamation laws. When the Bill returns to the House, his concerns can be addressed.

Senators Alex White, Norris, Quinn, Regan, Bradford and Daly discussed the Criminal Justice (Miscellaneous Provisions) Bill, which the House will debate next week. The longest time will be afforded it — most of the day and the night.

There are two Bills in the House next week concerning the Minister for Justice, Equality and Law Reform. On Wednesday we will deal with Committee and Remaining Stages of the Criminal Justice (Miscellaneous Provisions) Bill 2009 and on Thursday we will consider the

[Senator Donie Cassidy.]

Criminal Justice (Amendment) Bill 2009 for most of the day and evening. No section or line of the latter Bill will go undebated. There are some very eminent colleagues from the legal profession in the House who will afford the House the benefit of their experience and expertise. We genuinely and sincerely look forward to their contributions. The Bill is extremely necessary, as Senator Bradford stated. Senator Daly has stated the challenges must be met such that the law will be feared. We are legislators on behalf of the people and next Thursday is the day on which we must respond to the challenges facing the Government and the Garda Síochána, including the Garda Commissioner.

Senator Leyden has asked for the Minister for Health and Children, Deputy Harney, to come to the House to update us on the swine flu epidemic. Thousands, if not tens of thousands, have contracted the disease in the United Kingdom. We might be able to couple the debate with that on pharmacies.

Senators Donohoe, Hanafin, Buttimer and Ryan referred to the published Exchequer figures and called for a debate on the IMF report. I have left aside all day and evening next Friday to discuss the report, on which all Senators want to make their views known. At the meeting with leaders of the groups on Tuesday we will determine what time will be allowed to each Senator in which to make a contribution. I want all Senators to think about the matter over the weekend and decide on the timeframe they wish to request. I will not be found wanting in this regard. Regardless of whether the debate must last for seven, ten or 12 hours, I will allow all 59 Senators to make a contribution on the report next Friday. Colleagues have been preparing their submissions for the past few days.

Senators Norris, Hanafin and McFadden asked that the law be amended on foot on the awful tragedy in which a young boy lost his life when asphyxiated by the cord of Venetian blinds. When he became entangled, his feet were only two inches off the ground. I agree with the Senators' request and will pass on their strong views to the Minister.

Senator Coghlan referred to the NAMA legislation which I understand will be available in September — I would guess early September. The Senator knows as much about it as I do, but if it is published at the end of July, every Senator can tease out his or her views during August. I hope we will be back early in September to pass it in both Houses. The legislation is very sensitive and difficult. I know the Opposition has very close contacts at a very high level within the legal profession. The legislation is ground breaking and other member states in the European Union are watching what we will do. Representatives of one of our nearest neighbours were here during the week to learn what we were doing, as the measures in their country are not working. I hope the legislation will assist in freeing credit as quickly as possible because, unless this is achieved, we will all be in difficulty.

Senator Buttimer called for a debate on public transport. I can accede to this request, but it will be after the summer recess, as the Senator will appreciate.

Senator Regan asked about the Lisbon treaty legislation which we will consider next Thursday. On Second Stage, I invite Senators to make their views known on the forthcoming referendum. The debate will be open ended. I am considering a period of four hours, but if this timeframe is insufficient, I will extend it, with the agreement of the House. It is necessary that colleagues express their views in this regard when the Minister is present next Thursday.

Order of Business agreed to.

Criminal Justice (Miscellaneous Provisions) Bill 2009: Second Stage.

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

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): I am pleased to have this opportunity to introduce the Criminal Justice (Miscellaneous Provisions) Bill 2009 to the Seanad. The Bill contains a range of different and distinct measures. The intention behind it is to further improve the overall criminal justice system and update existing statutes in some areas where we have identified a need to do so.

The Bill is divided into five Parts. Part 1 contains the standard preliminary features of all legislative proposals, including the Short Title, the interpretation section and the provision that the Exchequer will bear the costs of administering the Bill when enacted.

Part 2 contains amendments to the European Arrest Warrant Act 2003, as amended by the Criminal Justice (Terrorist Offences) Act 2005, which for the sake of clarity I will refer to hereafter as simply “the Act”. The Act gave effect to the EU framework decision on the European arrest warrant and replaced extradition arrangements between member states with a system of surrender based on arrest warrants issued by judicial authorities of member states. The amendments proposed in this Part are necessary to deal with issues which have arisen in the administration and implementation of the Act. As the House will be aware, the Act has been in operation for over five years and there is a better understanding, both here and across all member states, of the European arrest warrant system. The amendments to the Act proposed in the Bill are timely and will enhance the operation of the European arrest warrant system, while at the same time safeguarding the rights of persons whose surrender is sought on foot of European arrest warrants.

Section 4 of the Criminal Justice (Miscellaneous Provisions) Bill 2009 amends section 2 of the Act by inserting a number of definitions used in the substantive sections of the Bill and deleting a couple that are no longer relevant because of other amendments to the Act by the Bill. Section 5 deletes subsections (2) and (3) of section 4 of the Act. These subsections were inserted originally to accommodate declarations made by Austria, Italy and France, pursuant to Article 32 of the framework decision, that requests for surrender sent to these states for offences committed before the dates specified in the declarations would be dealt with under the old extradition arrangements rather than the European arrest warrant system. An unintended effect of the subsections is that Ireland cannot accept European arrest warrants from these countries relating to acts committed before the dates specified in the declarations. The section is being amended in order to remedy this.

Section 6 amends section 10 of the Act by deleting the word “duly”. The word “duly” can be interpreted as meaning that the validity of a European arrest warrant could be inquired into by an Irish court. This goes against the very principle of mutual recognition on which the European arrest warrant system is based. Section 10 is also amended by the deletion of text which limits the scope of European arrest warrants where a custodial sentence has been imposed and the offender has fled from the issuing state. This is not a formal requirement of the framework decision and is being deleted in order to simplify the procedure in such cases.

Section 7 amends section 11 of the Act. Section 7(a) clarifies that there is no requirement for domestic arrest warrants to recite each of the offences in respect of which surrender is sought. It is sufficient for an arrest warrant to have been issued, by a judicial authority in the issuing state, for just one of the offences to which the European arrest warrant relates. Section 7(b) is a purely technical amendment to correct the numbering of the subsections. Section 7(c) substitutes the text of subsection (2A). The substituted text removes the reference to “where it is not practicable” in the subsection, and in this way, permits information not included in the

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warrant to be specified in a separate document without further requirement for proof. This amendment will considerably ease the administrative burden in the processing of European arrest warrants.

Section 8 contains a number of amendments to section 12 of the Act, which deals with the transmission of documents. It provides that European arrest warrants, and any other documents required, may be transmitted by any means capable of producing a written record under conditions allowing the central authority in the State to establish its authenticity. It is intended to allow for the use of modern means of communication, including e-mail. The section also substitutes the text of section 12(7) of the Act which specifies how a document is to be deemed a 'true copy' for the purposes of the Act. The purpose of the substituted text is to simplify the procedure for certification of true copies of documents for the purpose of the Act.

Section 9 amends section 13 of the Act by deleting the references to 'facsimile copy'. Again this is consequential on the revised provisions on transmission of documents in subsection (8)(a).

Section 10 substitutes section 14 of the Act. The current text of section 14 was intended to give effect to Article 9(3) of the framework decision on the European arrest warrant which provides, in general terms, that an alert in the Schengen information system will be equivalent to a European arrest warrant. The Schengen information system is one of the elements of the Schengen *acquis* in which Ireland opted to participate. It consists of a database allowing designated authorities in participating states to have access to information on persons and property for specified purposes. However, to date, the technical, administrative and legal infrastructure necessary to participate in the system have not been in place and section 14 has, therefore, had no practical effect.

The original system is now in the process of being upgraded on foot of a Council decision of June 2007 to establish a second generation of the system. The new section 14 anticipates Ireland's participation in the upgraded system and provides for arrest on foot of an alert for arrest and surrender entered in the system. The section sets out the procedure to be followed following such an arrest and provides that a person will be released if a European arrest warrant is not received within the time specified by the High Court.

Section 11 amends section 15 of the Act which deals with consent to surrender. Paragraph (c) restricts the grounds of appeal to the Supreme Court to cases which the High Court certifies as involving a point of law of exceptional public importance and where it is desirable in the public interest that an appeal should be taken to the Supreme Court. This is an important restriction to prevent the lodging of frivolous or vexatious appeals whose only purpose is to delay surrender. Paragraph (e) clarifies that where a person has either lodged an appeal to the Supreme Court against an order for his or her surrender or has made a complaint under Article 40.4.2° of the Constitution — a *habeas corpus* application — he or she will not be surrendered while the appeal or the complaint is pending. Paragraph (f) provides that, where surrender does not take place within the period specified, the High Court may remand a person for a further period to enable surrender to take place, unless it considers that it would be unjust or oppressive to do so. Paragraph (g) inserts a new text at subsection 15(9) which provides that the High Court may remand the person in custody or on bail pending the hearing of an appeal to the Supreme Court. The provision for the withdrawal of consent to surrender in the original section 15(9) has been removed. I am satisfied, having regard to the requirements of the section, that the High Court must be satisfied that consent is both voluntary and informed and that the person has had an opportunity to receive legal advice before consenting that this is appropriate.

Section 12 amends section 16 of the Act, which deals with contested applications for surrender. Paragraph (c) restricts the grounds of appeal to the Supreme Court to cases which the High Court certifies as involving a point of law of exceptional public importance and where it is desirable in the public interest that an appeal should be taken to the Supreme Court. Paragraphs (d), (e) and (f) insert provisions which bar the surrender of a person while an appeal to the Supreme Court or a *habeas corpus* is pending and limit the right of appeal and provide for the extension of the period of remand, where necessary, in order for surrender to take place. Paragraph (g) enables the High Court to remand a person, in custody or on bail, where an appeal to the Supreme Court has been lodged. All of these amendments are similar to the amendments which I have just described for section 15.

Section 13 amends section 18 of the Act to provide that postponement of surrender where proceedings are pending in the State, will be “until the final determination of those proceedings” as the existing wording of the section does not reflect all possible outcomes of proceedings. Section 14 amends section 20 of the Act which deals with requests for additional documentation and information by the High Court. The purpose of the amendment is to align the provisions of the Act with those of the Extradition Acts regarding evidence in writing which are being revised in line with a recommendation from the Attorney General.

Section 15 amends section 29 of the Act. That section sets out the procedure for dealing with two or more European arrest warrants received in respect of the same person from different issuing states. This does not, however, cover the situation where two or more warrants are received from different judicial authorities in the same member state. The amended section applies where two or more warrants are received in respect of a person, whatever the source.

Section 16 amends section 33 of the Act, which deals with the issue of European arrest warrants by an Irish court. It allows a court to issue a European arrest warrant once satisfied that a domestic warrant is in existence for the person and that the person may not be in the State and provides for the admissibility of Garda evidence as to the whereabouts of the person. It also makes it clear that a European arrest warrant can be issued where a person has been or is liable to be sentenced to imprisonment or detention. This is in accordance with the framework decision and other provisions of the Act which provide for execution of European arrest warrants where the penalty is detention.

Section 17 amends section 38 of the Act, which deals with the offences in respect of which surrender may be granted. Section 38(1) allows surrender for an offence which is listed in Article 2.2 of the framework decision on the European arrest warrant or “is an offence that consists of conduct specified in the paragraph,”. The Supreme Court, in a judgment, concluded that this phrase has no meaningful effect in the operation of the Act and, accordingly, it is being deleted.

Section 18 amends section 34 of the Act and provides that a European arrest warrant issued in the State may, rather than shall, be transmitted by the central authority, thus providing for transmission of warrants via the Schengen information system. Section 19 deletes section 40 of the Act, which was intended to apply, as a bar to surrender, in a narrow set of circumstances where delay in proceedings was an issue. As the question of delay is, however, a matter more appropriately dealt with by the courts in the issuing state, the provision has been removed.

Section 20 amends section 45 of the Act and inserts three new sections into the Act. Section 20(a) substitutes section 45. This is a technical amendment to correct duplication in the numbering of the subsections. Section 20(b) inserts new sections 45A, 45B and 45C into the Act which deal with identification procedures, transfer of persons to the state from which surrendered and technical flaws in applications for surrender respectively.

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Section 45A provides for identification procedures. A key requirement under the European Arrest Warrant Act is that the court must be satisfied that the person before it is the person named in the European arrest warrant it is considering. I understand that fingerprints, palm prints and photographs of a requested person are often sent by requesting states to assist with identification. The Garda Síochána has no power to take similar material from the arrested person for comparison with the material received. The new section addresses this situation.

This section authorises the Garda Síochána to photograph, fingerprint and palm print persons arrested under the Act for the purpose of verifying the person's identity. Reasonable force may be used to take this material subject to appropriate authorisation and the other safeguards specified, which are in line with similar provisions in criminal justice legislation. The section also creates an offence of obstructing a Garda in the execution of powers under this section. It also provides for the admissibility in evidence of identification material sent with a European arrest warrant to Ireland.

Section 45B provides a mechanism for the transfer, after trial, of persons who have been surrendered to Ireland on foot of a European arrest warrant to the state which surrendered them in order to serve the sentence imposed by the Irish court. The background to this is that under Article 5.3 of the framework decision on the European arrest warrant, where a person whose surrender is sought is a national or resident of the executing state, surrender may be subject to the condition that the person is returned, after the trial, to the executing state to serve any sentence imposed. We had not previously legislated to give effect to this provision of the framework decision and, while this has not caused any problems to date, I am of the opinion that it is important we have a procedure in place. The procedure set out in the section is similar to that in the Transfer of Sentenced Persons Act 1995. It is a fundamental requirement of the section that the person consent to the transfer.

Section 45C is a new section providing that applications for surrender will not be refused owing to minor or technical defects in the European arrest warrant. It goes against the principle of mutual recognition that requests for surrender from our EU partners should be refused on purely technical grounds. An important safeguard for the requested person is that the section will not be applied where the court considers its application could lead to an injustice.

Section 24 amends section 27 of the Extradition Act 1965 which deals with provisional arrest. I have dealt with arrest without warrant on foot of an alert on the Schengen information system. This amendment reflects the fact that there are countries participating in the Schengen information system where the European arrest warrant does not apply. It is a requirement of states participating in the system that an alert for extradition entered on the system will be treated as a request for provisional arrest for extradition. The section also provides for definitions of certain terms related to the Schengen information system.

Part 3 contains several provisions relating to Ireland's participation in the Schengen Convention. The convention is an agreement between certain European states which allows for the abolition of border controls among the participating states. It also includes provisions on common policy on visa matters, the harmonisation of external border controls and cross-border police and judicial co-operation. Ireland will participate in the measures relating to police co-operation, mutual assistance in criminal matters, extradition, drugs co-operation and the Schengen information system. This is an increasingly important area of operation for the administration of justice given the increasingly international dimension of many criminal activities. The Schengen information system is an electronic alert system which facilitates the exchange of information between police and customs authorities within the Schengen system.

The relevant articles of the convention will come into effect in Ireland only after a range of technical and legislative measures have been put in place. This Bill provides for several of these measures and defines the principal Schengen terms. Specifically, it contains a provision enabling the Garda and the Revenue Commissioners to exchange information with other Schengen member states and a provision designating the Data Protection Commissioner as the supervisory authority for data held in the Schengen information system.

A substantial and important part of this Bill is devoted to the licensing of firearms and associated issues. For ease of reference and debate the 20 firearms and offensive weapons related sections can be grouped into the following categories: public safety and control issues, technical matters, efficiency and modernisation measures.

I will deal first with the sections which deal with matters of public safety and control. Section 30 addresses the licensing of handguns. For more than 30 years prior to 2004, all handguns effectively were banned in this jurisdiction. Following a series of judicial decisions that is no longer the case and almost 2,000 handguns have been licensed in the five years since. The Minister has been concerned that this situation did not come about as the result of a considered or deliberate public policy decision. The growth in the ownership of handguns, as a new trend, is in itself a source of concern. It would be disturbing if the assumption that a positive outcome for some shooting interest groups in some judicial review cases on licensing matters was seen as an accretion of rights. This is flawed logic and I want to dispel any notions that there is any inherent 'right' to be considered here.

I am aware that some people have a strongly held view that once they are of good character and make the necessary secure arrangements for the storage of their firearms they should be free to have firearms of any kind licensed to them. I do not agree with this. This view would represent an unacceptable situation where our gun laws could mirror those of countries such as the United States. If the present situation continued unchecked, this would happen. We had no alternative but to call "Stop" and address the current specific and long-term strategic issues at the heart of this matter. We would never be happy if firearms were freely available or if, as happens in some jurisdictions, there were a notification system under which one purchases the firearm and informs the authorities afterwards.

The Minister was, conscious of the remarks made in the High Court last July that a reasonable person is entitled to feel alarmed at the proliferation of handguns. I am aware, too, of calls made by members of the Oireachtas from several parties to address this situation. It was against this background that he directed the Department and the Garda Síochána to carry out an urgent and intensive review of the firearms law. Following from that review, the proposals for reform in this area include a ban on issuing new licences for handguns, although there will be limited exceptions for handguns designed for use in connection with competitions governed by International Olympic Committee regulations.

As the House may be aware the Department of Justice, Equality and Law Reform has liaised closely with the sports shooting groups, through the firearms consultative panel, FCP, over the past 18 months and there has been considerable discussion on many aspects of shooting sports. The Minister met the FCP on 9 June and following that and arising from it, he received a submission, which he has referred to his colleague, the Minister for Arts, Sport and Tourism, on target shooting for calibres above Olympic specification. I understand the Department of Arts, Sport and Tourism is examining the issue and will liaise with the Department of Justice, Equality and Law Reform on it in due course.

As the Minister announced at that time, those who already have licenses can, when they are due for renewal, apply to have them renewed, albeit under the new licensing procedure where the safety of the community will be paramount. In the wake of the Minister's announcement

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last November, many public representatives received representations for and against the handgun ban, but I especially note the endorsement by the chief inspector of the Garda Síochána Inspectorate who drew on her own very considerable experience of policing in the United States. She was quoted as saying that many guns used in the commission of crime in the States are guns that have been stolen from their rightful owners. Several handguns here have been stolen from licence holders. Those guns, by definition, are immediately in criminal hands. I am concerned not only with the possibility of licensed firearms falling into the hands of criminals but the other issues involved and, in particular, the Government regards the growth of a handgun culture as simply unacceptable.

The International Action Network on Small Arms reported at the time of the announcement: “Unlike the UK, which imposed the ban in response to the Dunblane school shooting in 1996, the Irish government decided to act before a major tragedy involving handguns occurs.” It is right that we take this action now rather than endure a tragedy at some point in the future when people would rightly ask us, as politicians, why we did nothing in advance to prevent it.

It is also intended, under section 33, to prohibit the form of target shooting known as practical or dynamic shooting. This type of shooting involves firearms being used in simulated combat or combat training and is anathema to most target shooters. In so far as it is akin to police and military tactical training it is an undesirable activity not rooted in any tradition in Ireland and one which should not have any place in our society. I am informed that most mainstream shooting organisations in Ireland have dissociated themselves from it, and this speaks volumes.

Section 36 brings under tighter control the importation of firearms and ammunition by specifying that such importation may be made only by a registered firearms dealer on foot of an importation licence having been granted by my Department. The intention of this section is to channel all imports through registered firearms dealers. It is simply not acceptable to let the present system continue whereby an issuing officer can in theory license a firearm which the Minister does not want licensed here. It is important that there be a national perspective and an ability to see trends in firearms importation and licensing. This measure is designed to provide that oversight.

While that is the intention, it is also important that the planned new restrictions on personal importation do not apply to Irish shooting tourists returning from abroad with their firearms. As they would have a firearm certificate for the firearm, this should not be considered an import and the new section 17 should not apply. With more than 220 registered firearms dealers in the country, I would question if this is necessary but perhaps we ought to permit the holder of an Irish firearms certificate to purchase a firearm within the EU from an authorised dealer. Any such transaction would have to be on a face to face rather than distance purchase, for example, over the Internet. For these reasons this Bill will not commence until my officials have clarified the operation of prohibitions with their counterparts in the Revenue Commissioners. This is the normal procedure.

On the classifying of firearms, firearms are divided into two categories in Irish law, non-restricted and restricted. This Bill proposes a measure to increase the sophistication of our ability to categorise firearms. It introduces the concept of a prohibited firearm. Section 27 proposes that the Minister for Justice, Equality and Law Reform should have the residual powers to declare certain firearms and ammunition to be prohibited. The Minister will, in consultation with the Garda Commissioner, keep firearms licensing under review in the interests of public safety. This residual power will, in particular, allow the Minister to address any particular issues which arise threatening the safety of the community.

Prior to moving on, it is important to stress that our proposals will not impinge adversely on the activities of the majority of licensed firearms holders. I recognise that those firearms holders pursue their legitimate interests in a law-abiding way and I am anxious to have a well regulated sector in which those interests can be successfully pursued, in co-operation with the relevant authorities. Section 34 inserts a new section into the principal Act obliging certificate holders to report the loss or theft of a firearm and creates offences for failure to do so.

Section 40 regulates the sale and use of realistic imitation firearms, including devices known as airsoft. These items are practically indistinguishable from real firearms and have on occasion been used to intimidate and rob and in anti-social behaviour. There is also a real possibility of a tragic incident occurring should armed members of the Garda Síochána be called out in response to reports of a person carrying or brandishing one of these realistic imitation firearms. We will be making their possession in a public place a serious offence. Again, the relevant associations have been involved in dialogue with the Department and these proposals to regulate and control airsoft activities should come as no surprise. Some of the measures in this section were requested by those who play airsoft to protect their activity from irresponsible and casual purchasers.

There are also two sections relating to knives and bladed or sharply-pointed weapons. Though the number of murders, the most serious crime committed involving knives, fell from 37 to 15 last year, there is no room for complacency. The overall number of crimes committed using knives is a matter of great concern to all of us.

In any discussion about offensive weapons, there is one aspect of the problem we must confront. Items used as offensive weapons are often items which have legitimate everyday mundane uses. This makes it almost impossible to distinguish by legal definition between knives which have a legitimate use and those the sale of which might be undesirable. Even if this was to be attempted it would prove futile in practice as ordinary kitchen knives or tools, the sale of which is not prohibited, could be just as lethal in the wrong hands as anything which might be prohibited and are all too often the weapons used to cause death or serious injury. That is why the law has to concentrate on the circumstances in which these items are in a person's possession.

Last year, the Minister requested the Commissioner of the Garda Síochána to conduct a review of the provisions of the legislation in the context of the increased use of offensive weapons in assaults and murders. The purpose of the review was to identify aspects of the legislation that may require strengthening from an enforcement perspective. The Bill contains two sections on the control of weapons arising from these fatal stabbings. It is proposed to increase the maximum prison sentence for possessing a knife in a public place from one year to five years under section 39 and to extend the power of search without warrant in circumstances where a member of the Garda Síochána has reasonable grounds to suspect a person is carrying any article for unlawful purposes under section 41. We also intend to create a new firearms and offensive weapons order to deal with the issue of samurai swords.

Sections 25, 26, 32, 35, 37, 38, 42 and 43 involve purely technical amendments which themselves are of no great policy significance. These technical and practical amendments with the efficiency and modernisation measures contained in sections 28, 29 and 30 of the Bill will permit the transformation to a comprehensive and efficient firearms licensing regime, including making the changes necessary for the implementation of the final outstanding sections of the Criminal Justice Act 2006 to be commenced.

Section 28 of the Bill provides for the changeover from the current one-year system where all licences expire on 31 July to a new three-year system with phased expiry so that the work involved in applying the new regime can be spread out over a 12-month period. Section 30

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provides for the outsourced collection of the more than 230,000 firearms certificate fees and will free up a significant amount of Garda time as a result.

The new three-year licence for firearms is a big and a welcome step forward in terms of efficiency and customer service. With this step-change come logical improvements in how we license firearms, including secure storage, taking up references for applicants and acquiring consent to make medical inquiries where that may be necessary.

As regards this legislation and how it will impact on the shooting sports community, there has been an unprecedented level of consultation with shooting groups during the development of the Bill and these consultations have been intensive and productive. The previous Minister for Justice, Equality and Law Reform established a firearms consultative panel comprising the shooting interest groups, the Garda Síochána and members of the Department to assist with the introduction of the firearms licensing regime provided for under the Criminal Justice Act 2006 and this panel has met on a regular basis for the past 18 months.

The Department of Justice, Equality and Law Reform held a firearms conference in May 2008 with more than 100 delegates from shooting interest groups, Departments and the Garda Síochána in attendance. In February 2009, the Department, in conjunction with Countryside Alliance Ireland as sponsor, held a further seminar focused on forthcoming legislation regulating shooting clubs and ranges. As a result of this inclusive and active participation, I believe that the proposals in this Bill will not come as a surprise to the legitimate and responsible hunters and target shooters of the country and that they will be accepted and even welcomed by many of them.

Section 29 allows the Commissioner of the Garda Síochána or the Minister to issue guidelines on the practical application of the Firearms Acts. I understand that the Garda Commissioner, as head of the licensing authority, proposes to introduce guidelines which will be publicly available. These guidelines will attempt to address one of the main criticisms of the current licensing system, namely, a lack of uniformity in the application of the Firearms Acts and the processing of applications.

In addition to these guidelines, in 2008 the Garda Síochána established the firearms policy unit. This has helped to ensure that the Commissioner's policies on firearms licensing are clearly understood and standardised throughout the force and has been invaluable in resolving problems and complaints about applications.

The firearms legislation, which stretches back over 80 years and across five main Acts, has been criticised by some commentators as being difficult to interpret. The Law Reform Commission has scheduled a restatement of the Firearms Act which I welcome and which I hope will help to alleviate this problem.

Part 5 of the Bill deals with a range of miscellaneous matters which have been identified as requiring amendment for a variety of reasons. Section 40, for example, amends the Summary Jurisdiction Act 1857 to allow a District Court a longer period of time to state a case following a request to do so. Section 41 also provides for a change to the Summary Jurisdiction Act 1857. It sets out the procedures to be followed in serving relevant documents to other parties involved in an appeal by way of case stated.

Section 43 amends sections 5 and 9 of the Bail Act 1997. The amendments are of a technical nature. Section 5 deals with the payment into court of bail money. The amendment clarifies that, for instance, in cases where the person who has been granted bail is remanded in custody until the bail money is raised, payment of the money to the prison governor may be regarded as a payment into court. This avoids the need to hold the person until the court is sitting and avoids having to bring the person to the court to pay the money.

Section 9 is concerned with the estreatment of recognisances and the forfeiture of money into court. The amendments aim to improve the drafting by amalgamating section 9(1) and 9(2). Section 9(12) now makes clear that the order for committal to prison for non-payment of an estreated amount may be made in respect of the surety as well as against the person who was granted the bail.

Section 44 amends section 15 of the Criminal Justice (Theft and Fraud Offences) Act 2001, by inserting an additional offence. It is proposed that a person commits an offence if he or she is in possession without lawful authority or reasonable excuse of any article made or adapted for use in the course of or in connection with the commission of a number of offences under the 2001 Act, including theft and burglary. An example would be the possession, even in a persons home, of devices to attach to ATMs. A defence to the new offence is also provided.

Section 45, the final section in the Bill, proposes a minor technical amendment to the 2001 Act. We made an amendment on Committee Stage that would further clarify the operation of section 99 of the Criminal Justice Act 2006 on suspended sentences.

To sum up, the Criminal Justice (Miscellaneous Provisions) Bill 2009 will complete the process of reform in firearms licensing which began with the Criminal Justice Act 2006. We are also taking the opportunity to introduce some further necessary changes to ban the widespread licensing of handguns and the development of undesirable shooting practices. The Bill will improve in practical terms the operation of the European arrest warrant system. It also gives powers to the Garda Síochána and to the staff of the Revenue Commissioners to exchange information with other states who are party to the Schengen information system.

Some of the other changes envisaged in this Bill are technical in nature, but it is important none the less for the criminal justice system that they are legislated for and that the proposed amendments are dealt with to the satisfaction of the Oireachtas. I welcome the contribution of all sides on this matter and I commend the Bill to the House.

Senator Eugene Regan: I thank the Minister of State for outlining the Bill in such detail. It is important legislation and covers quite a range of issues. The handgun issue has taken most attention but there are very important provisions in this Bill on a range of key legal issues. It is self-evident that we need a new regulatory regime for the licensing of rifles and handguns. The European arrest warrant has been of major significance in terms of co-operation at a European level, and given the cross-border nature of a lot of crime, that facility is very important to law enforcement authorities in different member states, including this country, so it is important the Bill is framed in a workable manner. I will return to this point.

The amendment of the Bail Act is more technical than significant. Our participation in the Schengen information system carries with it a tremendous benefit to the prosecution authorities in this country. The certification of evidence on the part of the Garda technical bureau will facilitate the provision of evidence and reduce costs for technical matters. The provisions on knives and swords are very important.

The figures on firearms since 2005 state that 1,236 firearms were stolen — an extraordinary figure — of which 31, I understand, were handguns. The focus on handguns and the banning of certain types of handguns is not entirely justified by the facts and statistics. There has been a dramatisation by the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, of the problem of legally held handguns, which takes away from the general thrust of the Bill, that is, to have a proper regulatory and licensing regime in place for the entire firearms area.

When we discuss this type of legislation, one is quite shocked at the extent and numbers of firearms in the State, some 233,000 in 2007 and 2008. It is an extraordinary number of firearms

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and it is very important the entire licensing system is properly regulated. The need for a proper licensing system has been evident for some time.

I should declare that I have been involved in legal cases on the issue of licensing. It has been evident that a new licensing regime has been required since the Frank Brophy case, Dunne v. Donohoe, etc. Previously, the discretion and the manner in which it could be exercised by the chief superintendent, who the courts described as the *persona designata* and who was vested with the discretion to decide on applications for licences, was very restricted. Through the cases I have mentioned, the courts facilitated an opening up of the system so that where previously under the legislation in place, namely, the Firearms Act 1925, there had to be an individual consideration of an application, the licensing regime came to be determined more by the courts than by the Legislature.

If we have had an expansion of firearms and, in particular, hand-held firearms, it has happened under the watch of this Administration. If there was a need to act, it was evident for quite some years and should not have had to wait until Mr. Justice Charleton highlighted this issue last year in the case of McCarron v. Kearney. It was evident for some years that the licensing of firearms was taking place in a manner which the Legislature and the Government were not content with and contributed to a significant increase in the number of handguns. We cannot now try to close the door. It was the Government which allowed this to happen over recent years.

It is important not to overreact when we now try to establish a proper licensing regime. Due cognisance should be taken of the situation of people who have undertaken and invested in a sport where there is no evident danger posed by such sports and the people registered for and participating in them. I appreciate the legislation was amended in 2006, which tightened up the regime, but the Government failed to act and put in place a regime in which the licensing system was what the Legislature would wish it to be. There are changes in the Bill, such as the three-year licensing system. The provisions in the Bill regarding the distinctions between restricted firearms and prohibited firearms can be dealt with on Committee Stage. The broad thrust of the licensing regime which is being introduced will find support from this side of the House.

In general, we are supportive of this Bill across a range of issues. However, there are a number of specific points regarding firearms which we will discuss in more detail on Committee Stage. One issue is the sport of practical shooting and its interpretation by the Minister, which has been viewed as posing a danger. However, it is not readily apparent why that is the case. It seems to be a recognised sport in many western countries and we have to justify the Bill and the restrictions being put in place in that regard. It is a very popular sport in the United Kingdom and I question whether it poses the danger the Minister attributes to it. The regulation of firearms dealers in the manner proposed is in order. The issue of replica weapons can be a problem and it is appropriate that they be regulated. In general, on the firearms element of the proposals, subject to the qualifications I have expressed in regard to some of the sporting activities and the type of weapons which are used in those activities, the Bill will be supported.

With regard to the European arrest warrant, this is a very important Bill. It was originally European legislation and was then reluctantly approved of by the then Minister for Justice, Equality and Law Reform. The original drafting of the legislation was not only rushed, which is acknowledged by, I understand, Mr. McIntyre in his annotation of that Bill, but its rushed nature led to a number of drafting problems and these gave rise to a need for substantial amendments of the Act soon afterwards.

Its rushed nature was not the only issue. There was a view that this was an encroachment on the Irish criminal justice system so we would draft this Bill to make it as difficult as possible to implement it. I appreciate there is a change in that view. The legislation was amended in 2005 and the amendments which are proposed in this Bill are practical and necessary.

We have an interest in this legislation. It is not just a threat in that we receive demands through arrest warrants from other countries. We also have a keen interest that the system works as we want to ensure individuals who have been engaged or potentially engaged in criminal activity in this country can be extradited from other member states of the EU.

While I appreciate that many of the amendments are technical, nevertheless, they are significant — for example, the provision which is necessary in section 5 to allow for Ireland to accept arrest warrants from Austria, Italy and France. Some of these technical amendments concern European arrests warrants which are “duly” issued. All those points need to be cleared up. There is a fundamental change with regard to the right of appeal and we will have to discuss on Committee Stage the conditions under which appeals would be permitted. There is also an issue, where an individual voluntarily surrenders, that he or she is not permitted to change his or her view on that at the last minute, thus frustrating the simplicity of the system and its increased efficiency.

There is the issue of the Schengen Information System II. Again, I should declare that I have advised on this matter so I will not say too much about it. It is a system from which we can benefit greatly, not only in regard to our immigration policy but also in the area of criminal law and co-operation among the policing and prosecution services. The fact that Ireland is participating fully in this system and that we are now setting the legislation in place before it is fully up and running is to be welcomed.

With regard to the other elements of the Bill in terms of bail and the evidence from the technical bureau, we will be supporting them. I will reserve my position on the amendments which will be submitted but, in general, Fine Gael supports the Bill.

Senator Jim Walsh: I thank the Minister of State for outlining in detail the content of the Bill. I have an observation concerning the Title of the Bill, the Criminal Justice (Miscellaneous Provisions) Bill. In so far as we can, the Title of the Bill should reflect its content. It should be accessible to legal practitioners and to those members of the public who want to check aspects of law in regard to particular topics. In my business and local government days, I was always suspicious when I saw “miscellaneous” expenses. When I raised this at the local authority, I noticed that the miscellaneous expenses then reduced but a new item of “sundry” expenses was added. Often, when one began digging, one would not know what one would find. I believe simplification should be the order of the day. While we do not want to duplicate, triplicate or quadruplicate the Bills we have, I suggest that as far as possible the Title of the Bill should reflect its content precisely.

I refer to the amendments to the Firearms Acts 1925 to 2007. I preface my remarks in this regard by stating I support fully the control of guns, a strict licensing regime and anything which serves to promote the avoidance of a gun culture in our country. We have been successful to date in achieving this and I would not want anything I say to be interpreted as flying in the face of that philosophy. However, as is the case with many Members, some of the sporting bodies have been in touch with me, particularly the International Practical Shooting Confederation, which I met. The definition “practical shooting” is excluded from the Bill and the term “simulated combat” is used. However, this organisation, the Irish branch of which is, I understand, located at the Hilltop Shooting Club in Newtownmountkennedy, would argue it is not involved in pop-up target activity which simulates combat activity.

[Senator Jim Walsh.]

While I understand the Minister, his officials and the Garda have concerns in this regard, and obviously one cannot fly in the face of these, I ask that there would be continuing interaction with such clubs and that we would not simply limit sporting activities to Olympic sports. A broader approach needs to be taken without at the same time endangering society by risking the imposition of a gun culture. The Minister might be open to ensuring that if the Garda and officials can come to some accommodation in the future, this matter could be reconsidered and amended.

In his contribution on the European arrest warrant, the Minister of State said:

Section 6 amends section 10 of the Act by deleting the word “duly”. The word “duly” can be interpreted as meaning that the validity of a European arrest warrant could be inquired into by an Irish court. This goes against the very principle of mutual recognition on which the European arrest warrant system is based.

I wish to concentrate on the issue of “mutual recognition”. Is the Minister satisfied that the human rights of Irish people will not be infringed by any anti-Irish prejudice that might arise within any jurisdiction? I am referring specifically to warrants from the English courts, where we saw in the not too distant past serious miscarriages of justice. There have been high profile cases such as the Birmingham Six, the Guildford Four, the Widgery report and the words of Lord Denning, which showed it was not beyond the judiciary to fabricate opinions to meet the political situation rather than the needs of justice involved.

I have raised in the House on many occasions the issue of the Dublin and Monaghan bombings. I do so because the case displays a certain mindset. An all-party sub-committee of the Joint Committee on Justice, Equality, Defence and Women’s Rights sat for some considerable time hearing evidence and taking statements of witnesses in regard to the reports of Mr. Justice Barron, who inquired into these issues over a period. The Barron report stated the inquiry received co-operation from the Royal Ulster Constabulary at an early stage of the investigations. However, it was then informed by the RUC that it had been instructed to refer all inquiries to the Northern Ireland Office. When the inquiry did so all co-operation ceased. The Joint Oireachtas Sub-Committee on the Barron Report, an all-party committee, referred to the collusion involved in such cases, especially the knowledge and acquiescence, not only from the security forces, but also the Northern Ireland Office. The only unresolved question is if this was carried out at the direction of people high up in the security forces, the political system and the establishment. The Northern Ireland Office was under the control of the United Kingdom Secretary of State which reported to the UK Cabinet security committee. On foot of these reports the Dáil passed an all-party motion calling for the UK House of Commons to assist in securing co-operation and the truth about what took place and these atrocities.

Our laws on terrorism and subversive activities allow for an inference to be drawn when a suspect remains silent. The corollary is that we could draw an inference from the deafening silence from the House of Commons and the British Government and establishment regarding these terrible atrocities.

It was a sad era in Irish history but a shameful era in British history. The matter has been raised by backbenchers in the Dáil and I have raised it several times in the House, as have others. However, it should not fall to backbench Members to demand answers. Senior Members of the Dáil on the Government and Opposition sides should lead and seek answers. It is not good enough to say these events took place on 17 May 1974, that it was too long ago and that we should consign them to history when 34 citizens were brutally cut down and murdered.

Recently, the Ryan report was published and I wish to draw an analogy. It dealt with serious crimes and abuse committed the 1940s, 1950s and 1960s. The media, politicians on all sides and the public were appalled, shocked and concerned at the crimes. No one suggested they took place too long ago and that we should not bother with them now. They have been referred to the Garda and people will continue to pursue justice for the victims. A compendium of highlights from "Questions and Answers" was broadcast last Monday. One clip featured the testimony of one of the abused, namely, Michael O'Brien and it was quoted in the House yesterday. He graphically described how he was abused in an institution. Without in any way diminishing the appalling abuse and crimes committed against him, at least he is alive today to talk about his experiences and to seek justice belatedly for those crimes.

I am sure the Minister of State visits Wexford regularly. The next time he is in the town he should go over the bridge and take the first left and he will arrive at Crosstown cemetery. One of the first graves he will see is the small grave of Siobhán Rice. She was a 19 year old starting her career in the public service, I understand in the Revenue Commissioners. She was killed in Talbot Street on that day. Her father and mother appeared before the sub-committee. They were in their 80s at the time and are now in their 90s. Edward Rice appealed to the sub-committee to establish the truth for him before he closed his eyes.

Where innocent citizens are murdered by the agents of another State it is not good enough to allow the matter to be swept under the carpet. I echo his call and appeal to the Taoiseach, Deputy Brian Cowen, and Deputies Enda Kenny and Eamon Gilmore to follow through. I commend the Taoiseach for allowing the motion, which calls on the House of Commons to cooperate, and for putting it on the Order Paper in the Dáil. However, it is not good enough to leave the matter there. We must follow through, set up a Dáil committee which would interact with its counterpart in the House of Commons and, if needs be, take the matter to the European Parliament. We must continue to exercise ourselves and focus attention on this appalling crime committed in this State.

An Leas-Chathaoirleach: Senator Walsh is straying from the Act before the House.

Senator Jim Walsh: I will do that. To use the words of the sub-committee, the State failed the victims. That was also stated in the report. The right to life is the most fundamental of all human rights. I call on the Minister to explain the safeguards in place related to extradition warrants to ensure such miscarriages of justice do not occur in future, especially given that a certain dilution is now taking place.

Senator Rónán Mullen: I welcome the Minister of State. Tacaím leis an bprionsabal laistiar den Bhille. Tá sé tábhachtach go mbeidh na rialacha cuí againn maidir le ceadúnas a thabhairt i dtaca le gunnaí éagsúla, agus tábhachtach go mbeidh na hathruithe teicniúla clúdaithe sa Bhille. Chomh maith le Seanadóirí eile, áfach, bhuaile mé le daoine atá buartha faoi ghnéithe den Bhille. Ceapann siad go bhfuil an tAire ag dul thar fóir, go háirithe leis an gcosc iomlán ar ghunnaí láimhe de shaghas éagsúla mar cuirfidh seo isteach ar ghnáth-cheart daoine páirt a ghlacadh i spórt atá measúil agus nach bhfuil aon chúlra coiriúil ann. Ní dóigh leo gur ceart cosc a chur ar an spórt seo toisc go bhfuil an tAire buartha go ginearálta faoi chultúr gunnaí sa tsochaí. Síleann siad gur ceart díriú isteach ar mheon an duine atá ag cleachtadh spóirt in ionad cosc iomlán lom a chur ar imeachtaí nach bhfuil aon chontúirt ag baint leo.

I welcome the general provisions of the Bill, most of which are important and those of a technical nature are necessary. I wish to put questions, some of which occurred to me while listening to the Minister of State and others from meetings I held with representatives of various sporting organisations. They expressed concerns about the ban on certain activities

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involving firearms proposed in the Bill. As with other Senators I have met people and formed my view on their bona fides. I wish to outline some of the issues raised.

Section 6 refers to deleting the word “duly” which can be interpreted, according to the Minister of State, as meaning the validity of a European arrest warrant could be inquired into by an Irish court. This goes against the principle of mutual recognition upon which the European arrest warrant system is based. I know we have the European arrest warrant but I listened to that paragraph in the context of the recent decision of the Federal German Constitutional Court about the Lisbon treaty where essentially the court gave conditional permission for the ratification of the Lisbon treaty in Germany but subjected it to the requirement that legislation be brought forward in Germany which would strengthen the ability or the hand of the German Parliament when it comes to assessing legislation from the European Union.

In many ways, the co-operation in these criminal justice matters and the existence of the European arrest warrant is in general good. However, we come from the background of particular Irish constitutional traditions. The question occurred to me — it is perhaps a question which the Minister of State can answer in terms of the operation of this to date — could circumstances arise where a European arrest warrant could not be questioned, even though aspects around its operation, were it to apply to the operation of a domestic arrest warrant, might be in violation of Irish constitutional principles? Have we arrived at the pass that because this stems from the framework agreement, which requires unanimity at European level, because it is a European measure, our Constitution really has no relevance to its operation in a way that would not be true with regard to domestic matters? I cannot imagine but that this is the case, given the way we have incorporated or facilitated the legitimacy of laws enacted and measures taken on foot of our membership of the European Union. Whereas I do not question the desirability of that in general terms, I am interested to know what view the Minister of State has on whether there is a potential disparity in the level of scrutiny that could be given to the European arrest warrant and its application, having regard to the Irish Constitution as compared with domestic equivalent warrants and procedures being carried out by the Garda Síochána.

Turning to the issue of hand guns and specifically the proposal, the enabling dimension in section 27, which allows the Minister to prohibit certain classes of guns, having regard to certain criteria including calibre and so on, section 33 proposed prohibition of practical or dynamic shooting. I have mixed feelings about that proposal. I am reminded of a well-loved phrase of an old debating partner of mine, who was a very thin fellow. He started his speech in a college debate about the just war by stressing that he was a pacifist by physique, if for no other reason. I speak as someone who has never held a gun in my life and have no particular interest in these kinds of activities. I have a strong concern for animal welfare and animal dignity. It was nonetheless with an open mind that I met people from the International Practical Shooting Confederation, practitioners of that sport in Ireland, and I listened to what they had to say.

Senator Alex White spoke this morning about the unseemly rush of legislation where we have a number of Bills coming together like the 46A buses, having waited in vain for them all year, they all come at the same time. I know the Government wants to be seen to have reached certain goals by the end of the year and to tick certain boxes, but there is no doubt that this limits and inhibits the Seanad’s ability and that of the Dáil to properly scrutinise legislation. Not only is it unseemly that so much legislation is coming pell-mell at us, but it literally makes more difficult our job, which is one of scrutiny and honest assessment and probing inquiry. The rush of criminal justice legislation is something which we should view with particular concern, having regard to the importance of criminal justice legislation and having regard to the restric-

tions, however justified, that it imposes on people and to the limitations on people's rights that are carried within some of what is being proposed.

I am concerned that this unseemly rush of legislation might also feed a certain not fully thought through desire on the part of Government to be seen to be tough on crime. We all want to be seen to be tough on crime, but the regrettable aspect is that we do not always think or act intelligently in terms of strategies that will prevent crime in the short, medium and long term. There is the old cliché about being tough on crime and tough on the causes of crime. I worry about an approach which is mainly focused on being seen to be tough on crime. It is a good thing to be tough on crime but if, in order to be seen to be tough on crime, one takes steps that are not refined, that lack the degree of specificity so as to avoid unnecessary injustices, that is not good and it is not good public service. I am concerned that a lot of this legislation is coming on the back of a desire to be seen to be tough on crime and to do like Alexander the Great, to cut through the knot rather than untangle it. In cutting through that knot too quickly and without proper regard to the need to tease out fully the issues and implications, the Government will do a disservice and ultimately possibly bring the law into disrepute. I am concerned there are aspects of this Bill that seek to use a mallet to crack a nut. It is an approach I fear that may lack refinement.

Turning to what is proposed in the legislation, specifically the proposed prohibition on practical and dynamic shooting, it is very difficult to assess at what point a sport becomes anti-social. In certain times and places, boxing has been prohibited, although that is not something we would ever countenance in this country. I know that some members of the Cabinet are very fond of skiing and I have seen enough James Bond films to know that people who ski down Alpine slopes are often very dodgy characters. There is a need to be very careful about what point we decide that a particular type of sport is anti-social or is capable of attracting anti-social elements or dangerous elements within society who might piggy-back on the back of that sport so as to enhance their ability to cause harm to others.

On the issue of practical or dynamic shooting, if that involves simulated combat techniques, humanoid-type figures moving fast, aiming at them in such a way as would enhance one's ability to cause havoc in some inner city area, I can see why that would be very undesirable. However, something like Paintball comes much closer to replicating combat techniques except that the guns used are not harmful. I played Paintball once and I never will do so again, having been splashed far too often with a rather painful paint. Paintball is a combat-style activity.

There is a degree of psychology and socialisation issues that have to be considered. There is a desire among members of society, among children, very often boys, to engage in combat-style games. As people grow up, some have a particular interest in shooting and in specific types of sport, but that does not make those people anti-social. There is a need to take care here so as not to hit out unfairly against groups of people who are doing something that is fairly ordinary in terms of their human nature. I will return to this on Committee Stage when I will be proposing some amendments. Having met some people involved in the international practical shooting confederation, it is fair to say a degree of hurt has been caused to people who see themselves as practitioners of a legitimate sport by those who regard their sport as anti-social. I am aware that was discussed at the Fianna Fáil Parliamentary Party meeting. People were concerned about the Minister's assessment of the degree of conviction among members of the Fianna Fáil Party of his point of view. People felt that did not fully represent the degree of support their sport and representations enjoyed among ordinary members of the Fianna Fáil Party.

I will bring forward amendments that seek to give the Minister the power to regulate certain activities rather than prohibit a particular activity because there is a major difference in opinion

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between the practitioners, in particular the International Practical Shooting Confederation, and elements within the Department as to the anti-social nature or otherwise of their activity and its potential to attract anti-social elements. It would be better if there was further dialogue and if the legislation permitted certain types of sports to be subject to scrutiny and be regulated and permitted accordingly.

Senator Déirdre de Búrca: I welcome the Minister. I welcome the opportunity to participate in this Second Stage debate on the Criminal Justice (Miscellaneous Provisions) Bill 2009.

When we discuss criminal justice legislation we must try to find a balance between the need to respond to the real problems of crime we confront every day but also the need to protect civil liberties and, as legislators, that is what we must be mindful of when we scrutinise and debate legislation such as that before the House.

Many crimes are transnational in nature and therefore it is appropriate we are discussing proposed amendments to the European Arrest Warrant Act, which was adopted in 2003 and has been in operation for approximately five years. We have had time to assess the effectiveness of the legislation and what must change.

Some of the amendments proposed in this legislation are a matter of clarification or removing ambiguity. They provide more accurate definitions. Section 8 is allowing more modern means of communication for the transmission of documents under the Schengen information system,

including e-mail. That is interesting because we must update the Schengen information system, which is an electronic alert system that facilitates the exchange of information between police and authorities in the various member states. We must recognise that we must move with the times and use more modern electronic systems and modes of communication. Much in the legislation can be supported.

I welcome the provision in section 21. As soon as we start talking about the transmission of documents, particularly sensitive documents, we are looking at the issue of data protection. Section 23(1) provides for the Data Protection Commissioner to assume certain supervisory functions that arise under the Schengen Agreement. I hope the Data Protection Commissioner will be adequately resourced to do that because after five years of its operation the European arrest warrant may not be used that regularly. I am not sure how regularly arrest warrants are issued under the European Arrest Warrant Act 2003 but it will be something that happens more regularly and the Data Protection Commissioner could find a burden on the office unless those resources are provided.

I have some concerns about the legislation which the Minister might clarify because I may not be interpreting the legislation correctly. One of my concerns has to do with section 10 which deals with section (14)(1) of the 2003 Act. It provides that a garda may arrest without warrant any person whom he or she has reasonable grounds to believe is a person named in an alert as defined in section 2 as amended by section 14 of the European Arrest Warrant Act 2003. My concern is if the garda can arrest that person without a warrant, section 10(3) of the legislation then provides that once a person is given a copy of the alert, the person is to be brought before the High Court as soon as possible after the arrest. I do not know the length of time it can take the High Court to hear such a case but once the person appears before the High Court, the High Court can then remand the person in custody or on bail at its discretion for a period of not more than 14 days for the production to the court of the European arrest warrant to which the alert relates.

It strikes me that where an error is made, and I have no doubt errors will be made from time to time under this alert system, an individual could find himself or herself in custody effectively for more than a two week period depending on how long it takes the High Court

to hear the application by the member of the Garda Síochána. That concerns me from a civil liberties point of view. I ask the Minister to clarify that point and provide some reassurances about safeguards that might be built into the legislation to prevent somebody being unnecessarily detained.

I have some concerns about the consent to surrender in section 11(c), which inserts a new subsection (3A) restricting the grounds of appeal to the Supreme Court against a decision made under the section to cases which are certified by either the High Court or the Attorney General as involving a point of law of exceptional public importance. That seems to suggest that where the High Court deems that the European arrest warrant issued in respect of a particular individual is appropriate and correct, once the matter is certified by the High Court the individual has no grounds of appealing to the Supreme Court. As far as I understand that is not the case with an ordinary arrest warrant issued by the members of the Garda Síochána and I am concerned that the individual would not have access to a higher court of appeal. I ask the Minister to clarify whether there is another body to which the individual can appeal, perhaps a European court, although I am not aware of one.

I have some concern about section 20(b) and the insertion of new section (45A) on the identification procedures. The new section (45A)(1) authorises the Garda Síochána to photograph, fingerprint and palm print persons arrested under the Act for the sole purpose of verifying the person's identity. Identification material of that type is often sent with European arrest warrants and hitherto the Garda Síochána had no power to take similar identification material for comparison purposes. However, the new section (45A)(4) provides that a member of the Garda Síochána may use reasonable force to take material under subsection (1) where the person fails or refuses to allow the material to be taken. I would be somewhat concerned about the latitude that might be given in that respect. I accept there are certain safeguards built into the legislation in that those powers may only be exercised on the authority of a garda of the rank of superintendent or higher, that the material pursuant to the section has to be taken in the presence of a garda or inspector of higher rank and that the taking of material pursuant to the section shall be video recorded. However, I am somewhat concerned about the definition of "reasonable force". Is that provided somewhere in the legislation? I do not see it.

Also, the new section (45A)(10) creates an offence of obstruction of a garda in the exercise of powers under the section, with penalties of €5,000 or 12 months imprisonment or both. I would be concerned that if an individual resists in the exercise of reasonable force they may find themselves subject to a considerable fine or 12 months imprisonment, or both. I ask the Minister to address that question.

On Part 4, amendment of the Firearms Acts 1925 to 2007, I agree with the Minister's approach. Like others I have been lobbied by some of the gun control groups and special interest groups and I understand their concerns but as the Minister mentioned in his contribution, 2,000 handguns were licensed in the five year period since 2004. I do not have the figures for the number stolen but it is a worrying number. The growth in ownership of handguns is a matter of concern.

The debate about the right to carry arms bears some similarity to debates in the US. Our police force is civilian and unarmed. The idea that the State would encourage the growth in ownership of licensed or unlicensed handguns, when we have a largely unarmed civilian police force, must be examined. The Green Party is supportive of the Minister's position in restricting section 3D, which provides that no new firearms certificates will be granted, with limited exceptions, for short firearms.

I support the ban on the form of target shooting known as practical shooting. The duration of firearms certificates should be three years unless revoked. We support these measures and we support the thrust of the legislation.

Senator Alex White: I refer to the sections of the Bill dealing with European arrest warrants. Most of them make sense and the sources of the changes are explained in some detail by the Minister. Many technical issues are dealt with in the course of the amendments under the European arrest warrants section of the Bill.

We talk about the role of the Seanad and how it examines legislation. The European arrest warrants provisions are technical and numerous even though many make good sense. This Bill will be considered by the Select Committee on Justice, Equality, Defence and Women's Rights. I ask colleagues to consider the following matter in discussions on the Seanad and how it operates. Rather than each member making a Second Stage speech on the general thrust of the Bill, the public might be better served by us working in committee style, almost like a seminar, with the assistance of the Minister and his officials. We could have the Bill available to us, as well as the various Acts to which it refers and proposes to amend.

Senator Walsh refers to Bills including the words "miscellaneous provisions" in the title and the fact that this means one must sit up and be careful. As a practising lawyer, this is a hazard. Matters come into law in different types of Bills and one can have great difficulty in locating where a change has come from. I am willing to go back to previous legislation and compare changes to the existing provisions as part of the job we are paid to do. The Minister might consider this in terms of how legislation is examined in these Houses. We could quickly access the principal Act to which we refer in the debates. There should be better software in this day and age so that one can access quickly related legislation to advise people and, more important, for our purposes here when we are considering changes that are to be made to legislation. Colleagues referring to sections in this Bill must then refer to sections in the principal Acts and to new sections that are proposed to be inserted. With the best will in the world, people get confused. This is a plea for consideration to be given to the modernisation of the way we do business. This is not a partisan point. Making the way we do our business more efficient would assist all of us and may assist the public, which is presumably the point of us being here in the first place.

I share some of the concerns raised by Senator de Búrca and I ask the Minister to examine these — we will examine them on Committee Stage. Senator de Búrca referred to an appeal to the Supreme Court, as did Senator Regan. I am uncomfortable with the emerging trend in much legislation. There is a temptation to cut off an appeal to the Supreme Court unless there is a certificate from a High Court judge that the case involves a point of law of exceptional public importance. This is a formula that we are familiar with in our law but it should be used sparingly. I question whether it is necessary in this case. I would like to hear the Minister justify the basis on which it is necessary in this situation.

I have a query on the change to section 7(a). This is a case where it would be helpful if I had the section it is proposed to change in front of me. Section 7 proposes to amend section 11 of a previous item of legislation, where "the offence" would be substituted with "one of the offences to which the European arrest warrants relates". Once there is a European arrest warrant obtained against an individual for any offence, this has application to that person in respect of other offences. The explanatory memorandum states: "it is sufficient, for the purposes of the subsection, that an arrest warrant has been issued by a judicial authority in the issuing state for one of the offences to which the European arrest warrant relates". There are circumstances in which it would not be proper for an arrest warrant to be used in respect of an offence for which it was not issued. Will the Minister consider this? Maybe I am missing the point but I seek clarification on it. Section 19 proposes to delete section 40 of the 2003 Act. The explanatory memorandum refers to Article 4.4 as:

one of the optional grounds for non-execution of a warrant. It provides that surrender will not take place where the wanted person could not, by reason of passage of time, be proceeded against in the State in respect of an offence which corresponds to the offence to which the European arrest warrant relates. Difficulties have arisen in relation to the interpretation of this section and it is considered that the question of delay — passage of time from commission of the offence — is a matter for the court in the issuing state. The section is, therefore, being deleted.

I would like an explanation on why it is necessary to drop this section, which seemed to be an important protection. I am not clear on the explanation by the Minister for dropping it.

The other major section of the Bill refers to firearms. Many colleagues have referred to these important provisions. I was struck by the reference to being tough on crime by Senator Mullen and the necessity for Ministers with responsibility for justice to appear to be tough on crime, perhaps for the optics. Senator Mullen is correct to draw attention to the problem because Ministers with responsibility for justice are tempted towards the macho principle. Perhaps this is because of the way these issues are dealt with by some sections of the media. The current Minister's predecessor was a strong exponent of what I describe as the macho principle. The current Minister has fallen into that trap on some occasions and is often tempted by the attractiveness of being seen, at least superficially or for the optics, as a man who is tough on crime. That is not to say it is not important to be tough on crime, but I am more interested in the substance than the optics. For that reason I have some questions about what is contained in the Bill regarding firearms.

What is the justification for the changes? It has not been given in any detail and certainly not in a way that is persuasive or convincing. We should only change the law if we are persuaded or convinced that it will in all likelihood make a real difference or that our failure to do so could result in a bad situation or a threat to the safety of the community which is, I accept, the paramount concern of the Minister for Justice, Equality and Law Reform. Having navigated my way through the Minister's speech to find the justifications for this handgun ban, I have found two, one of which is that there is a concern that legally held handguns might be stolen and used for criminal purposes. That would be a very legitimate concern if there was evidence that it is occurring. However, Senator Regan told us that of all the various weapons recorded as stolen in the State, there were 31 handguns. Is there any evidence of any of these handguns being used for criminal purposes?

The Minister referred to the situation in the United States as outlined by the chief inspector of the Garda Síochána Inspectorate who said many guns used in the commission of crime in the United States were guns that had been stolen from their rightful owners. The Minister went on to say a number of handguns had been stolen from licensed holders in this country. Senator Regan says that number is 31. Is there any evidence any of these guns has been used? It is the Minister's job to justify these measures and it is ours to question him. I do not claim there is no basis for these changes, but I am simply asking the Minister to justify them.

The second justification offered is the notion of a gun culture. The concept of a gun culture is very problematic. I support the Minister and others in trying to restrict firearms being used in an illegal manner, particularly in violent crime. However, in what sense is there a gun culture? When my child was very young, he took an interest in guns, as do all children, particularly boys at a certain age. They will grab practically anything in the house and deploy it as a weapon because of what they see on television and in the media across the board. Is that part of our gun culture? There is very little we can do to restrict or stop this in the culture in which we live.

With regard to the ban on handguns — I am questioning rather than opposing what the Minister is doing — will the ban on the future issuing of certificates for handguns really make

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the difference of substance that the Minister claims? This appears to be an Irish solution to an Irish problem in that we will allow existing licence holders to continue holding their handguns or to apply for renewal of their licences. There will still be legally held handguns, but we will not issue certificates or licences for handguns in future. I am not sure how that changes anything in terms of the appalling threat of violent crime and access to weaponry in the State. It is the illegal importation or procurement of weapons and guns that is the scourge we must tackle. The Minister has been represented in some areas of the media as trumpeting this measure as one that will support the action we must take to curtail access to weaponry by violent gangs and criminals. However, there is no evidence that this is the case.

Senator Denis O'Donovan: I welcome the Bill. A previous Minister for Justice, Equality and Law Reform, former Deputy Michael McDowell, made an effort to codify all the criminal justice legislation. What is the current position in that regard? It is a Utopian idea, but it would be very useful for practitioners and legislators to have a Bill containing all this legislation, neat and tidy. It would probably be an enormous Bill.

Section 40 of the Bill amends the Summary Jurisdiction Act 1857. In fact, that Act is being amended in two instances. In one, a District Court judge is allowed a longer period of time to state a case following a request to so do, while section 41 amends the same Act and sets out the procedures to be followed in serving relevant documents to other parties involved in an appeal by way of case stated. That simply demonstrates that our law still refers to bits and pieces of legislation that date back almost to the Magna Carta. I supported Michael McDowell when he made his proposal. I understood the work had been put out to tender and that the law department in UCD had embarked on this enormous task. Perhaps the Minister might enlighten us on how that work has proceeded. Since Christmas there have been 12 or 14 Bills before the House dealing with criminal justice matters. It would be much neater to merge them in a single Bill, if that was possible. The concept is good, but I am not sure whether it is practical or possible. We should at least attempt to codify our criminal justice law.

Section 29 is a strong provision which severely curtails the rights of gun clubs regarding training and so forth. I had great sympathy for the other side when I received many e-mails and listened to their arguments. However, I am of the view that sections 28 and 29 are not an attempt by the Minister to be a killjoy or stop sports activities or training. When one digs below the surface, there appears to be very strong evidence in the hands of the Garda and in information related to the Minister that some of these gun clubs have been used unwittingly as training grounds for international terrorists. If that is the case, it is very worrying. Whatever measures are required to stop this must be put in place. Perhaps the Minister will deal with this point on Committee Stage as I have no doubt that amendments to the Bill will be tabled. If he has serious and justifiable concerns in this regard, they far outweigh the merits of what might occur in such clubs. Perhaps the Department of Arts, Sport and Tourism might introduce a mechanism or system for genuine sports people who wish to practise shooting that would be curtailed and restricted and might overcome the problem faced by the Minister for Justice, Equality and Law Reform. If that is the case, it would be worth exploring.

I call attention to sections 28 and 30. Section 28 provides for the changeover from the current one-year system, where all licences expire on 31 July, to a new three-year system with phased expiry so that work involved in applying the new regime can be spread over a 12-month period.

I do not have a problem with that *per se*, but have a concern with regard to section 30 which provides for the outsourced collection of more than 230,000 firearms certificates and fees, resulting in the freeing up of significant amounts of Garda time. Perhaps I am old fashioned but the system we had with the local Garda or sergeant who knew his clients was a failsafe

one. In most Garda stations, the amount of time and effort spent in collecting the certificate and paying the annual fee was not a big problem. I ask the Minister of State to think again on this.

I used to do a great deal of District and Circuit Court work in my capacity as solicitor and there were many instances of gardaí and community members having information which showed it was not safe for certain individuals to have a gun in their possession. I remember one incident, about which clearly I cannot give details, where there was a row between neighbours and a shot was fired. The person who fired the shot was obviously somewhat unstable and the court decided he should not hold a licence for the gun. In my view, that was the right decision. I was defending the man and subsequently tried, on three or four occasions before the District Court and the local sergeant and superintendent, to get his licence returned because he was a farmer living in an area where foxes and other vermin were annoying and threatening his sheep stock, hens and ducks. I eventually gave up. On mature reflection, I believe that system was prudent. From the local sergeant, with his information, up to the District Court judge, all said they had reservations and that the man could try again in a couple of years. I am not sure what happened because this was some years ago but I believe the issue should be considered again. The amount of Garda time freed up would be minimal and we might change a system that has proved very safe.

An Cathaoirleach: The Senator has less than a minute remaining.

Senator Denis O'Donovan: I was just getting going, unfortunately. However, I welcome many of the Bill's provisions and Part 2, which relates to amendments to the European Arrest Warrant Act 2003, is a very sensible and prudent provision. There are many other amendments and parts to the Bill that cover other sections of legislation and that is very welcome.

I urge the Minister to establish the codification process in the lifetime of this Dáil, if possible. Perhaps it is a flight of fancy or folly on my part but it would be wonderful to have one codified system of criminal justice law. It would be very valuable for practitioners, even if only for downloading material. I would like to know how we stand in that regard.

Senator Feargal Quinn: I welcome the Minister. I listened very carefully to his speech and was impressed. I had not realised how involved the Bill is although most of it deals with technicalities to which I shall not refer. I wish to mention the involvement with the Schengen information system. It is my view that Ireland should be involved in Schengen rather than in the British travel area. I realise that is not relevant to this legislation but it dawned on me when we talked about the Schengen Agreement and what the benefits would be if we were to sign up to it and to convince the British to do so too, or overcome that factor in some form or another.

Senator Alex White spoke about being tough on crime. If I were Minister for Justice, Equality and Law Reform, the first action I would take, with so many robberies, burglaries and stabbings, shootings, murders and killings, would be to be tough on crime. Every Minister appointed to that Department appears to be tough on crime.

I was impressed by the detail of the Bill. We have had three criminal justice Bills in this House at the same time, and Senator O'Donovan was looking for further Bills. There is clearly a need for them because there is a problem.

I shall deal with two points. First, the amending of the Firearms Acts 1925 to 2000 is perhaps the most important part of the Bill, given that almost every week a family is bereaved by shootings carried out by criminal gangs. Almost 2,000 handguns have been licensed during the past four years, with 579 new licences issued last year. That figure shows the explosion in gun

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ownership and demonstrates the real need to address the situation. I am not convinced the Bill will do everything it might to counter illegally held handguns.

However, it will certainly affect law-abiding citizens who are members of gun clubs. Research shows that guns used in criminal activity do not come from gun clubs or their members. In my view, this Bill will probably do little or nothing to stop illegally held handguns, and genuine sporting enthusiasts should be able to gain licences. When there are burglaries of houses in the countryside, if a gun is available it is always the first item stolen. Therefore, many illegally held guns are probably stolen from licensed owners. I understand the going price for a cut-down gun in Limerick or in areas of Dublin is approximately €500. One can see how tempting it is for a criminal who enters a farmhouse where there is a legally held gun.

At a time when Garda resources are being cut back, we must keep in mind that it is gardaí who are doing most in the fight against illegally held firearms. They have proven very successful in seizing such firearms in recent years. It is estimated that 2,000 weapons have been seized under Operation Anvil. This year that operation's budget was increased modestly, from €20 million to €21 million. However, instead of punishing law-abiding gun club members, why does the Minister not increase substantially the successful operations budget, resources and remit of Operation Anvil? What, if any, is the long-term plan for Operation Anvil? Will its budget be cut in the future as has been the case with Garda operations in general in the recent past? Is there any other way of removing a large number of illegally held firearms from our streets?

I welcome that penalties for carrying knives are to be increased considerably. The number of offences by people in possession of a knife has risen dramatically in the past five years. I have a figure showing a 72% increase in offences relating to the possession of offensive weapons, mainly knives. Of these, only 32% resulted in convictions, which is worrying. I do not understand how anybody can go out with a knife of any kind and not be found guilty of a crime. The legislation, therefore, is to be welcomed. There have been recent shocking incidents of people wielding samurai swords and causing serious injuries. I am glad that offence has been included.

The Minister, Deputy Ahern, stated in the Dáil he was determined to stamp out a practice known as practical shooting and that his Department had monitored with concern "competitions in which people shoot their way through multi-stage target courses based on real-life combat scenarios, such as a home invasion or a hostage rescue". He went on to say: "This activity is one that seeks to glorify and normalise attitudes to high-powered handguns and promote their use and ownership." The Minister described practical shooting as a "highly undesirable" recent development in Irish shooting sports. The Minister of State has told the House of his plans in this regard.

I have some degree of sympathy with the Minister's viewpoint although I believe the problem of so-called practical shooting is exaggerated. I was not aware of it. The German Government had plans to ban combat games such as paintball — where players shoot paint at one another — but has pulled back, although it has not dropped the legislation. In response to a recent school shooting near Stuttgart about which we all read, German politicians wanted to outlaw the sport, calling it immoral and disgraceful, and impose a €5,000 fine. Will the Government go down the route planned, but not yet followed, by Germany? Given that a superintendent has the power to grant permission for such realistic imitation devices, will there be a de facto ban on paint balling in some parts of the country? I do not regard it as a sport, but it became quite popular, even among management classes, in recent years.

The Minister for Justice, Equality and Law Reform is concerned with so-called practical shooting, but what is his stance on computer games in which ultra-realistic killing and other

types of violence are integral parts of the plots? Do such computer games “glorify and normalise attitudes to high-powered handguns”? I believe they do. While I do not have much experience with them, such computer games are quite aggressive and vicious. Is the Minister in favour of a more comprehensive ban on “killing” computer games?

An Cathaoirleach: The Senator has one minute remaining.

Senator Feargal Quinn: I am on my last point. The Bill introduces some small amendments to our bail regime, which remains one of the world’s most lax. Is legislation to tighten up the area planned? Previously, there were constitutional difficulties regarding bail issues, but respect for the law is reduced considerably when someone who is awaiting trial is accused of committing second, third and, in a recent case, 16 other offences while on bail. I urge the Minister of State to consider what we must do to restore respect for the law.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): I thank Senators for their contributions and recognise their support for the legislation, although I acknowledge that a number of issues were raised for discussion. We will deal with some of those in more detail. As I gave a lengthy introduction, I will not repeat everything in full, but I will make some general comments in reply to some of the points raised. I do not doubt that we will tease some of them out further on subsequent Stages.

Senator Alex White discussed the manner in which the Bill has been presented. It is not for me to say how we should do our business, but he made a valid point about how documentation is presented and the possible use of electronic means whereby we could see where various sections fit in. I remember being involved in preparing a policy document. When it was circulated and amendments were made, I was able to read it all on-line. The pieces to be removed had lines drawn through them and the new inserts were in a different colour. As with everything else, we must examine how the Houses do their business.

Regarding Senator O’Donovan’s comments, the codification of criminal law is being undertaken jointly by the Department and UCD’s law faculty. It will take many years and, while there is no timescale, it is unlikely that it will be completed within the lifetime of this Dáil.

Senators Regan, Alex White, Mullen and de Búrca commented on the firearms proposals. The Government is appreciative of the House’s broad support for the Bill. The control of firearms in the population generally is undoubtedly a progressive initiative and desirable for society as a whole. With some exceptions, this appears to be the opinion of most Senators. Any society that is lax in its control of access to firearms is storing up trouble for itself. Some Senators have pointed out that the Bill will not do anything to alleviate the situation with regard to gangland crime, but it is fair to say that the Government has never claimed that to be the Bill’s target. A significant body of other legislation intends to target gangland crime and further proposals that are currently in the Lower House will be before this House next week. Last night, the Seanad debated the Criminal Justice (Surveillance) Bill.

The House will be aware that the current anti-gangland crime measures include Operation Anvil, which Senator Quinn mentioned. Its focus is the disruption of serious organised criminal activity. The Senator is correct in that, in a time of budget cuts, €21 million has been ring-fenced in this year’s Garda budget to ensure that ongoing operations in Operation Anvil continue to be undertaken by all Garda units and sections. When we discuss legislation on these matters, we are discussing a cumulative effect as opposed to a single law. The Seanad completed the surveillance Bill last night.

Some legally held firearms are stolen. It stands to reason that they are stolen for a purpose that is likely to involve some form of criminal activity. We cannot afford to let legally held

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handguns fall into the wrong hands. The Government has made it clear that its reasons for restricting handguns are much wider. In particular, we do not wish a handgun culture to take hold. Speaking in the Lower House yesterday, the Minister for Justice, Equality and Law Reform mentioned that senior gardaí to whom he has spoken have consistently stated that they are alarmed by the prospect of the proliferation of handguns in communities.

With this Bill's passage, the law will be tighter and the Garda Commissioner will have the additional powers he requires to address matters relating to firearms licensing. It is the Government's belief that the promotion of undesirable shooting practices in recent years, which has created a demand for high-powered handguns, is not in the public interest and we do not wish to have such activities thrive. Nothing is specifically planned in respect of paint balling. If I am wrong, I will correct myself.

Thankfully, there has not been a second Dunblane in the United Kingdom since it banned handgun ownership. Any research on jurisdictions where access to handguns has been tightly controlled will show that such controls were introduced after a gun rampage. We do not want that type of tragedy to occur in Ireland. That the coverage of gun rampages is now so short-lived due to their frequency is disturbing.

There has been a degree of lobbying in respect of practical shooting, but the International Practical Shooting Confederation, IPSC, and the National Rifle and Pistol Association of Ireland, NRPPI, are different. Yesterday, the Dáil voted to prohibit practical shooting. The Garda Commissioner recommended the prohibition. However, the Minister has sympathy for bona fide target shooters above Olympic calibres. For this reason and on receipt of a submission from the National Association of Sporting Rifle and Pistol Clubs, NASRPC, he wrote to the Minister for Arts, Sport and Tourism. They are reflecting on the content of the submission, which is complex and was received late in the Bill's development. For example, there is a suggestion that an individual would need to serve an apprenticeship on Olympic calibres for up to two years and be a member of a recognised target shooting club before he or she could apply for a licence for a centre-fire pistol. It is a strategic issue rather than an urgent one, but the Minister made clear in the Dáil yesterday the distinction between practical or dynamic shooting and what we would loosely know as traditional target shooting.

As the Minister stated in his opening speech in the Dáil, the Bill's firearms proposals are primarily about the protection of public safety and the updating of the administrative and licensing arrangements for legally acquired firearms. A great deal of time was spent discussing particular aspects, but this point should not be missed. Considering the serious consequences that could arise from anything less than a highly efficient administrative approach to the control of firearms in society, no side of the House could object to the aims at the heart of this part of the Bill.

Last year, the Minister stated he would keep under annual review and in consultation with the Garda Commissioner the outcome of the licensing procedure. This commitment as opposed to a long-term review is important. If the outcome of the procedure results in a situation that still poses an unacceptable risk to the community, he has stated he will use new powers contained in the Bill to ban any type of firearm outright.

The provision in the Bill concerning the operation of the European arrest warrant was mentioned. It is designed to increase the system's efficiency and to ensure greater co-operation between EU member states. Like many activities in the modern world, crime has an increasingly international dimension. That was recognised in the House this afternoon. The House's broad welcome for these provisions is appreciated.

Turning to Part 2 of the Bill, which contains amendments to the European Arrest Warrant Act, the following points, arising from Senators' contributions, are worth making. Since the coming into operation of the European Arrest Warrant Act in 2004, this jurisdiction has received approximately 600 requests for arrest warrants from other states, 198 of which were received last year. In 2008, we issued 40 European arrest warrants which resulted in the surrender of 13 individuals thus far.

Senator Walsh expressed concern about the adequacy of human rights protection in the provisions. He spoke about the Dublin and Monaghan issue, which is separate and not directly related to the Bill. However, I draw the Senator's attention to section 37 of the European Arrest Warrant Act 2003, which prohibits surrender where the person's rights under either the Constitution or the Convention on Human Rights would be breached. On any objective assessment, it is difficult to imagine what greater protection of human rights could be given.

Senator Mullen asked about the deletion of the word "duly" and whether a warrant could be challenged. The amendment to delete the word "duly" arises from a High Court judgment which found the use of the word required the judge to look behind the European arrest warrant and consider the validity of the domestic warrant on which it was based. The decision in that case was appealed to the Supreme Court but the appeal was subsequently withdrawn. The European arrest warrant system is based on the principle of mutual recognition of orders of judicial authorities. It is not in keeping with the spirit of this principle that our legislation should require an Irish judge to inquire into the validity of a warrant issued by a judicial authority of another member state. Accordingly, the word "duly" is being deleted. However, the deletion does not prevent the validity of a warrant being challenged by a person whose surrender is sought under the Act but it removes the word the High Court considered required a judge to inquire into the validity of the underlying domestic warrant.

Senator de Búrca asked about the right of appeal under the European Arrest Warrant Act. Both sections 15 and 16 will not allow appeals to the Supreme Court on a point of law of exceptional public importance where it is desirable in the public interest. Senator de Búrca also asked about the taking of fingerprints and palm prints under section 45(a). Provisions in this regard are identical to those in the Criminal Justice Act 1984.

Senator Alex White asked for clarification on the amendment of section 11 of the European Arrest Warrant Act in respect of single or multiple offences. The Attorney General has advised that the Interpretation Act 2005 allows the singular to be read as the plural. Therefore, the subsection could be read as requiring a domestic warrant or similar order to have been issued in respect of each of the offences listed in a European arrest warrant. The Attorney General has advised that the framework decision only requires that a European arrest warrant contain evidence of the existence of the domestic arrest warrant or other order and that this requirement cannot be interpreted as requiring that a domestic warrant exist for each offence set out in a European arrest warrant. The Attorney General recommended this amendment to remove any ambiguity that may arise over the interpretation of the subsection by placing beyond doubt that it is sufficient, for the purpose of the subsection, that an arrest warrant has been issued by a judicial authority in the issuing state for one of the offences to which the European arrest warrant relates.

Senator Regan referred to section 11, in respect of which the right to withdraw consent or surrender has been removed. There are strict requirements for the giving of consent. The judge of the High Court making the order must be satisfied that the consent is being given voluntarily and that the person fully understands the consequences of consenting and had obtained or was given the opportunity to obtain legal advice before deciding to consent. If the court is satisfied as to the giving of consent, it must then consider whether the surrender of the person is pro-

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hibited under the Act or framework decision. In other words, the requested person's consent cannot override the provisions of the Act and require the court to order surrender where this would be prohibited by the Act.

The comprehensive nature of the protections for a person consenting to surrender is such that the current provision which allows for withdrawal of consent right up to the steps of the plane is no longer considered appropriate. Operational experience suggests that this particular provision has been availed of on vexatious grounds purely for the purpose of delaying surrender. The deletion of the provision in no way interferes with, or limits, other legal rights of the person.

A further point raised by Senator Regan on this section related to the restriction on the right of appeal. The restriction is similar to that contained in criminal justice legislation and again operational experience suggests the appeal process has been availed of on frivolous and vexatious grounds to delay or frustrate surrender.

Senator de Búrca expressed concern about the provisions of section 10, in particular the possibility of a person being remanded in custody for a period of 14 days under the section. The section requires the person arrested to be brought before the court "as soon as may be" after arrest and the matter is then the subject of judicial oversight. The House will have noted the requirement for the person to be informed of the right to legal representation not only on arrest, but again on appearing before the court. *1 o'clock* Senators will note that the remand is not automatically in custody but may be in custody or on bail at the court's discretion and, equally, it is not automatically for 14 days but for such period not exceeding 14 days as the court considers appropriate.

With regard to bail legislation and the system of bail as a whole, the question of the duration of any period of bail is always a matter for the courts and, to some extent, is related to the ordering of business in the courts. The Department of Justice, Equality and Law Reform keeps the law on bail under constant review and will continue to do so.

I hope I have addressed most points. If I have missed any, I hope the Senators will revert to me on Committee Stage. The Bill represents another legislative building block in the overall aim of improving and modernising our body of criminal legislation. The fight against ever more sophisticated criminal activity is being undertaken on a range of fronts. The updating of our legislation to meet the current needs is but one of the weapons we must employ. It is with this in mind that the Government proposes the measures contained in this Bill. I am grateful for the support it has been given by the Senators who made contributions today, for which support I thank them.

Question put and agreed to.

Committee Stage ordered for Tuesday, 7 July 2009.

Adjournment Matters.

Sheltered Housing.

Senator Paul Bradford: I welcome the Minister of State, Deputy Finneran. I am glad he is here to respond to my question on behalf of the Kilavullen housing association and its application for grant aid. I look forward to hearing his comments on the scheme, its funding requirements, the plans for it at national level and his views on the Kilavullen project.

To give a brief overview, Kilavullen is a village in a parish of the same name in County Cork that is quite close to Mallow town. It is a rural parish with a significant population of senior citizens, many of whom would be interested in being considered for social housing in the locality if it was available. Currently, the village does not have a local authority housing scheme designed for elderly persons. However, as a result of local planning and fundraising, an organisation called the Kilavullen housing association was set up. It has raised funds and has engaged in successful dialogue with the HSE, the Cork County Council planning department, relevant personnel in the local authority and with personnel from the Department of the Environment, Heritage and Local Government.

Arising from the work of the association, an application was lodged seeking funding from the Department under the capital assistance scheme. The Minister of State is aware, from his time as a member of his local authority, that throughout the country the capital assistance scheme has resulted in a significant number of developments that allow elderly people reside in comfort in their own communities. This is good for the persons concerned and their communities and contributes to a strong community and village life. These developments are also good for the construction industry and local contractors who often do much of the work.

I understand the scheme, like most schemes depending on national funding currently, is under some degree of stress and strain. I appreciate there are constraints, but I would like the Minister of State to look upon the Kilavullen application in a favourable light, as the association has invested much time and energy in the scheme at local level. The committee has worked hard and has worked closely with the local authority and with the HSE which is the owner of the preferred site. Much good work has been done locally and the local fundraising efforts have given rise to the hope and expectation in the community that the project will move to construction phase.

I understand there are delays on projects and difficulties with regard to funding, but I would like to know the current position on the application submitted to the Department. What are the Department's plans for the scheme nationally and how will these plans impact on Kilavullen. I appeal to the Minister of State to consider the application, and similar applications, in as favourable a light as possible. These are good projects not only from an economic perspective but from a social one. They allow people stay in their communities and help retain a sense of community and a strong social bond between neighbours and families. I appeal to the Minister of State to use whatever discretion he has in a positive fashion.

Minister of State at the Department of the Environment, Heritage and Local Government (Deputy Michael Finneran): I thank Senator Bradford for raising this matter and commend him on his ongoing involvement with the voluntary and co-operative housing sector in County Cork.

This sector has a very proud record of achievement in terms of the provision of accommodation to substantial numbers of vulnerable households over the past 20 or so years. Since the 1980s, more than 21,000 homes have been provided in all areas of the country under the capital assistance scheme, CAS, and the capital loan and subsidy scheme, CLSS. As the Senator will be aware, these two schemes provide accommodation for people with special needs and for low income families. By any measure of social housing delivery, this represents a considerable success story in terms of meeting housing need.

We are currently living in difficult times, both in terms of the constraints on the public finances and wider social issues, such as rising unemployment. However, I reassure the Senator that support for voluntary housing remains a priority for my Department. To that end, I am confident that we will be in a position to substantially meet our ambitious Towards 2016 target to start 6,000 new voluntary houses between 2007 and 2009. More than 4,000 of these have already been delivered, at a cost to the Exchequer of some €850 million. This is a clear demon-

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stration of our commitment to supporting the valuable contribution by the sector in meeting housing needs of vulnerable groups and households.

The voluntary and co-operative housing programme is delivered through two schemes, the CAS and the CLSS. Following the announcement of the annual allocations for each local authority in May of this year, resources under these schemes are now committed for this year. Incidentally, this is the third and final year of the initial Towards 2016 delivery period for voluntary and co-operative housing. In light of this, it is now incumbent on us to look ahead to the next years of the programme and, taking account of the changed economic situation, begin the process of preparing a new multi-annual programme to underpin future progress. The voluntary and co-operative sector has been, as always, very active in this regard, and has already submitted an impressive number of new projects for consideration under the new programme.

This brings me to the project raised by Senator Bradford, for seven units at Killavullen in County Cork. I make it clear that this project has not yet been formally submitted to my Department for consideration. It remains under consideration by Cork County Council in the context of the council's overall approach to meeting housing need in the area. I understand that officials from the council have engaged closely with the voluntary group and have recently requested some additional information on the potential costs involved in the project. Obviously, it is impossible for me to make a determination on the project in the absence of a formal submission. However, I again draw the Senator's attention to my earlier comments on a new multi-annual programme for voluntary and co-operative housing to begin next year, and the need to develop that programme in a manner which clearly reflects the very changed economic environment.

We are all aware of the challenges that face us as we continue to try to deliver ambitious capital programmes in a climate of reduced resources and rising need. However, this situation also presents a significant opportunity for us to better manage investment to achieve greater value for money. Accordingly, as we begin our preparations for a new multi-annual programme for the voluntary housing sector, I would like the message to go out that the Government remains committed to the voluntary and co-operative housing sector, but we must ensure, now more than ever, that our support delivers on our sustainable communities' objectives, while simultaneously achieving best value for money.

Jobseeker's Allowance.

Senator Paschal Donohoe: This matter concerns an issue brought to my attention with regard to the difficulty in retaining jobseeker's allowance when a person receiving that allowance returns to full-time education. My understanding of the attitude of the Department of Social and Family Affairs towards people seeking to return to education is that the policy is to allow jobseekers to return to full-time education for certain schemes to ensure their training and development is maintained and accelerated during the period when they are out of work. This is a smart policy that is right for our economy and for the individual receiving the allowance who wants to go back to education to better himself or herself.

Someone raised this with me because he wants to do a master's degree in law. He understood that he would be able to go back to college and continue to receive most, if not all, of the allowances he is receiving now. He checked and was told it was the case. When he was accepted on the course and went to his local social welfare office to make the necessary arrangements he was told that the master's degree would not qualify for those allowances.

He has done some research on other schemes that would allow him to retain the money he is receiving, for example a higher diploma. This delivers the same number of Further Education and Training Awards Council, FETAC, points as the master's degree he wants to do but if he did a higher diploma he would continue to receive the money whereas he cannot receive it on the master's course.

The overall approach of the policy is to allow people to go into full-time education when they are not working. Postgraduate courses form a large part of full-time education. A master's degree is as legitimate and important a way to do further education as a higher diploma. This appears to be an anomaly in the policy. I would appreciate if the Minister of State could clarify Government policy on this and whether somebody who returns to college to do a master's degree can receive jobseeker's allowance as is the case for many other equivalent higher education courses.

Deputy Michael Finneran: I am taking this Adjournment debate on behalf of my colleague, the Minister for Social and Family Affairs, Deputy Mary Hanafin. Since its introduction, the underlying objective of the back to education allowance scheme has been to equip people on social welfare payments with qualifications that will enable them to obtain employment in the labour market. It is a second chance educational opportunities scheme for people on welfare payments who wish to participate in full-time education and who would not otherwise be able to do so.

The allowance replaces the applicant's existing social welfare income and, in addition, an annual €500 cost of education allowance is payable. Participants may also continue to receive any secondary benefits to which they have been entitled. The scheme has been modified in the recent supplementary budget to reduce the qualifying period. In general, an applicant must be in receipt of a relevant social welfare payment for three months if pursuing a second level course or 12 months if pursuing a third level course. In order to support activation of the unemployed, the qualifying period for the third level option is reduced to nine months for persons who are participating in the national employment action plan process or are approved by a Department facilitator. People who are awarded statutory redundancy may access the scheme immediately, provided an entitlement to a relevant social welfare payment is established prior to commencing an approved course of study.

The Government has devoted significant resources to the back to education allowance. Some €519 million has been allocated over the lifetime of the National Development Plan 2007-13. This year, €87.8 million is available. The number of participants has increased significantly in recent years. The number of people on the scheme at the end of the 2008-09 academic year was 11,646 which is 31% higher than the previous academic year.

The back to education allowance is an important part of the overall strategy to provide opportunities for unemployed people to upskill in order to enhance their prospects of entering or returning to the labour force. Following a review of the scheme in 2002, the third level option was re-focused on people doing a primary degree and since 2003, the postgraduate option of the back to education allowance is payable only to persons who wish to pursue a postgraduate course of study that leads to a higher diploma qualification in any discipline or to persons in pursuit of a graduate diploma in education, primary and secondary teaching. It is not available to a master's qualification.

The objective of the scheme is to assist those most marginalised and most distant from the labour market to acquire the necessary education to improve their chances of becoming independent of the social welfare system. The scheme targets assistance for the maximum numbers in greatest need and at present there are no plans to extend the back to education allowance scheme to persons pursuing other types of postgraduate courses including a master's

[Deputy Michael Finneran.]

degree. At this time, it is considered necessary to target scarce resources at those most in need and enabling as many people as possible to get a primary degree is the priority. The scheme will continue to be monitored in the light of the changed economic circumstance in order to ensure that it continues to meet its objectives.

Senator Paschal Donohoe: I thank the Minister of State for his response. I appreciate that this does not fall within the remit of his Department. A consequence of this policy is that the State will continue to pay people for doing nothing but if they wish to return to college to pursue a master's degree which in many cases is equivalent to a H.Dip. it will not give them the money to do so. Unless I am missing something this is cost-neutral. The State will give social welfare payments to which a person is entitled and for which the person has paid tax but will take them away if the person decides to go to college to pursue a master's degree. This is counter-productive. If the State is giving people money to which they are entitled while they are unemployed surely it should give it to them in conditions that allow them to develop themselves.

Deputy Michael Finneran: I will bring the Senator's comments to the Minister. I have made a note of them and the Senator may be contacted again regarding the scheme.

The Seanad adjourned at 1.20 p.m. until 2.30 p.m. on Tuesday, 7 July 2009.