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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 8 *July* 2009.

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SEANAD ÉIREANN

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Dé Céadaoin, 8 *Iúil* 2009.
Wednesday, 8 *July* 2009.

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

———

Paidir.
Prayer.

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Business of Seanad.

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

The need for the Minister for Education and Science to provide home based tuition for the month of July for children classified by the National Council for Special Education as having moderate learning disability.

I have also received notice from Senator Nicky McFadden of the following matter:

The need for the Minister for Finance to consider the establishment of microcredit banks similar to the system successfully existing in the developing world as a means of providing credit for the poor in the present economic climate and to counteract the exploitation of people by moneylenders.

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

The need for the Minister for the Environment, Heritage and Local Government to resolve the stand-off between his Department and Killarney Jarveys in regard to the ongoing horse dung issue which obviously needs consultation and dialogue involving all the parties and the licensing authority.

I have also received notice from Senator Pearse Doherty of the following matter:

The need for the Minister for Health and Children to halt cutbacks in the hours and services for home help recipients in County Donegal.

I have also received notice from Senator Jerry Buttimer of the following matter:

The need for the Minister for Health and Children to make a statement on plans to improve waiting times for drug rehabilitation, intervention and detox facilities in the Cork region.

I have also received notice from Senator Frances Fitzgerald of the following matter:

The need for the Minister for Health and Children to outline Government policy on respite care services in Cherry Orchard Hospital, Dublin, in light of recent cutbacks which have seen this service extremely curtailed and disrupted.

[An Cathaoirleach.]

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and have selected the matters raised by Senators O'Reilly, McFadden and Coghlan to be taken at the conclusion of business. The other Senators may give notice on another day of the matters they wish to raise.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion regarding the Stardust tragedy, No. 2, Criminal Justice (Miscellaneous Provisions) Bill 2009 — Committee and Remaining Stages; No. 3, Enforcement of Court Orders (Amendment) Bill 2009 — Report Stage; No. 4, Health (Miscellaneous Provisions) Bill 2009 — Committee and Remaining Stages; No. 5, Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Bill 2009; and No. 40, Private Members' motion No. 35 regarding the national broadband scheme. It is proposed that No. 1 shall be taken at the conclusion of the Order of Business and shall conclude not later than 1.15 p.m., Senators may speak for five minutes and may share time, and the Minister shall be called upon for concluding comments not later than 1.10 p.m.; No. 2, Criminal Justice (Miscellaneous Provisions) Bill 2009, shall be taken at the conclusion of No. 1; No. 3, Enforcement of Court Orders (Amendment) Bill 2009, shall be taken at the conclusion of No. 2; No. 4, Health (Miscellaneous Provisions) Bill 2009, shall be taken at the conclusion of No. 3 and shall adjourn not later than 5 p.m. if not previously concluded; No. 40, Private Members' motion shall be taken at 5 p.m. and shall conclude not later than 7 p.m.; No. 5, Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Bill 2009, shall be taken at the conclusion of No. 40. Committee and Remaining Stages of the Health (Miscellaneous Provisions) Bill 2009 shall resume at the conclusion of No. 5 if not previously concluded.

Senator Frances Fitzgerald: Yesterday in this House there was an attempt to take All Stages of two Bills. That is clearly bad practice and I hope it will not happen here again. Next week, the Criminal Justice (Amendment) Bill will come into the House. Whatever approach one takes to that Bill — Fine Gael supports many aspects of it — there is an ever-growing view that not enough time is being given to debating it and examining all the implications for the country, society and the Constitution. Today's edition of *The Irish Times* carries a letter signed by 133 defence and prosecution lawyers that states the Bill could jettison ancient rights and rules of evidence if it is passed without proper debate.

It is extremely important that this legislation is fully debated, with enough time given to tease out difficulties. We will consider the legislation next week. If amendments are made in this House, will the Dáil be able to consider those amendments? I urge the Leader to give proper time in this House to the Second Stage debate. This legislation is critical. I am aware of the intimidation that local communities and families are facing from drug barons. I have talked to families and know what they are going through. Young children are being asked to carry drugs from one place to another. Strong legislation and adequate Garda resources must be put in place to deal with the threat but it is important that we follow parliamentary procedure and that we have sufficient time to deal with the legislation. I ask the Leader to assure the House that we will have sufficient time to discuss the Bill next week and that there will not be a guillotine as there was on a Bill yesterday.

Senator Joe O'Toole: Yesterday was such a bad day for the House that the Leader should make serious attempts to ensure that over the next week the image we are projecting does not continue. I was watching the House from afar yesterday and it was embarrassing. Responsibility

lies with the Leader. He has never found wanting co-operation from this side of the House as long as we understood what we were doing.

Senator Donie Cassidy: Touché, touché.

Senator Joe O'Toole: Senator Fitzgerald should be heeded and the necessary arrangements should be made for next week.

When people raise the current electricians' strike, we should insist they have an idea what they are talking about. Yesterday some people talked about an electrical contractors' strike while others spoke about the need for the union to resolve the issue. We must be serious and look at this in the context of what the Pope said about the economic system. With so many people talking about economic lunacy, for someone living on €40,000 a year, who had an expectation of an extra 11%, to be told that not only will he not get that, but 10% will be taken from him before negotiations start, that is economic lunacy and financial disaster for that family. I would like people to keep that in mind.

These people are not trying to bring down the Government or undermine the economy, they are trying to earn a living and to act honestly. I feel for my wallet when I hear people talking about seeking courage and leadership from the trade union movement. The trade union movement will not be found wanting in courage and leadership if it can find honesty and integrity on the other side of the table. I came from a background where business was done on a handshake and a bond, and people stuck with that. Their word was their bond and they would die for it. That day could be upon us once more.

I was thinking about that when I was reading the Pope's remarks. He pointed out that too much of business now is answerable only to investors. This and other issues weaken companies' sense of responsibility towards stakeholders — workers, suppliers, consumers, the natural environment and general society. People should bear that in mind when they talk about this strike. These are not lunatic revolutionary communists trying to undermine the Irish economy, they are trying to act honourably to observe an agreement and work properly.

Not everyone who spoke yesterday was misleading. Senator John Hanafin took a very balanced view, but others did not know what they were talking about when there is a need for balance in a discussion of this nature.

Senator Phil Prendergast: I wish to raise the ability of the State to cope with the swine flu epidemic. Recent hospital bed closures seriously compromise that ability. There are 119 confirmed cases, 45 in the North and 74 in the South, with a huge increase in people being cared for in accident and emergency departments. Swine flu is getting more difficult to diagnose because the bug is mutating and people are presenting with gastric upsets, perhaps lying in an accident and emergency department without being diagnosed and spreading the virus to many others.

The HSE has 373 beds closed due to budgetary constraints and cutbacks, and there are 79 seasonal bed closures. So far, 85 beds are to close in Merlin Park Hospital, Monaghan General Hospital and St. Vincent's Hospital, making a total of 537 beds that are not available for use by the HSE. In June last year there was a 19-day period when 1,992 patients were lying on trolleys in the eastern region alone and this year, in a comparable 19-day period, there were 2,700 people, an increase of 36%. The number of people receiving acute care in hospitals continues to spiral. These data come from Trolley Watch, with information from front-line providers. The HSE has confirmed that swine flu is being passed from person to person, which could turn the hospitals into swine flu incubators.

[Senator Phil Prendergast.]

This is a serious situation that the HSE and the Minister will have to take into account when considering how to manage a pandemic that will have huge cost implications.

Senator John Carty: I rise to mention the case of Sharon Commins and her friend who have been captured and kidnapped in Darfur. I compliment the Minister for Foreign Affairs and the Department on the assistance they are giving the family. I was delighted today to read that the UN Secretary General, Mr. Ban Ki-moon, offered yesterday, during his visit, to give the full support of the UN to work for her speedy release. It is a traumatic time for her family, some of whom live in my neck of the woods and who are family friends. I hope this will be brought to a speedy conclusion and I am sure anything this House can do to be of assistance will be done.

Senator Paul Bradford: I hesitate to challenge the new alliance of Senator O'Toole and Pope Benedict. Senator O'Toole, however, raised a pertinent issue on which that we must reflect. We all welcome the fact that there appears to be a ray of hope and some progress in the strike. Once talks start we hope progress will be made.

Senator O'Toole's perspective is valid in the sense that the electricians had a certain expectation of an increase, but, unfortunately, the economic situation has changed so dramatically that there is now a new economic order. This House must offer political leadership in this area. Over the course of the forthcoming session from September onwards we should have a series of engagements in the House with the social partners. We complain from time to time that social partnership has removed politicians from the talks and decision-making process. During the last Seanad we engaged successfully on a frequent basis with our MEPs. It would be useful to have presentations from the social partners in the House in which they would present their points of view and if we feel their analyses are flawed we can engage in constructive and robust debate. We must all accept the new economic realities but we must listen as much as lecture. It would be helpful if, rather than complaining about being removed from dialogue in social partnership, we used the Houses of the Oireachtas to engage directly with the various leaders of the social partners. In this way we can try to be part of the solution rather than shouting from the sidelines.

Senator Ivor Callely: I wish to raise two important problems in the area of banking. I ask the Leader to indicate how the banks are required to demonstrate compliance with the code of conduct on mortgage arrears and business lending to small and medium-sized enterprises. I am aware that difficulties are being experienced by people in both areas. The code of conduct facilitates access to credit, promotes fairness and transparency and ensures that banks assist borrowers in meeting their obligations. My understanding from small and medium-sized enterprises is that their access to credit and overdraft facilities is being withdrawn, which is causing them serious problems. I therefore ask the Leader to reply quickly on this issue. I also ask the Leader to indicate the role of directors of State-funded banks or those which have been nationalised.

I also ask the Leader to indicate the progress that has been made in bringing to account former and current bankers who misled——

Senator Mary M. White: Hear, hear.

Senator Ivor Callely: ——either their banks or their investors. Most people in this room and in the general public would be able to name such people immediately, although I would not do that in the House as it would not be the right thing to do. However, I ask the Leader to let us know what progress has been made on the investigations that we are led to believe are

under way. We will of course allow for due procedure but we do want to be briefed on the developments.

Senator David Norris: I deeply dislike elections, which are a horrible experience for politicians. I have never called for one before, but we need one now because of the disgraceful behaviour of the Government and the way in which it is treating this Parliament. We are moving away from a democracy and towards a Stalinist era of closed courts in which people cannot be represented and which they must attend on the word of a junior garda. I did not think I would ever come across this. Politicians are being frightened and bullied by radio programmes and by the Minister out of saying they are against the Criminal Justice (Amendment) Bill. Everybody is saying they support the Bill but I am against it because of its utter violation of decent democratic principles. It will be condemned by the United Nations.

It is time this Government realised that trial by jury is not just the name of an operetta by Gilbert and Sullivan. It is a fundamental principle of our democracy. A total of 130 lawyers, from both the prosecution and defence sides, have signed a letter to a leading newspaper demanding that the Bill be withdrawn. Passing the Bill in the House next week is a total and utter meaningless farce as no amendments can be accepted. We are just wasting our time. The leading criminal judge has said there is no difficulty with impanelling witnesses.

With the greatest respect, I must also object to the mentioning of irrelevancies. I am a great admirer of Senator Fitzgerald, but the fact that under age children are being used as couriers has nothing to do with this. I understand why she said it because we are all worried, but we cannot allow our genuine worry to blur the fact that we must focus on the fundamental constitutionality of this Bill. The Government should go as it has disgraced itself again. I hope the President will refer the Bill to the Supreme Court.

Senator Denis O'Donovan: On the issue of the Criminal Justice (Miscellaneous Provisions) Bill, I understand the passion of my colleague Senator Norris. There are two views on this. I appreciate the Senator's view and its sincerity. However, over the weekend I read three articles by prominent Irish journalists welcoming the Bill because they were under death threats from certain criminal gangs.

Senator David Norris: It will not stop that.

Senator Denis O'Donovan: The fact that there is witness intimidation is well known. Leaving that aside, however, I wish to raise with the Leader an article I read which stated that certain lawyers — either solicitors or barristers — are acting in concert with some of these criminal gangs. That is extremely worrying if it is factually correct, and it should be investigated. Most lawyers, whether barristers or solicitors, have knowledge of where judges live, their movements, the times of sittings and how they access courthouses. If there is any element of truth to this report, it is the most worrying aspect of the whole debate. We can debate the legislation at length either this week or next week when it comes before us.

Senator Dominic Hannigan: We were lucky yesterday to have the presence of the United Nations Secretary General, Mr. Ban Ki-moon, in the House. The Chairman of the Oireachtas Joint Committee on Foreign Affairs was able to offer him a céad míle fáilte. However, that was not the case last Friday, when three young Texan backpackers were sent packing at Dublin Airport. They were refused entry because they could not prove they had tickets to go somewhere else. As everybody knows, backpackers move from country to country. This has cost each of those backpackers $1,800 and it will cost the Irish tourism industry as well because this story was picked up across the United States, including by *The Dallas Morning News*. The Garda said it was just standard procedure and that the US authorities do the same thing.

[Senator Dominic Hannigan.]

However, this is not the case. I arrived in the US from New Zealand on a ship and I was allowed in although I was *en route* to another country with no proof of onward travel. The US immigration officials took a sane and reasonable view, and the Irish officials should have done the same.

What is clear is that there are no procedures in place for dealing with backpackers. They are jobsworths in Dublin Airport for turning away three backpackers who offered to show proof of funds. They were told "No" and two hours later they were on a flight back to the USA. Some gardaí out there need to be taken aside and spoken to. I would not let them be in charge of access to Craggy Island, let alone Ireland. I ask the Leader to ask the Minister for Foreign Affairs to write to these three people, express his concern that they were refused entry to the country and invite them back on a future occasion so they can see the céad míle fáilte we can offer when we recognise that we should not refuse entry to backpackers in such circumstances.

Senator David Norris: And we can send them to jail as well, without a trial.

An Cathaoirleach: I ask Senator Norris to respect the House.

Senator David Norris: That was Senator O'Toole's idea. I just copied it.

Senator Camillus Glynn: I rise to support the comment of Senator Callely about the banks. On Tuesday morning I met a developer in Mullingar who has paid his taxes and whose C2 is intact. He is a good community and family man and any developments in which he was involved have been completed. Westmeath County Council does not have to worry about completion and planning enforcement is not an issue. The stories he related to me about the banks are exactly comparable to the comments of Senator Callely. What is happening is a disgrace.

This House has helped the banks. I remember the occasion myself; I was not feeling very well at the time. I walked across the plinth at 8.20 a.m. having passed legislation to save the banking system. What have the people got back from the banks? One would want good eyesight to see it because it is not much. It was always my understanding that a good banking system complemented good business activity. That now seems not to be the case. The Minister for Finance should be called to the House as soon as possible to outline to Members what he proposes to do in this regard. The banks are doing nothing to stimulate business activity.

I received a telephone call recently from a councillor in the west who expressed concern about social welfare fraud. He referred to an incident where a non-national couple had their child christened in a particular parish in his area. One week later, the same priest was standing in for a priest in a neighbouring parish when, lo and behold, the same couple presented to have their child christened. I am sure it is not because they like baptismal cake so much that they had the child christened twice. There was surely a more sinister motivation at play. I understand baptismal certificates are being accepted as proof of birth as well, as birth certificates, which is something that should be reviewed. This is a scam and it must be investigated.

11 o'clock

Senator Paul Coghlan: Has the Property Services (Regulation) Bill 2009 slipped entirely off the radar? The regulatory body which exists in shadow form in Navan is complaining about the delay in implementing the legislation, which is bringing the entire system into disrepute. That body received 90 complaints last year, of which 20 related to management companies and could not be dealt with in the absence of legislation, 17 were satisfactorily concluded and 43 are still under investigation. Will the Leader indicate the current status of this Bill, which was initiated in the Seanad? It will clearly not be passed in this session.

Since the special group on public service numbers and expenditure programmes, the so-called bord snip nua, completed its deliberations, we have heard much about divisions and disagreements within the Government in regard to the release of its report, with attempts to delay its publication. I am not sure whether it has as yet been delivered to the Minister for Finance. What is the Government afraid of in releasing the report? The issues it examines are of concern to us all and it is legitimate that they are debated. The recommendations will undoubtedly be leaked in any case. Will the Leader provide the House with an up-to-date account of the status of that report?

Senator Mary M. White: Some time ago, the National Economic and Social Forum produced a draft report which indicated that 10% of children nationally suffer literacy problems. Nobody can fail to be shocked at the reality that one tenth of young people cannot read and write to an adequate standard. The indications are that such children are likely to end up unemployed, living in poverty and possibly even facing imprisonment. The introduction of the universal provision of a year's pre-schooling for children between the ages of three years and three months and four years and six months will undoubtedly benefit the most vulnerable children. It is one of the most welcome and significant initiatives of any Government and will make a dramatic change in the lives of children from disadvantaged backgrounds. The parents of many such children cannot afford to pay for pre-schooling.

What is required now is a fair deal, similar to that introduced in respect of nursing home charges, for the providers of child care services. Such providers are not treated on an equitable basis across the State, with commercial rates entirely dependent on the particular local authority. This was the case previously in respect of nursing home charges, with the degree of expense depending on where one lived. I call on the Minister to introduce a scheme of standard commercial rates for child care providers throughout the State. As it stands, educational establishments do not have to pay commercial rents. Now that a universal, State-provided educational provision is available in pre-school facilities, they should not be subject to arbitrary commercial rates. Certainty in this regard will encourage more providers to enter the scheme, thus ensuring there is capacity for the 70,000 children eligible for places next year.

Senator Feargal Quinn: We should pay more attention to the food policy being espoused by Sweden, which assumed the Presidency of the European Union last week. That country pointed out that the global population is likely to double by 2050 and that there will therefore be a shortage of food. However, some of the steps being taken by Sweden should concerns us as consumers and from an agricultural perspective. As individuals and nations, we must strive to avoid the huge quantities of waste being created on an individual basis and by retailers and others. Figures for Britain show that last year 484 million tubs of yoghurt were thrown away unused, whether because they had passed their sell-by date or for some other reason. The manufacturers of prepacked sandwiches are obliged to cut off and discard two slices from either end of every loaf of bread they use because consumers do not want the crusts. This resulted in 2.6 billion slices of bread being thrown away last year in Britain. Last year, 27 apples per head of population were thrown away because they were discoloured or otherwise tarnished. The figures for this State are undoubtedly proportionate. We can take action both as individual citizens and as legislators to ensure the quantity of waste created is significantly reduced, if not eliminated. This issue should be a priority for debate.

Senator Eugene Regan: I understand from Standing Orders that the Leader is responsible for ordering the business of the House. Will the Leader confirm that this is the case or whether this responsibility rests with the Minister for Justice, Equality and Law Reform? Given the procedure that has been followed this week, it certainly seems to be the latter who is deciding

[Senator Eugene Regan.]

how we conduct our affairs. The Leader should resist any attempt by the Minister to bully him and he will have the support of the House in his resistance.

Senators: Hear, hear.

Senator Eugene Regan: To take All Stages of a Bill on any particular day, as the Leader purported to do yesterday in respect of two Bills, is unacceptable. I note that the Land and Conveyancing Law Reform Bill 2006, important reforming legislation which was first initiated in 2006, has been removed from today's Order of Business. Will the Leader clarify whether we are to deal with All Stages of that Bill tomorrow? To conduct business in this manner is very unsatisfactory.

In regard to the Bill we are scheduled, mar dhea, to debate next week, the Criminal Justice (Amendment) Bill 2009, the main criticism raised by a group of barristers in an article in *The Irish Times* today is that there has not been sufficient time for proper debate. The introduction of this legislation is an admission of failure by the Government and acknowledgement that the law and order situation is out of control. Instead of the zero tolerance we were promised, we have anarchy. The Government has failed to protect citizens from organised criminal gangs and the wilful killing of innocent people. The legislation is an admission of failure in this regard.

One of the central concerns regarding the Bill is its impact on the right to trial by jury. The principle is established that the Director of Public Prosecutions may apply to initiate trial by the Central Criminal Court. While the principle is established, we need to ensure the legislation is correct. As to the issue of trial by jury, there is a precedent in the United Kingdom and the rest of the European Union. The procedure is in place but we need time to properly debate and scrutinise the legislation to ensure it works.

Senator Jerry Buttimer: I join Senator O'Toole in calling for a debate on social partnership. Pope Benedict, in his third encyclical, refers to a new economic order and discusses justice and truth. Social partnership is necessary and Oireachtas Members must be part of the process. I appeal to the Leader to invite the Tánaiste and Minister for Enterprise, Trade and Employment to the House to inform Senators of the role she will play, with the TEEU, in solving the industrial dispute which is having a profound impact. It is vital that the Minister engages to ensure the parties sit around a table and bring the action to an end. Never in the history of the State has the need for good industrial relations been so great. It behoves all of us to do what is best for the country in order that we can preserve, protect and create new jobs.

Senator Cecilia Keaveney: I endorse the words of Senator Mary White on commercial rates for providers of child care services and the early childhood subvention. It appears some local authorities impose commercial rates on child care providers while others do not. Given the value of the service provided, a uniform policy is needed, although it would be preferable if child care facilities were not rateable.

I ask the Leader to draw to the attention of the Minister for Justice, Equality and Law Reform the fact that members of many local communities, even in areas where community policing forums have been established, do not believe they engage with local gardaí in a positive manner. Much of the time, this is due to a lack of interaction and information. In my contribution to the Donegal policing plan, I indicated that the Garda Síochána does not provide sufficient feedback to victims of crime and those who report crimes.

My attention was drawn recently to the annual report published by the Chief Constable of the Police Service of Northern Ireland. I have a copy of the report if Senators are interested in reading it. While I do not commend everything done by the PSNI, the report addresses in

detail a series of interesting topics. These include: information on which police service members have died or been assigned to various areas; how money is spent; how to keep oneself safe, whether in the school yard or at home; neighbourhood policing; crime surveys; combating serious crime; safety at school; road safety; policing in the past, an important issue in the North; managing money; and annual crime figures. It is a highly informative report which is delivered to every home in the North.

This type of interaction should take place between communities here and the Garda Síochána to ensure citizens are given feedback about what the Garda is doing. Such engagement would result in fewer complaints from communities about the failure of the Garda to keep them informed.

Senator Paudie Coffey: I call for restraint and cool heads on both sides of the ongoing industrial dispute. In doing so, I speak as a former representative of the TEEU and a qualified electrician. While I understand the argument being made by both sides to the dispute, leaders on either side are using unhelpful language. I call for restraint and ask the Government to take all possible measures to assist them in reaching a resolution through negotiation. That is the obvious course of action. We could do without much of the adversarial comment we have been hearing in recent days as it serves only to escalate the problem to the detriment of the economy.

The European Union globalisation fund, which is worth €500 million per annum, is available to companies in which large-scale redundancies are made. While the fund was initially made available to companies with a workforce in excess of 1,000, it is now available to companies with 500 or more employees. I understand there has been engagement regarding the use of the fund in Limerick and the mid-west and the good news is that €20 million is being ring-fenced to assist those in the region who have been made redundant recently.

Will the Leader clarify whether the Government has applied for assistance from the globalisation fund for Waterford and the south east? As he will be aware, Waterford Crystal and many other companies in the region have made large-scale redundancies in the past year or so. More than 600 people have been made redundant at Waterford Crystal. As I have noted previously, the south east is highly exposed due to a large number of redundancies in the manufacturing sector. Will the Leader confirm that moneys from the globalisation fund have been ring-fenced for Waterford and the south east, a region that continues to be neglected by the Government? I will be pleased to commend the Government in the event that I receive such confirmation.

Senator Paschal Donohoe: I support the call by Senators Glynn and Callely for a debate on the behaviour of banks. It is important to have such a debate quickly. I note with interest the blame the Senators apportioned to the banks for their behaviour. Is it not the case that much of the responsibility and blame for the problem rests with the Government?

Last week, it emerged that €6 billion of €14 billion the Government will borrow is to be provided to the very banks Government Senators criticised. Is it not the case that if the negotiations on the use of taxpayers' money to recapitalise the banks had been done properly, the behaviour the Senators criticised would not be taking place? A Government Minister is travelling around the country holding public meetings with the very banks to which we have handed over €6 billion. What is needed are private meetings with the banks at which they should be told that having been provided with money, they must now change their game.

Senator Ivana Bacik: I join previous speakers in referring to a letter by 133 practising criminal lawyers, working both in the prosecution and defence areas, which was published in today's edition of *The Irish Times*. The letter calls for the withdrawal of the Criminal Justice

[Senator Ivana Bacik.]

(Amendment) Bill 2009. Members must take on board the comments and suggestions made by the lawyers in question when we contemplate the crazy Order of Business placed before us yesterday, today, for the rest of the week and for several days next week.

The authors of the letter express grave concern that the Criminal Justice (Amendment) Bill is likely to be passed and become law without proper debate. As other speakers have stated, the House will have a sham of a debate on the legislation next week, in the knowledge that the Dáil will already have risen and amendments will not be accepted. The Bill will then be passed into law with all of the flawed provisions about which we have been warned by the lawyers in question, many of whom are engaged in prosecuting serious crime. We have to be careful before rushing into legislating in the dark.

Those of us who were involved in yesterday's debates on several Bills, specifically the Enforcement of Court Orders (Amendment) Bill, observed a farcical scenario in which all Stages of the Bill were supposed to be taken but, following eight or nine hours of uninterrupted debate, we had only concluded Committee Stage, with the result that Report Stage is to be taken today. The ordering of business in the House needs to done in a more realistic, measured manner, one which enables real debate to take place on legislation that will have a potentially serious impact on the lives of many people.

While all Members recognise the serious problem of gangland or organised crime, we have been told by those among the best placed to know that the Bill is not the correct way to approach the issue, many of its provisions are constitutionally flawed and it should be withdrawn and re-entered for more thorough debate at a time when such a debate would be possible, as opposed to when the Dáil has risen, real debate will not be possible and there will be no prospect of having amendments accepted. I wish to say how much we all welcome the return of Mairéad Corrigan Maguire and Derek Graham from Gaza. I hope we can have a future debate on supporting their efforts to highlight the plight of people in Gaza.

Senator Nicky McFadden: I wish to highlight the serious accident that occurred in County Westmeath this morning when a truck overturned on the N52. I have been seeking a meeting with the National Roads Authority about the Rathconnell to Turin section of this road. The truck overturned outside the church this morning. It is only by the grace of God that there was not a pile-up or any fatalities. The road has been a major concern for those living locally, as well as county councillors, some of whom have been highlighting the issue for 30 years. There have been two fatalities on this dangerous road in recent years, but the NRA has refused to meet with Westmeath County Council. I cannot understand who is responsible and where the line of duty stops. It is like the HSE in that respect. The Fianna Fáil-Green Party Government is responsible for ensuring that people can travel in safety on the roads, so the NRA should be held to account and be answerable to the people of Westmeath. Before the House rises for the summer, the Leader should arrange the meeting with the NRA that he has promised.

Senator John Hanafin: I also wish to refer to the Criminal Justice (Miscellaneous Provisions) Bill because when the war on crime is not being won, drastic measures are needed. Internment is no answer and neither is the current system that we are operating. At least the people who are brought before a non-jury court will have a judge sitting in a fair system whereby they can be adjudged as to whether or not they are members of criminal gangs. That is a lot more justice than they have ever given their victims whom they have often murdered out of hand. If society has shifted to the extent that criminals may start winning the war, then radical measures are needed. It is unfortunate that we find ourselves in this situation, yet that is the reality in Ireland today.

In seeking a debate on the banks, I am conscious that the director general of the Swedish debt agency appeared before an Oireachtas committee yesterday. Whereas he did not get directly involved in the Irish situation, he made it clear that the Government's actions are similar to the successful actions taken by the Swedish Government in the 1990s. That is in contrast to the difficult situation Iceland finds itself in. Sweden and Iceland have experienced similar economic difficulties. One is successfully managing its banks while the other is being bailed out.

Senator Jim Walsh: I listened carefully to what Senator O'Toole had to say this morning about balance, particularly concerning the electricians' strike that is currently taking place. The Senator is absolutely right that we need to be balanced and measured. We all wish that the negotiations now being entered into will find a resolution. That is not to say that I do not have strong views on the restoration of our competitiveness and general wage rates, but injecting that into the current situation would probably be unhelpful. I am also of the view that the machinery involved in the industrial relations process should be allowed to work through these difficulties.

I contrast Senator O'Toole's call for balance with the tirade from his colleague Senator Norris about the Criminal Justice (Amendment) Bill. We could all come in here and follow on from somebody who has been on "Morning Ireland" or other radio shows, but we also need to be balanced. The rights of individuals are very important but the most basic of all human rights is the right to life. If we talked to the relatives of Brian Fitzgerald or Roy Collins we would see how those whom this legislation is targeting treated the victims' human rights. We have seen the cold-blooded murders of innocent people who are acting responsibly in society. It is quite obvious that the current legal process does not have the capacity to deal with this serious challenge to the State. It behoves us all to be balanced in the way we approach this matter. There is another side of the argument, which to me is the compelling one.

Senator Donie Cassidy: Senators Fitzgerald, O'Toole, Prendergast, Norris, O'Donovan, Regan, Coffey, Bacik, Hanafin and Walsh all expressed their views on the Criminal Justice (Amendment) Bill. I want to assure the House that the Bill will not be guillotined in any shape or form. I will consult with the party leaders in this House at our usual weekly meeting to see what time is required. I will allow the longest possible time that is required so we can debate all sections of the Bill. As I have often said, the fear has got to be in the law, yet the fear does not seem be in the law at present.

I congratulate the Minister for Defence, Deputy Willie O'Dea, for his utterances in the Dáil last week which were relayed to the nation via "The Week in Politics" programme. I also note the comments of the Limerick State Solicitor on the same programme. Senator O'Donovan, who is an eminent lawyer, gave the House the benefit of his experience of journalists who are under death threats. This urgent legislation is needed and Senators on both sides of the House have a responsibility——

Senator Joe O'Toole: On a point of order, this is misleading.

Senator Donie Cassidy: I did not interrupt the Senator.

Senator Joe O'Toole: It is not dealing with that. He is misleading the House.

An Cathaoirleach: The Leader is replying to the Order of Business.

Senator Joe O'Toole: My apologies.

Senator Donie Cassidy: I have listened attentively and in order to give balance to the comments made in the House I must listen to those who are working in the legal profession. I certainly accept the word of Senator O'Donovan who outlined his experience to the House. We will discuss this Bill for as long as possible, as required by every Senator, for its passage. That is a commitment and I do not mind how many days are required for this to take place.

Senators O'Toole, Bradford, Buttimer and Walsh all hope that the current electricians' strike will be resolved. I know many of the eminent senior people in the TEEU who have made a great contribution to the workforce and the smooth running of that union in conducting its affairs on behalf of its members. They are decent, hard working and responsible people. The timing of this problem could not be worse from their point of view. However, as Senator O'Toole pointed out, the difficulty must be addressed. Yesterday, I called on all sides to return to the table because at the end of the day the dispute will have to be resolved through negotiation. We will accept the views of the Holy Father, as outlined by Senator O'Toole. It is nice to know that we are getting a direct intervention by the good Senator to assist us in our deliberations. It is very welcome indeed.

An Cathaoirleach: The Leader should reply to the Order of Business.

Senator Ivana Bacik: He speaks infallibly.

Senator Paschal Donohoe: He has a lot in common with the Pope.

Senator Donie Cassidy: It is divine intervention.

Senator Joe O'Toole: Even the devil can quote scripture at times.

Senator Donie Cassidy: Yes. Senator Prendergast referred to swine flu and, as I said in recent days, I am endeavouring to have the Minister for Health and Children, Deputy Mary Harney, here on Wednesday next week concerning the swine flu epidemic and an update on the pharmacy issue. I will revert to the House later this week to report on how successful I have been in arranging this.

I join in Senator John Carty's comments concerning the kidnapping of Sharon Commins in Darfur. Our hearts go out to her family who are near neighbours of Senator Carty. It is a very trying and testing time and I hope the good work being done by the Minister for Foreign Affairs and his officials will bring this to a successful conclusion. I certainly join with the Senator in his expressions of goodwill this morning.

Senators Callely, Glenn, Donohoe and Hanafin called for a debate on the code of conduct for banks. Access to credit for SMEs is close to nil, and this is causing major problems. We will have statements all day on Friday on the reports by the IMF and the OECD, and I strongly suggest that Senators give their views when the Minister is present. This is a major challenge and with the recess coming, we want to do everything we can. Given that some banks are getting €6 billion, as has been pointed out by Senator Donohoe, we have to get an assurance for those banks that do not come under the guarantee. They are under no obligation and are here purely on a commercial basis. Now that there is no ACC and ICC, there is no friendly bank for SMEs at the moment. That is the difficulty now compared with the 1980s. Colleagues will have an opportunity all day on Friday to make the point to the Minister.

Senator Hannigan spoke about the experience of backpackers at Dublin Airport, and I will certainly pass his views onto the Minister. Senator Glynn spoke about social welfare fraud and the experiences he outlined to the House are a great cause for concern. It goes to show what is taking place and I will pass his views onto the Minister. Senator Coghlan spoke about the

proposed Property Services (Regulation) Bill 2009. This Bill has been published and it will provide for the establishment of a property services regulatory authority to give effect to the report of the auctioneers review group. I will update the House on the Order of Business on the timeframe proposed for that Bill. The Senator also spoke about an bord snip, and he can inquire about the position of the Minister at the debate here next Friday.

Senators Mary White and Keaveney called for a fair deal for preschool children over three years and three months, regardless of parental income. This is very welcome and I fully support Senator White's call that there should be a flat rate or even no rate, in order to assist those on the lower income threshold and give their children the same opportunities as those on middle or upper incomes. The greatest example to be given is the setting up of the institutes across the country going back to the 1970s in Letterkenny, Sligo, Athlone and so on, where the working man's or woman's child was given an opportunity to have the second and third level education that he or she did not have until then. I fully support Senator White's call this morning, and we will pass those views on to the Minister and have a debate here if necessary.

Senator Feargal Quinn raised the issue of food waste, and wished Sweden well in its Presidency of the EU. Senator Quinn and his family have been experts on food for decades, and his points were alarming to say the least. My mother used often say "wilful waste is woeful want". Some 2.6 billion slices of bread are going to waste here every year, something we were not used to in our time. I always thought the sweetest part of the bread was the crust. To each their own I suppose.

Senator Buttimer called for a debate on the success of social partnership. I strongly suggest that we take this on board at the debate on Friday. Senator Keaveney outlined her experiences in her part of the country and in the North of Ireland regarding community policing, and spoke about the feedback from the police there and the proposals of the Garda Síochána here. She highlighted the importance of information coming back from the community and information to keep all of our areas safe. I certainly agree with the sentiments expressed by the Senator. We might put this down on Private Members' Business for Fianna Fáil, in order to allow the House to express its views.

Senator Coffey spoke about the EU globalisation fund and the €20 million available to those in the Limerick area. I will make inquiries about the south east and especially the hard pressed workers who have lost their jobs in Waterford Crystal. Six hundred jobs is a great amount to lose in one area, and I will make inquiries to see what has been ring fenced and will come back to the Senator directly. It is a serious issue and a great challenge. The skill of the workforce in that particular area has taken years to develop and is a brand name throughout the world. One's heart would go out to them, because Waterford Crystal, Baileys, Guinness and so on are all world brand names that take generations to create and are such wonderful ambassadors for our country as well.

Senator McFadden spoke about the accident at Turin church this morning. That is just down the road from where I live. All traffic was diverted through Castlepollard. There are many twists and turns in the area. A huge amount of money has been spent on the N52 and it is improving all the time. I have given a commitment that the Westmeath Oireachtas Members will meet with the NRA. I will be the convenor and will arrange that meeting. The Senator can rest assured that this will be before the summer recess.

Order of Business agreed to.

Stardust Tragedy: Motion.

Senator Donie Cassidy: I move:

That Seanad Éireann:

[Senator Donie Cassidy.]

— notes the report of the independent examination by Mr. Paul Coffey SC of the concerns of the Stardust Victims Committee in relation to the investigation of the cause of the fire disaster;

— acknowledges that the cause of the fire is unknown, the original finding of arson is a mere hypothetical explanation and is not demonstrated by any evidence and that none of the persons present on the night of the fire can be held responsible for it;

— accepts the view of Mr. Coffey that to establish a new tribunal to investigate the cause of the fire in the absence of any identified evidence would not be in the public interest;

— supports the Government in establishing a committee to monitor the counselling and medical needs of the survivors and bereaved; and

— expresses its continuing and deep sympathy with all of the victims and bereaved of the Stardust fire tragedy.

Minister of State at the Department of Education and Science (Deputy Seán Haughey): On behalf of the Minister for Justice, Equality and Law Reform, I welcome the opportunity to move this important motion. The statement before us complements the motion passed in the Dáil earlier this year and is in keeping with the recommendations made by Mr. Paul Coffey SC, who carried out the independent examination of the case made by the Stardust Victims Committee.

The horrific events early in the morning of 14 February 1981 are foremost in all our minds in discussing this motion. Both the loss of life and widespread injury in the Stardust still stands as one of the greatest tragedies in modern Irish history. Of the several hundred young people in attendance that night, 48 never came home and 128 were seriously injured. Devastated survivors and families, together with the wider local community, all struggled to come to terms with the magnitude of the disaster in its aftermath.

The shock and outrage felt throughout Irish society at the time led to the establishment of a tribunal of inquiry, which came to damning conclusions on the adequacy of the fire safety and protection measures, including the means of escape. The tribunal report was no less rigorous in criticising the overall official framework for fire safety in the State as well as the effectiveness of the emergency response, notwithstanding the efforts of individual officers. The tribunal's criticisms and specific recommendations led to a complete transformation of our fire safety and protection measures. The collective outrage that was felt as a reaction to the Stardust disaster gave the reform programme an impetus. It brought about a determination to do everything possible to prevent a similar tragedy. Under the new legislative framework that was put in place by the Fire Services Act 1981, the person who is in control of a building has a specific statutory responsibility to take precautions to prevent the outbreak of fire and, in the event of fire, to ensure the safety of people on the premises. Under the new regulations that were introduced, the locking of doors and blocking of escape routes, which in the public mind had come to represent all that was most disturbing about the Stardust disaster, became specific offences. Powers of inspection, enforcement and prosecution were all strengthened. The fire service has been transformed, by comparison with how it operated in 1981, as a result of substantial investment in infrastructure, communications, equipment, staffing and training.

There was widespread dismay on the part of the victims and their families about the tribunal's findings on the probable cause of the fire. Today's motion, which follows that already passed in the Dáil, clarifies that record. Mr. Paul Coffey's report, which has been laid before both

Houses of the Oireachtas, concludes that the finding of probable arson was merely hypothetical. Today's motion acknowledges the original tribunal's true finding that there is no evidence that the fire was started deliberately and that the cause of the fire remains unknown. On behalf of the Minister for Justice, Equality and Law Reform and the Government as a whole, I wish to acknowledge that paragraph 6.167 of the Report of the Tribunal of Inquiry on the Fire at the Stardust Artane, Dublin on the 14th February 1981 states:

> The cause of fire is not known and may never be known. There is no evidence of an accidental origin: and equally no evidence that the fire was started deliberately.

Critically, none of the victims of the Stardust disaster or the people present at the Stardust on the night of the fire can be held responsible for the fire.

Mr. Coffey was also required to consider the case made by the Stardust Victims Committee for a new inquiry. His conclusion is that the committee did not identify any new or existing evidence capable of establishing the cause of the fire. He states that while it could be argued that a further inquiry would at least establish whether the fire began in the west alcove or in the roof space, it seems to him that at a remove of nearly three decades from the date of the fire and in the absence of any identified evidence that might establish the cause of the fire wherever it arose, the public interest would not be served by establishing a further inquiry solely for that purpose. Mr. Coffey also considered whether a case can be made for a further inquiry to assess the probable cause of the fire. He concluded that in the absence of any confirming evidence capable of establishing the cause of the fire, such an inquiry could, at best, produce a hypothetical finding. As it would be incapable of proof or disproof, it would be of no obvious or forensic value. The Government accepts Mr. Coffey's view that the establishment of a new tribunal to investigate the cause of the fire would not be in the public interest, in the absence of any new evidence that might establish the cause of the fire.

I pay tribute to the efforts of the Stardust Victims Committee and its solicitor for their perseverance and determination over the years. It has been a long road but one on which important progress has been made at different stages. As a local representative, I have worked with the Stardust committee at various points along this journey. For example, I addressed its concerns about certain planning applications regarding the use of the site. I was pleased to work with the committee in securing the provision of a suitable memorial to the victims of the tragedy, which has been realised in the peaceful but poignant Stardust memorial park in Bonnybrook. The successful identification of the remains of the five previously unidentified victims has made it possible for the families in question to erect headstones and hold services for their lost loved ones.

I am pleased to recommend this motion to the Seanad and thereby allow Senators to pay tribute to the memory of the dead and the grief of their families and friends. The motion looks to the future by accepting the recommendation that arrangements should be put in place to ensure any outstanding necessary counselling and medical treatments are afforded to the survivors and the bereaved. I understand that discussions are ongoing with the committee's solicitor concerning the practical mechanisms in this regard. Officials have engaged with the relevant health service experts with a view to identifying the best means of assessing and meeting the welfare needs of those concerned. It is my strong desire that arrangements be put in place as soon as possible. I express my sincere sympathy to the victims and their families. I hope this motion, which forms part of a collective resolution from both Houses of the Oireachtas, will provide some closure for all affected by this devastating tragedy.

Senator Feargal Quinn: I thank the Fine Gael Party for allowing me to speak first because I have another appointment. I asked to speak on this motion because I have a very personal

[Senator Feargal Quinn.]

association with the Stardust fire. At approximately 5.30 a.m. on the morning of 14 February 1981, I received my first telephone call telling me what had happened during the night. My company employed a large number of those who were caught up in the fire. I think particularly of the five employees we lost, all of whom I knew well and all of whose families I visited in the days following the fire.

David Morton was a potential manager. He had started at the bottom before moving quickly up the ranks of our Northside branch. I still remember the sadness of George O'Connor's parents when I met them in the days that followed his death. They could not understand it. He was an active young man who loved coming to work. Liam Dunne, who also worked in the supermarket and was popular with everybody, lost his life on that day as well. I particularly remember two sisters, Mary and Martina Keegan, who died in the fire and whose parents, having lost two girls, were later actively involved in the Stardust committees. Another of their daughters, who also worked for us, was seriously injured. I knew each of the five employees of my company who died in the fire very well.

After the Stardust tragedy, I was most impressed by the spirit of those who survived, some of whom sustained injuries when they went back into the fire to rescue people they did not know. I would particularly like to mention Jimmy Fitzpatrick, who was seriously injured in the fire as a young man. I cite him as a representative of many others who were not initially injured but received injuries when they went back into the Stardust to rescue other people. Mr. Fitzpatrick has had to live with his injuries since 1981. The spirit, personality and charm with which he accepted the change in his circumstances was an example to everybody else.

I have mentioned the names of some of the victims because their parents and those who survived, like many of us, were really concerned about the original report. The recent report, which ruled out arson as the probable cause of the fire, represents a victory for the families. I welcome the acknowledgement in the motion before the House that "the cause of the fire is unknown, the original finding of arson is a mere hypothetical explanation and is not demonstrated by any evidence and .... none of the persons present on the night of the fire can be held responsible for it". The Minister of State, Deputy Haughey, who has been heavily involved in pursing this matter, understands the importance of that statement. His father was similarly involved in this case in the years immediately following the fire. As the Minister of State is aware, the suggestion that somebody who was in the building may have purposely caused the fire was a source of huge upset to the families who had to live with it afterwards.

I welcome and support this motion. I agree that it should be publicised in the hope that it will help the families who have suffered such sadness over many years. I am pleased that the suggestion that the fire might have been caused by one of those who were inside the building has been put to rest. I thank the Minister of State for attending and for giving his attention to this. As regards the points he has made, let us ensure such an event never happens again.

Senator Ivor Callely: I formally second the motion before the House and welcome the Stardust committee, survivors and friends who are present in the Visitors Gallery. It is correct that we should amend the record of Seanad Éireann by way of the motion before the House. The motion is a clear acknowledgement of a difficult and at times trying struggle by the Stardust committee which continued its fight against the authorities despite all the odds until it was vindicated following a 28-year campaign.

I congratulate the committee and the many people involved on bringing the tragic Stardust disaster to a satisfactory closure. Prior to my role as a public representative I was a local person who had attended functions in the Stardust along with many of my friends. I am very conscious of the scale of the tragedy that took place on St. Valentine's Day 1981. For people born in the

late 1950s and early 1960s, St. Valentine's Day 1981 would have been a special day in any event and one we would have looked forward to celebrating. When we look back on that day when 48 people lost their lives and many other individuals and families were scarred for life, so many hearts were broken in bereavement and so many families and communities in the immediate area were affected. The date, 14 February 1981, is engraved on the minds of many northsiders.

It is human nature to associate certain events with where one was when certain seminal events happened, such as the Twin Towers tragedy, the collapse of the Berlin Wall, the John F. Kennedy assassination and the Stardust disaster. When I heard the news of the Stardust fire in the early hours of 14 February, I recall the immediate concern for family and friends, as well as the first telephone call to my family home from a relative overseas in the knowledge that we were living nearby to see whether we were all right. The hours that followed revealed our worst nightmare: 48 innocent lives lost and more than 120 injured and scarred. The weeks that followed brought home to us all the inadequacies in our system in terms of the policing of security in entertainment venues, bars on exit windows, chains on exit doors, inappropriate materials within such premises, the lack of co-ordination between State authorities, emergency services and supports, inadequate water supplies, innuendo and much more.

The Keane tribunal of inquiry that followed, while it addressed a number of issues, was flawed and caused further hurt to survivors, families, friends and the Stardust committee. I am annoyed at the length of time it has taken to correct the record on this matter. I am greatly upset at the manner in which the Stardust committee has been treated over the past 28 years. It is source of embarrassment. The committee has been remarkably successful on a number of fronts and is due unequivocal acknowledgement and congratulations. One crucial demand the committee has is that no such tragedy should happen again. In this regard many of the Stardust recommendations have been implemented or taken into account in some form or fashion, especially in the area of fire safety infrastructure and services.

I commend the remarkable determination of the Stardust committee and the role of the media, in particular our northside journalists, Tony McCullagh and Neil Fetherstonhaugh, in their publication, *They Never Came Home: The Stardust Story*. There was also the work of Ms Geraldine Foy in 2004 that clearly drew attention to the new evidence available to the effect that the report of the Keane tribunal was unsound, unsafe and inaccurate. A further initiative by the Stardust committee and their solicitor, Mr. Greg O'Neill, in 2006, Nothing But the Truth, which made the case for a new public inquiry, led to the appointment of Mr. Paul Coffey SC in 2008 to conduct an examination of the Stardust committee's case. Mr. Coffey's recommendations are welcome, and I especially note the concerns of the Stardust victims' committee about the investigation into the cause of the fire disaster. His report acknowledges that the cause of the fire is unknown. It says the original finding of arson is a mere hypothetical explanation and is not demonstrated by the evidence and none of those present on the night of the fire can be held responsible for it. The report expresses its continuing and deep sympathy to all the victims and bereaved of the Stardust tragedy.

I want to make an additional plea today, namely, that the Government, the State and its agencies never allow such a miscarriage of justice to recur. The obstacles and instruments that block justice for such a prolonged period must be eradicated. The Stardust committee should be encouraged to work with the relevant Department to put in place protocols that would help individuals and groups who find themselves in similar uphill struggles against the Government, the State and its agencies. It is a daunting task for any individual or group to take on the State and fight a cause against all that power and might, with the frustration, worry, expertise required and money involved. Many give up. I salute the Stardust committee and all others involved in the campaign and I pay tribute to them. I warmly welcome the motion before the House.

Senator Eugene Regan: I, too, warmly welcome the motion which we in Fine Gael hope will give some solace to the families of the victims of this extraordinary tragedy and achieve some closure and finality on the issues they have had to deal with for so many years. This motion, on which all sides of the House agree and which corrects the record of the Seanad, is not a triumph for politics. It is a triumph for the families of the victims of this terrible tragedy. As has been said, it has been an extraordinarily long road in trying to find satisfaction for the complaint identified as far back as 1985 by Mr. John Keegan, founder of the Stardust victims' committee, whose daughters Martina and Mary died in the blaze and whose wife and daughter, Antoinette, are in the Visitors Gallery. I welcome them to the House as well as the other persons present, ably assisted by Mr. Greg O'Neill, their solicitor. They knew something was wrong despite the inquiry by the eminent Mr. Justice Ronan Keane and they persisted in trying to find the truth. They organised an independent report and submitted expert evidence. RTE's "Prime Time" broadcast on the subject and then there was the Nothing But The Truth campaign. All of this led, ultimately but very late in the day, to the appointment of Mr. Paul Coffey SC, the barrister who carried out this excellent report.

We have many lessons to learn as parliamentarians from the work which the families of these victims did over the years since this tragedy. There was a lack of sensitivity by Government and a mean-spirited approach to compensation and care for the victims. There is an extraordinary conclusion in the Coffey report from which I want to quote a few lines. On 22 October 1985, it says, the Houses of the Oireachtas established the Stardust victims compensation tribunal, which made 823 awards. It says that in many cases the doctors were shocked, not to say indignant, that people who needed medical advice and treatment were left without it for so many years. This issue has been dealt with in this report by Mr. Coffey and in the motion before us.

12 o'clock

That central finding of Mr. Justice Keane is so important. Mr. Coffey puts it very succinctly when he says, "the tribunal's finding of fact that the fire was probably started deliberately is on its face a mere hypothetical explanation for the probable cause of the fire and is not demonstrated by any evidence that the fire was started deliberately." He goes on to say that in the absence of such evidence the explanation cannot be demonstrated to be objectively justifiable.

This is the kernel of the issue and caused so much angst, hurt and so many problems for so many of the families of the victims. There was a sense that the victims may have been responsible for the fire in question. It is very important, and I welcome the fact that the motion corrects the record of this House in that regard.

The leader of our party, Deputy Kenny, has had a very direct involvement in this issue. Our local representatives have been very much involved with the victims' committee and the representatives of the families of the victims directly. We are humbled by this issue and the mistakes made. We hope that in this motion, which is supported by all sides of the House, in setting the record straight, we bring some satisfaction to the families of the victims and assist in some closure of the issue. They will have our continued support in following up on this motion and dealing with other live issues.

Senator Donie Cassidy: I fully support the motion and join with the Minister of State, Deputy Haughey, in expressing my sympathy as Leader of the House with the victims of the Stardust disaster and their families. Some members of the victims' committee are here today and they are very welcome.

Nobody will forget St. Valentine's Day 1981. We had been at the Ard-Fheis and were on our way home and I have never seen so many emergency services vehicles on the streets of Dublin at approximately 2 a.m. that morning — ambulances, fire engines and Garda cars. We will never forget the activity on the streets of Dublin that morning. When we got up later in

the morning we realised the terrible tragedy that took place in Dublin. From 1979 the most joyous occasion in my lifetime was the visit of the Holy Father to the Phoenix Park, and then we had this terrible disaster on St. Valentine's Day 1981, which was probably the saddest. As has been said in this House by a colleague today, we will never forget it. It was the saddest day in the history of Dublin in our lifetime.

Mr. Paul Coffey, SC, has been widely praised here and rightly so. The recommendations of his report have the backing of the Government and give rise to today's motion, providing an opportunity to address the long-standing concerns as to the cause of the Stardust fire. As the Minister of State said, the Coffey report highlights that the original finding of probable arson was hypothetical only and not fact. Mr. Coffey's report calls on the Government to put on record the original finding that there is no evidence that the fire was started deliberately and that the truth is that the cause of the fire is unknown.

None of the young people attending the Stardust can be held responsible for or implicated in the fire. The Minister of State, Deputy Haughey, has put this on the record of the House on behalf of the Government. He said:

> I therefore acknowledge that the Report of the Tribunal of Inquiry on the Fire at the Stardust Artane, Dublin on 14 February 1981, at paragraph 6.167 states as follows: "The cause of fire is not known and may never be known. There is no evidence of an accidental origin: and equally no evidence that the fire was started deliberately."

I have enormous experience in the entertainment industry since 1963, and this fire was everybody's nightmare and horror. Many of examples that were found to apply that night have resulted in many changes to standards, and thank God for it. The Government has accepted Mr. Coffey's discretionary recommendation that arrangements be put in place to ensure the outstanding medical or counselling needs are met. It is essential that this be done. Our understanding of how to respond to a tragedy of this nature, the importance of counselling and support, has evolved dramatically, as we all know, since 1981. The skills and expertise acquired should be put in place and put into effect in this instance.

There have been major changes since 1981 in the responsibilities for the prevention of fire and the protection of the public in the event of fire. The Fire Services Act 1981 quickly introduced an entirely new regulatory regime with widespread impact. While none of us can say a tragedy of this magnitude could not happen again, part of the legacy of the Stardust is that the mechanisms now in place were inspired by the shocking realisation of what could happen in the absence of proper safeguards.

I praise the efforts of the victims' committee and its solicitor for their dedication and determination over the years. While our words are of little significance relative to their great loss, I hope today's motion is some small comfort or vindication. As I have said, I will never forget the Stardust disaster. It is fitting that the Minister of State, Deputy Haughey, is here today. As we all know, his late father was seriously concerned to do anything he could in his time. I acknowledge that here today.

Senator Brendan Ryan: I welcome the motion and the distinguished visitors to the Gallery. The Coffey report is a vindication of the heroic and valiant 28-year campaign by the Stardust families to achieve some level of justice for their loved ones and for the survivors of the 1981 Stardust inferno. I especially welcome two of the recommendations, namely: "that the cause of the fire is unknown and that none of the persons present on the night of the fire can be held responsible for it", and on the urgent need to establish "a committee to monitor the counselling and medical needs of the survivors and the bereaved."

[Senator Brendan Ryan.]

It has been a very long and hard struggle for the Stardust Victims and Relatives Committee. Progress to this point has been the result of a tremendous effort on behalf of the Stardust victims and relatives. I pay particular tribute to the work of Ms Christine Keegan, Ms Antoinette Keegan, Ms Gertrude Barrett and Ms Bríd McDermott of the Stardust Victims and Relatives Committee without whom the Coffey report would never have come about.

The 1981 Stardust tragedy was the worst fire disaster in the history of this State. On that fateful night, 48 young people, predominantly from Bonnybrook, Kilmore, Coolock, Darndale, Kilbarrack, Raheny and Donaghmede, went out for the night socialising and so tragically never returned home to their families. The impact of the Stardust disaster on these communities, throughout Dublin and the rest of the country was devastating.

Some families lost two or three of their beloved sons and daughters. On some streets every second house had a family connection to one of the tragic victims or indeed survivors of the inferno. The scars of that night are deeply etched across those communities and have been made worse by the appalling and, at times, almost inhuman way that the Stardust victims and relatives have been treated in the 28 years since the disaster.

The abandonment of the Stardust victims and their relatives by the State and the refusal to forensically investigate every aspect of what really happened on that tragic night is without doubt one of the most shameful and unjust episodes in our country's entire history and ranks with some of the most serious miscarriages of justice ever.

In the mid-1980s survivors and the bereaved received very modest compensation payments. Basic things such as counselling services for the survivors and the bereaved or ongoing medical monitoring for those who had been severely injured on the night of the fire were never made available. The horrific deaths and injuries of that terrible night were also compounded by the conclusions of the flawed Keane tribunal report. The conclusion contained in that report that arson was the most probable cause of the 1981 fire was particularly offensive for the Stardust survivors and relatives. They rightly felt that this cast a slur on their blameless loved ones who had innocently gone out for a night and ended up in the inferno at the Stardust club. A key element of the Stardust families' campaign, which has been vindicated in this report, has always been to have this unsafe and indefensible conclusion rejected.

The Labour Party strongly welcomes the conclusions in the Coffey report which clearly acknowledges that the original Keane tribunal conclusion that arson was the cause of the fire is unsound and unsafe and must be officially and publicly rejected. Mr. Coffey's key recommendation that the Government should correct the public record "by placing on the record of the Dáil and Seanad an acknowledgement of the Tribunal's findings that there is no evidence that the fire was started deliberately and that the cause of the fire is unknown" provides a full vindication of the long campaign of the victims' and relatives' committee.

The core of Mr. Coffey's report therefore adopts and accepts one of the long-standing key arguments of the Stardust relatives' and victims' committee "that the Tribunal's finding of fact that the fire was probably caused deliberately is based on hypothesis and not established by evidence and is for that reason inherently unsatisfactory". However, we regret that the fifth part of the motion does not clearly apologise for the grief and distress suffered by the relatives and survivors because of the Keane tribunal finding.

The second most critical recommendation of the Coffey report relates to the establishment of a committee to finally monitor the progress of the victims and their relatives and to ensure that counselling and medical treatment where necessary and appropriate are afforded to the survivors and the bereaved at the expense of the State. The horrendous injustice that is the Stardust disaster and its aftermath is crystallised in the fact that it took an astonishing 28 years

for the Government to agree to a such a basic measure to address the medical and psychological needs of the Stardust survivors and the bereaved.

Some Stardust survivors and relatives may be disappointed that a new inquiry has not been recommended in the report. The Labour Party shares some of this disappointment, but, as I have said, we are happy that the key finding of the Keane tribunal has been overturned.

I wish to finish, as did Deputy Broughan in the other House, by quoting the words of Laurence Binyon on its First Memorial Stone in Beaumont Hospital:

> They shall grow not old, as we that are left grow old;
>
> Age shall not weary them, nor the years condemn.
>
> At the going down of the sun and in the morning
>
> We will remember them.

Senator Dan Boyle: I was 18 on 14 February 1981 and with tens of thousands of my generation in hundreds of locations throughout the country we were in premises not unlike the Stardust — large, cavernous and dark with no indication of where we were to go or what we were to do in the event of something terrible happening. The overriding feeling of many of us subsequently was very much one of "there but for the grace". It very much informed not only attitudes of those of us of that age but also how the law changed. Previous speakers mentioned some of those changes. We also must be conscious that many changes are still necessary.

I commend the ongoing and often frustrating work of people involved in the Stardust victims' committee. In my seven years as an Oireachtas Member, I have received regular contact regarding its ongoing campaign. The depth of that frustration could still be felt up to a number of months ago with a degree of uncertainty as to what was to happen to this latest report. The positive response it has received vindicates the many years of campaigning. With other speakers, I happily accept the recommendations, particularly those relating to the implication that people who were victims may have been considered the creators of their own deaths and injuries. It is important that this aspect has been cleared because it has been a cloud hanging over the events that occurred in the Stardust.

In order to progress these issues and in memory of those who needlessly died and were senselessly injured, we need to consider how to improve our legislative canon. There is no doubt that fire safety has come about. However, one of the horrors of the Stardust fire was the number of victims, despite the fact that it happened in our capital city where emergency services were at their highest levels in terms of access to fire brigades and ambulances. We still live in a country where responsibility for emergency services is very much decentralised and, depending on where in the country one lives, one's access to these services remains a lottery. The question of whether we should have a national fire service and how that should be resourced is fundamental to avoiding incidents like this in future.

We also need to review our civil code. Unlike other jurisdictions we continue not to have a crime of corporate manslaughter. While not indicating anything regarding this series of events, we also seem to avoid the fact that an individual or a corporate entity might be responsible. Our laws do not properly reflect the need to take that responsibility and accept legal liability.

In the 28 years since the events of 14 February 1981, insufficient supports and recognition have been offered. Today's motion "supports the Government in establishing a Committee to monitor the counselling and medical needs of the survivors and bereaved". Making that call is an acknowledgement that those needs have not been met as they should have been to date. Through making these statements and the efforts the Government has made in recent times, I hope that finally an appropriate level of support can be offered.

[Senator Dan Boyle.]

The most important element in recognising the memories of those who died is to ensure that events like this can never happen again. While there is a fear that the possibility exists that it might, our efforts as public representatives should be that, in terms of both legislation and appropriate resources for emergency services, such events never happen again. Now that my daughter has passed the age I was on 14 February 1981, I hope that the subsequent generation will never experience what the 48 people who senselessly died and those who were horrifically injured had to suffer on that day.

Senator Paul Coghlan: I wish to share time with Senator Fitzgerald.

Acting Chairman (Senator Diarmuid Wilson): Is that agreed? Agreed.

Senator Paul Coghlan: We very much welcome the motion. I wholeheartedly concur with everything that has been said so far by the Minister of State and other speakers. We are very grateful to members of the Stardust victims' committee. We commend and thank them and their solicitor, Greg O'Neill, for all their work and efforts over a long period. While it is a pity it was delayed for so long, this was a very important independent examination that clears the air. As has been acknowledged, Mr. Paul Coffey SC has done the families and the State a great service with his work.

This was a matter for the Oireachtas, which obviously established the Keane tribunal. Obviously there was a delay in placing this acknowledgement on the record of the Dáil and Seanad. This is an acknowledgment that there was no evidence whatsoever that the fire was started deliberately and that its cause is unknown. As has been said and I will not be repetitive, the tribunal's report found that the original finding was purely hypothetical. I will hand over to Senator Fitzgerald who will expand further on this.

Senator Frances Fitzgerald: I welcome the motion before the House, which has the agreement of Members on all sides of the House. I also welcome the important points that are made in the motion, which states:

That Seanad Éireann:

— notes the report of the independent examination by Mr. Paul Coffey SC of the concerns of the Stardust Victims Committee in relation to the investigation of the cause of the fire disaster;

— acknowledges that the cause of the fire is unknown, the original finding of arson is a mere hypothetical explanation and is not demonstrated by any evidence and that none of the persons present on the night of the fire can be held responsible for it;

— accepts the view of Mr. Coffey that to establish a new tribunal to investigate the cause of the fire in the absence of any identified evidence would not be in the public interest;

— supports the Government in establishing a committee to monitor the counselling and medical needs of the survivors and bereaved; and

— expresses it continuing and deep sympathy with all of the victims and bereaved of the Stardust fire tragedy.

It is difficult to believe that it has taken 28 years for this motion to arrive on the floor of this House, having already been in the Dáil some months ago. Those intervening months must also have been hard on the families, the members of the committee and their solicitor. I want to

welcome, in particular, the families, members of the committee and their solicitor, Mr. Greg O'Neill, here today and acknowledge the tremendous effort, fight and energy they have put into this campaign over such a long period. What better tribute is there to those 48 young people who did not come home than that effort which these people have put in over such a long period.

I want to echo what Senator Regan said. Politics is humbled by this. This is no victory for politics. This is a shame on politics because the resistance that these families met tells us a story about how victims have been dealt with in Ireland. I hope that now we have learned the lesson of listening to people who are directly involved in tragedies such as this. I hope we have learned the lessons of listening and acting because it is extraordinary that 28 years on we are talking about establishing a committee to monitor the counselling and medical needs of the survivors and bereaved. It is very late in the day to be establishing such a committee, but I welcome it and hope it will work effectively, efficiently and in the interests of the families in helping them with their ongoing emotional and physical needs.

A number of speakers talked about closure and in a sense this motion brings political closure to a degree to this terrible tragedy, which was so horrific that it is etched in all our minds. It was one of the worst tragedies ever in Ireland. For the families of those who died in such an horrific way and for those who were injured, I do not know that closure is the right word. It is about living with the consequences of this terrible tragedy, but by their work and efforts and by this motion before us today, I hope it brings some sense of having been understood and that the political system has finally responded to the points they have highlighted and the campaign they have run so effectively over such a long period.

Acting Chairman: Before I call the Minister of State to reply to the motion, I want to acknowledge the presence of Deputy Finian McGrath in the Gallery.

Deputy Seán Haughey: I thank the Senators for their contributions. We have had a very honest, reflective and constructive debate on this motion. I welcome that there is all-party support for it in this House.

A number of Senators spoke and various issues were raised. Senator Quinn said he personally knew five of the victims and he spoke poignantly about that, for which I thank him.

Senator Callely paid tribute to the committee and its efforts to ensure that such a tragedy never happens again. Many other Senators also paid tribute to the committee. Senator Callely also highlighted the fact that we need to learn lessons from this 28-year campaign in regard to similar campaigns arising out of tragedies. We would all agree with that. Certainly, there are lessons to be learned arising out of this particular tragedy.

Senator Regan spoke of the role of John Keegan in regard to the establishment of the committee and the fight for justice. He spoke of the persistence of the families and the lessons to be learned from this particular event in our history. He highlighted the need for the families to have closure in regard to this awful tragedy, with which we would all agree.

The Leader of the House, Senator Cassidy, like others, praised the work of the Mr. Paul Coffey, SC, and I join him in expressing such praise. Mr. Coffey has done great work in regard to this issue, for which we are grateful to him.

Senator Cassidy also stated how everybody remembers where they were the night of the Stardust fire and other Senators mentioned that also. That is true for all of us, that we all remember where we were on the night of such an awful tragedy. It is a night that is etched on the minds of everybody who was around at that time.

[Deputy Seán Haughey.]

Senator Cassidy also spoke of the medical needs of the families. I dealt with that in my contribution. I am anxious that the matter would be brought to finality as soon as possible.

Like many other speakers, Senator Ryan paid tribute to the efforts of the bereaved families in bringing about justice. All of us pay tribute to the families and their tireless campaign to deal with the outstanding issues arising from this awful tragedy.

Senator Boyle highlighted the need for fire safety in general. As I said in my contribution, all the recommendations on fire safety outlined in the tribunal report have been implemented in one form or another. There is no room for complacency. Fire safety is of concern to all of us. I share Senator Boyle's view in that regard.

Senator Coghlan praised the work of Mr. Paul Coffey SC. He said he did a great service to the State on this issue, for which we all thank him.

Senator Fitzgerald, like other Senators, highlighted the effort and the energy of the Stardust Victims Committee. She made a good point about the need to listen to people involved in tragedies. The lessons of even the past few months have to be learned in that regard. The Stardust tragedy brings home to us the need to listen to people in distress and those who have been involved in tragedies. If we listened more, it would help to improve the politics of this country and society in general.

I thank Senators for their contributions. As representatives of the wider community, we are expressing our continuing sympathy and regret for the loss suffered by all those affected by this tragedy. On my behalf and on behalf of the Government, I thank all Senators for joining me in expressing sympathy.

Question put and agreed to.

Sitting suspended at 12.30 p.m. and resumed at 12.40 p.m.

Criminal Justice (Miscellaneous Provisions) Bill 2009: Committee and Remaining Stages.

Sections 1 to 32, inclusive, agreed to.

SECTION 33.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 1 is consequential on amendment No. 5 and amendments Nos. 2,3 and 4 are related and as such amendments Nos. 1 to 5, inclusive, may be discussed together by agreement. Is that agreed? Agreed.

Senator Rónán Mullen: I move amendment No. 1:

In page 24, line 18, to delete "section" where it firstly occurs and substitute "sections".

I stated my intention on Second Stage to bring forth this amendment. I am concerned that in the context of unnecessarily rushed legislation and of a set of proposals contained therein, which are fine, the Minister is none the less proposing to use a sledge-hammer to crack a nut. All of this is being done in the context of a concern everyone in society shares about the theft of certain firearms, the unlawful use of firearms, the emergence of a gun culture and a sense of powerlessness in the face of certain types of criminal activity, especially gang related activity. This is the background and context for the Minister's proposal to ban certain types of firearms according to certain categories, calibre, working mechanism, muzzle energy and so on. More important, it is the context for the proposal to create an offence as set out in section 33 through

the insertion of a new section 4C in the principal Act which offence will be that of a person facilitating or engaging the use of a firearm for the purposes of practical or dynamic shooting.

As I said last Friday, I come to this as a person who has never in his life picked up a gun — I used the phrase "a pacifist by physique" — and as a person who recognises that difficult times can call for extraordinary measures. However, it is precisely during difficult times that one must be careful about how laws are enacted and how that rule of law is used and should not be abused and, in our efforts to protect the rule of law, should not give us *carte blanche* to encroach on legitimate freedoms enjoyed by honest and responsible people.

Having discussed section 33 with some of the people who will be affected by it, I believe the Minister is targeting a type of activity which he believes might provide cover for anti-social or criminal elements. In targeting this activity in the manner he is doing, the Minister will inhibit and prevent the enjoyment of legitimate sports by people who are bona fide. As I said last Friday, I am concerned this is all about optics and being seen to be tough on crime. We all want to be tough on crime and to make this country a cold and unwelcoming place for criminals of any kind, especially those who have no respect for life not to mention property. However, in being tough on crime and bringing forward measures which will restrict people's freedoms supposedly in the interest of a greater good, we must first enure we have done everything necessary to target the behaviour which is wrongful and not legitimate respectable activities which may or may not be engaged in by people with criminal intent.

I have proposed in my amendments a change to the content of what section 33 would import. Amendment No. 1 seeks to substitute "section" with "sections". I have also proposed the insertion of new subsections 4C(5) and 4D. Whereas the legislation provides for the creation of an offence where a person facilitates or engages in the use of a firearm for the purposes of practical or dynamic shooting, I propose that it provide for the Minister's ability to make an order prohibiting the facilitation or engagement in a certain activity. The scope of what the Minister proposes in creating this offence is ill-thought out, encompasses legitimate and respectable activities and encroaches unnecessarily on people's freedoms, in particular the freedom of people interested in using guns for bona fide and legitimate sporting purposes. We need to delay the prohibition of any activity until we are sure what activity should be prohibited. In that regard, I propose we insert into the Bill an enabling provision that will allow the Minister to prohibit by order at a future point the facilitation or engagement in an activity of a certain kind rather than make such an offence in this Bill.

There is confusion to say the very least about what particular activity the Minister proposes to criminalise. Practical or dynamic shooting has been referred to. Section 4C(4), as inserted by section 33, states that practical or dynamic shooting "means any form of activity in which firearms are used to simulate combat or combat training". On face value, this would appear to provide some comfort for people such as those involved in the International Practical Shooting Confederation who state that their activity, which is known as practical shooting, does not in any sense simulate combat or combat training. One could argue that whatever simulation means, it cannot mean what the IPSC is doing. The confederation makes the case strenuously that its activity does not involve defensive or combat training techniques, that one would be more likely to get that in a game of paintball. It states that its activity involves the use of certain types of handgun to engage in firing at targets that do not resemble human or animal forms in quick succession. That is similar to shooting as an Olympic sport and it is a long way from immature people in fatigues playing at war games and pretending to attack and assault each other unexpectedly, the sort of thing we would associate with a game of paintball, which I have engaged in on one occasion, never to do so again.

[Senator Rónán Mullen.]

Section 4 as proposed may very well exclude from the remit of the offence the activity the IPSC is involved in, but the IPSC and its adherents feel no comfort in this regard precisely because of the dialogue they have been having with the officials and the Minister because of what has been said in these Houses and at meetings of the Fianna Fáil parliamentary party about the sort of activity they are engaged in. It is their belief that the Minister believes that practical or dynamic shooting of the kind practised by the International Practical Shooting Confederation involves such simulated combat activity or training whereas it is the confederation's case that it is involved in a much more respectable and less war-like sort of activity in that it involves the use of certain types of handgun to shoot at particular targets that are not human or animal in form and to do so in quick succession, thus practising the skill of fast moving shooting. Clay pigeon shooting is an example of an activity that involves a high degree of hand to eye co-ordination and I doubt we propose to ban that.

Amendment No. 2 states that the Minister may prohibit by order the activity known as practical or dynamic shooting or facilitation of or engagement in that activity. It would change the situation from the creation of the offence in the Bill to one where the Minister has power under the Bill to criminalise or prohibit an activity known as practical or dynamic shooting. There is no clarity or correctness in the Minister's mind about what exactly is going on in this activity. I await the Minister's comments on whether section 33(4), the Government's proposal, would relieve of criminal sanction any activity of the kind I have described being practised by the IPSC, which involves firing at non-human or animal targets in quick succession using a certain level of handgun.

To put the issue beyond doubt, I have proposed amendment No. 4, which would allow for further clarification of what the Minister may prohibit and the circumstances under which the Minister may prohibit practical or dynamic shooting. The amendment would provide that for the purposes of the section, an activity shall not be designated practical or dynamic shooting simply because it entails the use of specified firearms and-or that it entails aiming and firing at particular targets in rapid succession where the said targets are not designed to represent human and-or animal figures and where no combat or other defence techniques are entailed in the said activity.

Given the doubt and confusion surrounding what practical or dynamic shooting involves and the unsatisfactory nature of the correspondence between adherents of that sporting activity and those in power, I propose that we clarify the issue and provide that the Minister may not prohibit practical or dynamic shooting if the only reason for doing so is that a certain type of firearm is involved, because he has power under section 27 to prohibit certain firearms.

I did not table an amendment to section 27 because it provides that the Minister may make an order in the future, and I hope this will lead to common sense when judging what to prohibit by order. There is reason in section 27 because it allows for dialogue and the checking out of matters before a prohibition is made.

I have concentrated my fire on section 33 because it takes a step that may injure the rights of respectable people to carry out a legitimate activity. In the proposed amendment, the Minister, in designating an activity as practical or dynamic shooting, and therefore prohibiting it, may not so designate it simply because it involves the use of specified firearms, unless they are already prohibited, and may not do so if what is involved is the aiming and firing at particular targets in rapid succession. In proposing that limitation on the Minister's ability to designate a certain sport as practical or dynamic shooting, that limitation applies on the Minister where we are not talking about the use of human or animal type targets and where we are not talking about the use of combat or other techniques. The onus will be on the Minister to only designate

the activity as practical or dynamic shooting where something more is involved. The mere fact that an activity involves a certain type of handgun or firing at targets in quick succession is not enough to bring that activity within the scope of that legislation.

The last amendment stems from the reasonable efforts made by advocates of practical or dynamic shooting to be regulated. They want any dodgy characters who seek to be engaged with the activity for a criminal purpose to be policed and they want to co-operate in such regulation. Amendment No. 5 provides that the Minister may regulate any sport carrying or including the designation practical or dynamic shooting to ensure the practice of the said sport or sports in a manner that protects public safety and security. In a sense, these are alternatives. The Minister may prohibit facilitation of or engagement in practical or dynamic shooting. If he does not like that approach he has the option, under section 4D, of regulating the activity which he chooses to designate practical or dynamic shooting. Thus, there are options available for the Minister.

1 o'clock

Why am I proposing this? As I have said, there is a belief that a certain viewpoint has been taken by members of the Garda Síochána whose claims, although they are acting in good faith, deserve to be scrutinised. There is a fear that the Minister, in seeking to be tough on crime and to be seen to be tough on crime, is accepting uncritically a certain narrative about a certain activity, namely, that a gun culture is emerging and that this activity is ripe for the plucking, so to speak, by people with criminal intent. It is not that I do not respect greatly the good work being done by the Garda Síochána. However, the Garda does not make the laws of this land. It can advise the Minister as to what he should do but, in making up his mind, he needs to be careful about not encompassing legitimate activities in his rush to take what are largely good measures. He must be very careful to listen to the other side. There should be proper investigation of this kind of activity. The Minister might go and see for himself what is involved. Perhaps he has already done so and we will hear this. He may have asked certain questions and been unhappy with the answers he got.

On Committee Stage of this Bill, at a meeting of the Select Committee on Justice, Equality, Defence and Women's Rights, the Minister quoted from a letter he had received from the former Garda assistant commissioner, now deputy commissioner, Nacie Rice:

> Practical pistol and shotgun shooting are new activities which mimic combat or confrontational shooting scenarios. This was developed as a more realistic training method for military and police personnel. The shooting at human-shaped targets would not be considered as legitimate firearms use and possession and the question therefore arises if such practice is considered as a legitimate reason for possessing or using the weapons. There would be concerns that this type of shooting ... could be seen as a way of training in the use of these weapons with a view to criminal actions and as such the banning of this type of shooting would remove the inherent dangers associated with people engaging in this type of shooting. It is agreed that the scenario-based combat simulation situations could easily lead to criminal elements using the type of shooting as a "cover" for the training in the use of these weapons. I recommend that practical shooting, which is clearly compared to combat shooting and not target shooting, should be removed and banned as this type of training in weapons is not legitimate and could be utilised by criminal elements.

Here we see the root of the misunderstanding — the association of practical shooting, or something to be designated as such, with a type of combat-based activity which we all agree should be prohibited or at least controlled to a considerable degree. In a letter to the deputy Garda commissioner, an adherent of the sport stated that its representatives had engaged with the firearms policy unit of the Garda Síochána and the Department of Justice, Equality and Law Reform to show that while this may the impression given by ungoverned individuals in

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the United States, it does not accurately represent the sport of IPSC. It is the contention of the correspondent, who practises practical shooting, that officials in the firearms policy unit and the Department were left under no illusion as to what the sport was, bearing in mind that it is a recognised sport in 80 countries worldwide, including in Europe.

The practitioners of this sport deny that it involves combat-style shooting and human-shaped targets and they wonder how that impression can persist among the Garda Síochána and in the views of Government Departments. What these practitioners have been asking is that IPSC be investigated properly and that people consider exactly what is involved in the sport. They give their personal assurance that it has neither criminal nor tactical connotations. It makes one wonder how a sport can be practised legitimately in 80 countries yet be criminalised in Ireland.

I also received documents about the difference between tactical and combat training and IPSC sport shooting, with which I do not propose to detain the House. However, it is important to put on record an open letter from Nick Alexakos, the president of IPSC, in which he states:

> I have been following the emergence of efforts to ban the ownership and use of firearms in Ireland with the exception of those used to compete in the Olympic shooting sports. The proposal is using the sport of IPSC shooting, which is not an Olympic sport, to draw a line between those shooting sports that are acceptable and those that are not.

It seems that is a rather strange basis on which to draw a line between acceptable and non-acceptable sports given the limited number of Olympic sports. Mr. Alexakos continues:

> Based on what I have read in the newspapers and followed in debate during a meeting of the Select Committee on Justice, Equality, Defence and Women's Rights on June 18th, it is necessary and critical that the facts about IPSC shooting be known.
>
> By way of background, the International Practical Shooting Confederation (IPSC) was founded as a shooting sport in 1976 and is recognized as a sport in over 80 countries (list attached). IPSC is an international sport, emphasizing safety and safe gun handling, accuracy, power, and speed, in high-level competitions around the world.

Here is the interesting part. He notes:

> Although the early beginnings of IPSC were martial in origin, the sport developed just as karate, fencing, and archery had developed from their martial origins into well known, internationally recognized sports. As a point of fact, many Olympic sports today have their origins in military training exercises including the Olympic equestrian sports of dressage and eventing, and the Olympic Biathlon of skiing and target shooting, and like these sports IPSC is a civilian target shooting sport.

I emphasise that this means a sport for civilians, as distinct from a sport that targets civilians. The letter continues:

> I noticed with interest that the term "extreme sport" was used many times to describe IPSC shooting. I believe it would have been invaluable to the discussion to have a firm understanding of the term "extreme sport" and what kinds of sports define the term.
>
> Generally speaking, "extreme sports" is a media term for certain activities perceived as having a high level of inherent risk and danger. IPSC as the internationally governing body does not allow nor condone the promotion of IPSC as an "extreme sport" because IPSC does not fall within the definition of that term, nor does it in the minds of promoters and marketers of extreme sports.

There appears to be a mistaken impression of what the sport is. Mr. Alexakos states:

> IPSC has an exemplary safety record and incidents of injuries are so rare as to be less than what is recorded for any Olympic sport let alone any non Olympic sport. Also, IPSC sanctioned competitions are judged on strict criteria and use highly competent range safety officers. Any safety infraction, no matter how small or unintentional, results in a match disqualification.
>
> Arguments for banning non-Olympic firearms make a sharp distinction between stationary targets and moving targets harkening to Olympic level shooting of stationary targets as the only acceptable shooting that should be allowed. I draw attention to the sports of skeet, trap, and sporting clays shooting wherein the targets indeed move.

I mentioned this myself in the context of clay shooting. He continues:

> IPSC competitors do have some moving targets, but they are designed to ensure a 0% margin of error in safety and the vast majority of targets are, in fact, stationary.
>
> I would also like to set the record straight about remarks that IPSC creates settings that are combat based such as home invasions or hostage scenarios. These are simply and boldly a misstatement of the facts. The IPSC does not allow any element of a competition to create such scenarios. Further, the use of humanoid targets is banned.

I have taken all of this into account in preparing my amendment in order to allow the Minister to target what should be banned and not what need not be banned. Mr. Alexakos concludes by saying:

> The suggestion that air pistols and paintball guns should be substituted for the firearms appears to contradict other statements that IPSC shooting itself trains combatants. It defies logic that air pistols and paintball guns are acceptable even though they could just as effectively serve as criminal training tools. This statement is made only to illustrate that it has no relevance because IPSC is a recognised lawful, civilian sport, recognised as such around the world.

I am an Independent Member, not a member of the Fianna Fáil Party, but I have it on good authority that there is a degree of satisfaction within that party at how the Minister addressed the concerns of backbenchers at a parliamentary party meeting on this issue. I understand a significant number of Members took the opportunity to raise concerns about the unnecessarily broad scope of this provision and what it will entail, and that contrary to the Minister's assertion in the House, he did not leave even the majority of those with whom he discussed the matter satisfied in the light of certain supports he offered for his conviction that this is the correct approach to take. I acknowledge that the Minister is a good man and that his objective is to legislate for the common good. However, there have been many references in this House in recent days to the inappropriateness of rushing so much legislation through at the end of sessions, particularly legislation that impacts on recognised civil liberties. We spoke about how this undermines the important role of the Seanad as a second Chamber where legislation is properly scrutinised.

If that is the case in regard to legislation generally, surely it must be even more the case where there is such a difference of opinion about the activity the Minister proposes to criminalise. Surely this calls loudly for further consideration and for a proper investigation of the relevant sport. Why would the Minister cause such unnecessary offence to law-abiding citizens by bringing forth sloppy criminal justice legislation and by criminalising an activity that does no harm to anybody and which is practised by respectable people? What he should do, if he

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fears such activity may be infiltrated by criminal elements, is to facilitate the policing and regulation of that activity. As I suggested last week, one might as well ban paintball on the basis that some gang in Limerick might send its members out to play it to learn combat techniques. One might come closer to doing the public some good by doing that.

The exchanges between adherents of practical shooting and the Department are continuing. An issue that has caused a degree of confusion is the tendency of the Minister and Ministers of State to give varying reasons for their approach in this matter. In the Dáil debate on the Bill, the Minister of State, Deputy Curran, seemed to suggest that the motivation in bringing forward this proposal was not necessarily because of concerns regarding the emergence of a gun culture. He stated: "I have never claimed that these measures were intended to target gangland crime." The Minister of State went on to say:

> The Government has also made it clear that its reasons for restricting hand guns are much wider. In particular, we have made it clear that we do not wish a hand gun culture to take hold here.

That is an aspiration we all share. It is a question of what means are employed to achieve that goal.

However, the Minister, Deputy Dermot Ahern, apparently contradicted that when he stated in the Dáil:

> 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 are in legitimate, everyday, mundane usage. 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 quite ordinary kitchen knives or tools, the sale of which could not be 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 must concentrate on the circumstances in which these items are in a person's possession.

The last sentence is particularly important, offering a far more sensible approach. In it, the Minister acknowledges that if one targets a particular type of weapon or instrument, one moves away from intentionality, which is the key issue. We are all aware that the most ordinary, everyday implements can be used as weapons of murder.

The correct approach should be to concentrate on the circumstances in which items are in a person's possession. If that is the correct approach, how can it be right to criminalise a particular type of sporting activity? What should be done is to criminalise the use of a particular type of activity for a certain purpose or the engagement by particular people in a particular type of sporting activity for a nefarious purpose. What is required is policing, not unnecessarily sweeping prohibitions which target respectable people unfairly. I commend these amendments to the House.

Senator Eugene Regan: I support Senator Mullen's amendments Nos. 1, 2, 4 and 5 and commend my amendment No. 3 to the House. Subsection 4C(1), as inserted by section 33, states: "It is an offence for a person to facilitate or engage in the use of a firearm for the purposes of practical or dynamic shooting". My amendment proposes to insert "save and except any firearm used for legitimate and controlled sporting purposes as may be specified in Regulations" after the word "shooting" in the subsection. Either this amendment or those of Senator Mullen would deal with the issue we have raised. We are seeking to understand the rationale

for criminalising a particular sport which has no obvious offensive objectives for those involved. It is essentially a question of proportionality. There is no evidence that those engaged in this sport see it as other than sport or that it is engaged in for any purpose other than enjoyment as a sport.

Why is it necessary to interfere with the right to engage in that activity? Is there a less interventionist way to deal with concerns the Minister may have? As Senator Mullen suggested, greater regulation of the sport is key, including inspection by the Garda Síochána. A range of measures could be introduced which would interfere to a much lesser extent with the activities of persons involved in the sport of practical shooting. As I understand it, this sport is recognised as a legitimate shooting sport in other European states, including Austria, Belgium, Denmark, Finland, France, Germany, Norway, Switzerland and the United Kingdom. If I am mistaken in this regard and if authorities in other jurisdictions have considered it necessary to criminalise this sport in the interests of public safety, the rule of law and order or whatever, I ask the Minister of State to clarify that. The Minister and his Minister of State have not set out the rationale or justification for the measure either in this House or the Lower House. The documentation on the Bill produced by the Oireachtas Library and Research Service states:

> Practical Shooting is a term covering a shooting sport with no centrally defined elements. While different organisations and participants may structure their activities differently, practical shooting is broadly defined as shooting with movement, either by the shooter or by the target.

Although I do not engage in this sport, the first activity I look at when we go to a carnival or fair is the shooting range. I enjoy trying my hand at shooting, an activity made more interesting when there are moving targets. I fail to understand the reason this sporting activity is regarded as so nefarious as to require us to make the leap of banning it. An exception is made for clay pigeon shooting because it is obviously a safe sport. Less onerous measures are available than banning what many people consider a sport.

The report by the Oireachtas Library and Research Service continues:

> The activity typically takes place on ranges and uses full powered handguns in competitions designed to test reflexes, speed, power and accuracy. Shooters generally use military or police based training simulations to move through a course of targets, and shooters will be required to make instant shoot/don't shoot decisions. The practice has grown away from its military roots and has for example, grown extremely popular in the United Kingdom.

Clearly, this is a sport which is becoming more popular in other jurisdictions, including our nearest neighbour. What is the justification for the draconian measure proposed in the Bill? What elements led to the proposed ban?

The Minister for Justice, Equality and Law Reform stated in the Dáil that the Garda authorities have recommended that practical shooting be prohibited and the activity is not endorsed by the firearms consultative panel. He added that it was not in the public interest to tolerate the development of a sub-culture predicated on a shooting activity which, by the liberal standards of the United States, is regarded as an extreme shooting activity. Will the Minister of State elaborate on the Minister's statement?

Practical shooting appears to be a variation on the shooting sport. It is recognised internationally and less draconian ways of regulating it than outright criminalisation are available. The grounds the Minister advanced for criminalising the sport are flimsy and his approach his simplistic. The measure has been proposed without consultation and the Minister has not shown a willingness to engage or consider that there are certain nuances in how the sport is practised

[Senator Eugene Regan.]

which could lead one to be persuaded that it is not as offensive as he or the Garda Síochána make out. While the Minister has referred to the Garda Síochána, we have not seen a Garda report on this matter. In such circumstances, we do not know on what the recommendation to which the Minister refers is based or whether it represents an isolated view.

While the Fine Gael Party supports many of the elements of the Bill, I question the validity of this measure and recommend the amendment. I ask the Minister of State to clarify the rationale for criminalising this shooting activity in Ireland when it is a recognised sporting activity in other countries, specifically other member states of the European Union.

Senator Denis O'Donovan: I will lend what support I can to my colleagues opposite on this issue but, under the Whip system, my hands are regrettably tied.

Senator Rónán Mullen: It is never too late to stand up for a good principle.

Senator Denis O'Donovan: I have done so on several occasions.

Senator Rónán Mullen: Perhaps the Senator will speak for as long as he did on the Harbours (Amendment) Bill. He could talk out the legislation without voting against the Government.

Senator Denis O'Donovan: Unfortunately, I am not permitted to do so on Report Stage.

Senator Rónán Mullen: We are on Committee Stage.

An Cathaoirleach: Please allow Senator O'Donovan to continue without interruption.

Senator Denis O'Donovan: Having listened to the contributions of Senators Mullen and Regan, I have serious concerns to raise with the Minister of State. Is section 33 a killjoy provision? When I first read the legislation and listened to some of the comments made by individuals who run legitimate gun clubs, practice ranges, etc., I concluded that the Bill constituted a serious setback for them. Retired members of the Garda Síochána and the Defence Forces who have practised shooting like to keep up this activity from time to time in a legitimate, curtailed and regulated fashion. I am concerned that this measure will put some clubs out of business. Perhaps we are taking a sledgehammer to crack a nut and the measures go too far.

I ask the Minister of State to bear in mind that I have strong reservations about the proposed measure. Unfortunately, I had to leave the meeting of the Fianna Fáil parliamentary party which discussed this issue to attend to other business. I am aware, however, that many of my party colleagues expressed serious reservations about this measure.

The Minister argues that the section must be stringent and inflexible because evidence has been provided by senior Garda sources that groups from outside the jurisdiction have used the facilities in question to train and upskill themselves for activities other than recreational purposes. If that is the case, the relevant evidence and its source should be made transparent.

Senator Rónán Mullen: Hear, hear.

Senator Denis O'Donovan: If there are reservations, more substance should be provided because serious allegations have been made to the Minister by, I presume, senior Garda sources as a result of intelligence gathering operations and so forth. If that is the case, someone should outline the source of the information, whether the activity in question has occurred regularly or only once and what action can be taken to clamp down on it.

If people want to train in the use of illegal weapons or acquire such weapons, they can buy a Glock pistol for €150 on the street, as a Garda source in Dublin has informed me. People

can go underground and train in woods and remote areas, as has been done in the past. It is a harsh measure that can severely curtail certain recreational clubs, such as those for practical dynamic shooting. Some of them may be put out of business so I have reservations. Unfortunately, however, under the Whips system if a vote is called I will be obliged to concur. Nonetheless, it is important for people on this side of the House to express their concerns and reservations if we feel that measures are going over the top. On this occasion I feel we may be going too far with this measure in that it may not have the desired effect that legislators, the Minister and the Garda Síochána intended.

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Moloney): I thank Senators Mullen, Regan and O'Donovan for their specific contributions. I hope I can be equally specific in my response. I will start by referring to the points raised by Senator Mullen. I wish to put on record that I am a pacifist also. I want to be clear, however, that I do not think that issue comes into it. I hasten to add that I am not a killjoy either, which was the word used by Senator O'Donovan. I recognise from the three Senators' contributions that they are on the side of law and order.

I do not believe the legislation represents a sledgehammer to crack a nut, or that it is an attempt to target specific groups. I am not too sure about the Senators' understanding of what happened at the Fianna Fáil parliamentary party meeting. I can confirm, as Senator O'Donovan did a few minutes ago, that a number of people in our party have reservations. Those reservations were quite properly articulated at our parliamentary party meeting, the same as at other party meetings. The Minister went on to explain the issues concerning that. I do not accept that the Bill is being sloppy with civil liberties. I will try to separate the notion that paintball and this activity are much the same because I do not think so.

I can understand Senator Regan's opening comment whereby he is trying to understand the rationale of the legislation. I take the point concerning the proportionality of the response and whether there is an easier way. The point has been made in several debates in the Lower House concerning the possibility of greater regulation. I note that in this House, as in the Dáil, the question was raised as to whether the Minister was acting on Garda advice. Apparently, in other European jurisdictions the procedure has grown away from its military roots.

I do not believe the legislation is rushed, nor do I believe that practical shooting is a sport. Senator Mullen asked if the Minister had visited such centres. I can confirm that gardaí and officials from the Department of Justice, Equality and Law Reform have on occasion visited ranges. In addition, they have met the representatives of the Irish Practical Shooting Association on a number of occasions. The shooting bodies of the firearms consultative panel have all disowned practical shooting. The Senator referred to some correspondence and quoted certain experts so I will do the same to see if we can come to a position of understanding.

The US Practical Shooting Association still uses human-shaped targets. They are the ones who have initiated the terminology of extreme sports, so that is where it is derived from. Senator O'Donovan wondered about the advice of the Garda Síochána and whether the sport has been hijacked by groups outside the jurisdiction. I am not too sure if that has been the basis of the thinking behind the Bill, however. The amendments tabled by Senators Regan and Mullen would in effect legalise the activity of practical shooting, which the Minister is seeking to prohibit. That is the Minister's point.

Senator Rónán Mullen: No.

Deputy John Moloney: That is his initial point and I will come to it in a few minutes. The Minister also said that any basic research on practical shooting will see that it considers itself an extreme sport. In his opening response, the Minister also said that this is an imported gun

[Deputy John Moloney.]

culture and has nothing to offer Irish society. The Senators said that experts attached to the Olympic movement have no difficulty with this matter. However, I read the position of Mr. Horst Schreiber, the general secretary of the International Shooting Sports Federation in 2006, which shows the contradictory position that has entered this debate. The ISSF is a member of the International Olympic Committee and is in charge of Olympic shooting events. It does not and will not support IPSC shooting in any form. The ISSF's position was forcefully made by the secretary general at the 2006 assembly of the General Association of International Sports Federations where an application for membership was made by the IPSC.

I do not wish to waste Senators' time by going into long quotations, but I will give the drift of the thinking at that time. The general secretary told delegates that the ISSF firmly believed that IPSC shooting events could not be recognised as sports shooting events because they too closely resembled combat, police and personal defence training to be considered as sports within the Olympic sports community. I am trying to tease out the notion of whether it is a sport and, as part of my opening position, I must rely on the opinion of an authority such as the general secretary of the ISSF who does not recognise practical shooting as a sport within the Olympic sports community. He said that targets should not symbolise the killing or destruction of human beings or animals. The priority of the IPSC's activities is that of technical training and competitive firearms, rather than sport. In these competitions points are awarded not just on the accuracy of the participant, but also on the power of the handgun used. Although I am not an expert in this area, I am purely trying to tease out the best response.

Senator Rónán Mullen: There is also a skill involved.

Deputy John Moloney: I accept there is a skill involved, but the difficulty in moving from the skill to the sport element is if the additional marking involves accreditations based on the power of the gun used. I wonder about the sporting element of that. Either way, only seven of 70 votes were in favour of granting membership to the IPSC, based on the notion that they did not respect the fact that practical shooting was considered a sport. The shooting events practised by the IPSC are excellent tests of practical firearms skills. They are not sporting events in the understanding of the ISSF. Military and police shooting activities, as well as training activities for bodyguards and self-defence purposes are necessary and practical, but certainly cannot be considered as sports within the activities of the Olympic movement.

It is also important to clarify the Minister's reliance on the advice of the Garda Síochána. Senator Mullen said the Garda Síochána does not make the law, that it is up to us to do that. At the same time, we all understand that in order to make laws one must rely on experts in one's specific departmental area. It is important to try to come to an understanding of that particular issue. I must reaffirm that gardaí have occasionally visited the centre, so they are speaking from a position of knowledge.

I would like to read a short extract from a letter the Minister received from the office of the assistant commissioner:

> Practical pistol and shotgun shooting are new activities which mimic combat or confrontational shooting scenarios. This was developed as a more realistic training method for military and police personnel. The shooting at human shape targets would not be recognised as legitimate firearms use and possession, and the question therefore arises whether such practice is considered a legitimate reason for possessing or using the weapons. There would be concerns that this type of shooting could be seen as training in the use of these weapons, with a view to criminal actions, and as such, the banning of this type of shooting would remove the inherent dangers associated with people engaging in this type of shooting. Again,

> of course, it is agreed that the scenario based combat simulation situations could easily lead to criminal activity elements using this type of shooting as a cover for training in the use of these weapons... Practical shooting, which is clearly comparable to combat shooting and not target shooting, should be removed and banned, as this type of training in weapons is not legitimate and could be utilised for criminal elements.

This partly explains where the Minister is coming from on the issue. He was not just relying on that letter, as numerous Garda superintendents held a similar point of view. It is fair to make the point that this is not being rushed, but is being based on practical advice.

The Senator also asked why we are not banning paintball. The important difference between practical shooting and paintball is that paintball markers are not harmful and are not lethal. Paintball and airsoft are tag sports for the vast majority of players in Ireland, where the focus is on physical activity, fun and teamwork.

Senator Rónán Mullen: One might learn the combat skills in paintball——

An Cathaoirleach: The Minister of State, without interruption.

Deputy John Moloney: I have never had the privilege to take part in either activity. The style of play in both paintball and airsoft is completely based on the low range of the device, which is about 40 metres for airsoft. It is far removed from real combat, due to the limitations of the devices themselves. This is a world away from practical and dynamic shooting, where 9 millimetres is the minimum calibre required to take part. Competitors move at speed, shooting their way through stages on an obstacle laden course. It is not a sport and should have no place in society. The Dáil voted for its prohibition last week.

There were some criticisms of the Minister's position which claimed that his response was over the top, but he expressed his concern several times about the possible creation of a gun culture. People felt that by bringing this Bill forward rather than dealing with criminal elements, it was seen as an over the top response that pretends to be tough on criminal activity. I do not think that this is a fair criticism. When the Minister voiced his concerns about a gun culture in Ireland, he was not talking about youngsters playing cowboys and Indians, but about people who felt they had the right to be granted a licence for any firearms they wanted, including extremely powerful handguns. This is the specific area of his concern. He is concerned with the growth in the use of handguns, especially when compared with the number of such guns in 2004 and 2005. He is also acting in response to a statement in the High Court about the proliferation of handguns. He also referred to people organising competitions where they run with loaded guns, shooting their way through obstacle courses, as well as competitions where results are achieved through accuracy, power and speed, rather than simply on accuracy as is the case with traditional "bull's-eye" static target shooting.

Practical and dynamic shooting have only begun to develop in Ireland in the last few years, but it clearly has a very vocal lobby. It has grown in a vacuum created by recent court decisions. In his opening statement in the Dáil, the Minister made the point that he was not prepared to allow that vacuum to continue. This is why he is bringing the Bill before the House. I do not believe that it has been rushed, because many submissions had already been made before publication.

Some Members feel the Minister is targeting a certain group and that he has no support. The reality is that many groups that represent various gun lobbies are in support of what the Minister has been saying and they support his Bill. People claim that we are anti-sports for the sake of a pretence of being hard on criminal activity, so it is important to note that many respected groups have reservations and have voiced their support in favour of the Minister's

[Deputy John Moloney.]

proposals. The NRAGC has 28,000 members and it took the original handgun challenge case a few years ago, and it has made its position very clear on practical shooting. The chairman of the Sports Shooting Association of Ireland, which represents almost all of the national governing bodies, has even written to the Minister in the past few days on the issue. He stated that he was aware of the Minister's concerns with practical and dynamic shooting, and he gave his personal assurance that it will be neither promoted nor condoned at any of the 35 affiliated clubs and ranges. To my mind, that is fairly strong support for the Minister's proposals.

Senator Rónán Mullen: He is afraid the Minister will crack down on their activities. That is what is going on there.

An Cathaoirleach: Allow the Minister of State to reply, without interruption.

Deputy John Moloney: I do not think we can presume the future when we are trying to deal with a current issue.

Senator Rónán Mullen: We might have a go at understanding their motivation.

Deputy John Moloney: I do not think that the chairman of the Sports Shooting Association of Ireland would make such a strong point for fear that his organisation might be next. Other bodies do not support practical shooting, and they have also made their position clear. The National Association of Sporting Rifle and Pistol Clubs have also supported the Minister's position, as has the National Target Shooting Association, which represents the groups about which we spoke a few minutes ago, the Olympic shooters, the Irish Clay Pigeon Shooting Association, the Irish Deer Society, the Irish Gun Trade Association and the Countryside Alliance.

The prohibition on practical shooting is not an attack on shooting. The grassroots have spoken loudly and clearly, and they want practical and dynamic shooting stamped out because they are dangerous and in bad taste. It is simply not acceptable that individuals can engage in this activity with full bore handguns, rifles and shotguns. On the websites of many practical shooting clubs throughout the world, this form of shooting activity is clearly linked to self-defence and combat situations. The Minister believes that this mindset, which gives us a glimpse of the handgun culture, must be stopped in its tracks. I acknowledge Senator Regan's point that it is recognised as a sport in some European countries. I accept that it is true that such countries have involved themselves in the regulation of such activities.

It is important to address the issue of the risk to the State, which has arisen in this context. When the Minister was considering the introduction of this legislation, he relied on the advice of his departmental officials, who recently wrote to the State Claims Agency to inform it that the Department proposes to assume certain certification functions that are currently held by the Garda Síochána. The State Claims Agency examined the issue of practical shooting, which involves people running with loaded firearms, shooting from unstable platforms and engaging in various forms of potentially dangerous behaviour, purely from a risk perspective. It decided that practical shooting presents unacceptable risks to the State, as it would leave it open to potential negligence claims. When the Minister was bringing this legislation together, the agency strongly advised him that the State could not certify ranges for this activity. I assure the House that the Minister has sympathy for bone fide target shooters of Olympic calibre. That is why, following the receipt of a submission from the Irish rifle and pistol shooting association, he wrote to the Minister for Arts, Sport and Tourism. The Ministers are reflecting on the content of the association's complex submission, which was received at a late stage in the development of this Bill. It is not a question of agreeing that it is being rushed. The reality

is that it is a complex matter. For example, it has been suggested that a person of Olympic calibre should have to serve an apprenticeship of two years, and be a member of a recognised target shooting club, before he or she can apply for a licence for a centre fire pistol.

In light of what I have said, I ask the Senators to withdraw their amendments. This legislation, which is based on sound advice from the Garda, is not being rushed. The Minister's stance is respected by many respected groups. Rather than being a killjoy measure, this is a response to concerns that have been expressed to the Minister over recent years. In particular, it forms part of his direct response to the proliferation of handguns.

Senator Rónán Mullen: Gabhaim buíochas leis an Aire Stáit as ucht an méid atá ráite aige. Rinne mé machnamh ar an argóint de réir mar a bhí sí á chur in iúl dúinn. Beidh mé ag brú na ceiste seo chun vótála. Creidim go bhfuil fíor-bhotún á dhéanamh ag an Rialtas anseo. Níl an t-idirdhealú ceart idir an sórt gníomhaíocht le gunnaí gur chóir a bheith coiriúil agus an sórt gníomhaíocht nár chóir a bheith coiriúil — atá spórtiúil agus measúil — á dhéanamh ag an Rialtas. When I listened to the Minister of State, I was reminded of the lines of Shakespeare:

> What's in a name? That which we call a rose
>
> By any other name would smell as sweet.

His argument was a reversal of the Shakespearean proposition that whereas a name might change, the designated thing will remain the same. The opposite is the case here — the name is staying the same, but wild confusion is reigning in the minds of the Minister and his officials about what the name designates or connotes. I contend that the Minister's core mistake — he is hitting the innocent as well as the guilty, the undeserving as well as the deserving — results from his fixation on a certain idea of what practical shooting involves. He should be defining the kind of activity he wants to prohibit. I refer to any shooting activity that involves combat techniques or human targets, for example. All the activities about which he claims to be concerned could quite easily be prohibited if they were to be named in this legislation. Instead, the Minister has bought in a certain idea of what the word "practical" means in the context of practical shooting. He is proposing, in a completely sloppy way, to criminalise quite legitimate activities. There is an onus on the Minister to show beyond any doubt that the activity connoted by "practical shooting" is always undesirable. We have put the issue in doubt. As a result, this legislation should not be unnecessarily rushed. We need to hear more about the matter. There is something gnostic about the manner in which we are being told that the Minister has been in touch with the Garda authorities, who have said they know things we do not know.

Deputy John Moloney: That is not what is happening.

Senator Rónán Mullen: This Legislature should undertake a proper consideration of this matter. I hope it is not too late for us to refer this matter to an Oireachtas committee, which could hear precisely what the Garda has to say about what it thinks is involved in the activities of the International Practical Shooting Confederation. We should also hear from those who participate in this sport, before making a judgment for ourselves. The Minister of State is asking us to trust him and his senior colleague. They have suggested that decent people have told them there is something wrong with this activity, but the decent people to whom we have spoken are telling us they are being unfairly targeted and represented. The Minister, Deputy Curran, said in the Dáil some weeks ago:

> Not all forms of target shooting activities are as legitimate and credible as they claim to be. For example, the United States Practical Shooting Association on its website advertises, "If shooting has an 'extreme' sport, USPSA-sanctioned practical shooting is it".

[Senator Rónán Mullen.]

That may very well be true of USPSA-sanctioned practical shooting; if so, it should by all means be outlawed.

I understand that some members of the Cabinet are fond of skiing. I mentioned last week that although I have seen enough James Bond films to know that plenty of those who come down the slopes in goggles are dodgy characters, I would not outlaw skiing on that basis. I ask Members to consider what might happen if they and members of other parliaments were fond of a sport called "parliamentary practical skiing" that involved certain practical skills, such as dodging, that would be useful on the slopes, but it came to light that a body called the "American Parliamentary Paramilitary Practical Skiing Association" was involved in throwing hand grenades and developing various other marshal-type skills. Would we ban all forms of parliamentary practical skiing simply because they happened to be described as "practical"? This is folly of the worst kind.

I thank the Minister of State for acknowledging that I believe in the rule of law. I do not want a gun culture to emerge in Ireland. I agree that all possible means should be used to prevent unsavoury anti-social and criminal elements from developing the kinds of skills they would like to use to the detriment of all of us. I do not think we should criminalise a particular kind of shooting activity in such a blanket way, simply because it is described as "practical". I have not yet received an answer to one of the questions I asked the Minister of State in this context. Can he guarantee that practical shooting will continue to be permitted if what the International Practical Shooting Confederation is saying is true? I refer to its statement that the activities its members practice do not involve human or animal targets or combat defensive techniques. The proposed new section 4C(4) of the Firearms Act 1925 states that "in this section 'practical or dynamic shooting' means any form of activity in which firearms are used to simulate combat or combat training". Does that mean practical shooting activities will not be illegal, as long as they do not "simulate combat or combat training"? If that is the case, we can all go home. I am worried that when the Government talks about practical shooting, it keeps implicating the International Practical Shooting Confederation, which strenuously denies it is engaged in any kind of combat activity. Perhaps we can all go home because my amendments are unnecessary. I will withdraw my amendments if the Minister of State confirms that if the International Practical Shooting Confederation is not involved in any kind of combat training or simulated combat activity, its practitioners will escape prosecution because they will not be committing an offence.

I raised the issue of the parliamentary party meeting because I had spoken to a member of it and while it is my understanding it was represented to the Dáil that people's concerns had been allayed by the Minister's explanations, according to at least one member of the parliamentary party, that was not the case at all. That is why I said it because it is important to put it on the record. It is too easy for us to say under parliamentary privilege in the House that we were talking to members of the Garda who said it was dodgy or that we had been talking to the members of the Fianna Fáil Party who are happy now that we are right. One can avoid every argument by pretending one knows something no one else does, but that is not fair on the citizens who are carrying out a legitimate activity and believe they are being misrepresented.

2 o'clock

i will not draw the Cathaoirleach into this because he is in the Chair but I know he is a sportsman and I am sure he appreciates how bizarre all this is. We all hate the idea of a gun culture and dislike people who are trigger happy. We all worry about immature people getting their hands on guns. I believe it was Michael Moore, a man for whose judgement I do not have much regard, who brought out the fact in one of his films, "Bowling for Columbine", that

although there was a relatively high degree of gun ownership in Canada, that did not make it a violent society. That is why I believe the Minister of State would be foolish not to accept my amendments because they do not propose to legalise any activity. They propose to allow the Minister to prohibit a certain type of shooting activity where it involves simulated combat or combat training. It leaves the Minister with the power. The other amendment I propose says in effect and even more appropriately that if there is a problem about the way a particular sporting organisation is behaving or the type of sport in which it engages despite its repeated protestations, all we need do is regulate and establish conditions under which a particular sport may take place, up to and including how such guns may be obtained, where they may be stored and what activities may be practised under the heading of that particular sport. It is mad to fixate on the word "practical" and ban everything that carries that in the title.

If we were to worry too much about what might happen, would we allow any type of sport? Would we allow private flying licences when one thinks about what some people have done with aeroplanes in the past decade? Where does one stop once one departs from the need to focus specifically on the evil activity, so to speak, when one moves away from focusing on the wrong intention and activity, and instead begins to focus on activity that might or might not provide a context for criminality? It is very dangerous to ban an entire sport, especially one that is recognised in 80 countries.

I am not persuaded there is a case simply because the International Shooting Sport Federation, for example, refuses to admit the International Practical Shooting Confederation. We do not have before us the reason for this decision by that organisation. There may be all manner of turf wars in terms of the regulation of sport. It may have nothing to do with the perception that trigger happy people are involved in the IPSC. We simply do not know. It is not satisfactory for the Oireachtas as the Legislature to be making this decision on the basis of what is effectively a hearsay situation to the effect that other bodies do not like them either.

Can we not look at the issue on its own merit and hear from the Garda? Have we not got forums within the Oireachtas that would allow us, before we make this decision, to consider properly in committee the nature of the activities the Minister proposes to outlaw, and to hear from all the interested parties? Would that not be a more sensible way to go about making law?

I am not happy that we simply accept the views of other international associations or the view among certain bodies not to accept IPSC's claims or application for a particular status. We simply do not know enough about the reasons they have for that view, just as we do not know enough about what lies behind the view of certain senior gardaí to the effect that this shooting activity should be outlawed. It could be because they know something which, if were all aware of it, would mean we might share their viewpoint, or perhaps it is because they are being lazy in this regard. We are entitled to say that in the event. We have excellent forces of law and order within the Garda Síochána, but sometimes it is easier to ban something in a blanket way rather than doing the hard work of policing. It is our job as Members of the Oireachtas to be aware of that risk and difficulty, try to be specific about what we are proposing to prohibit, and prohibit only to the extent necessary to protect the common good.

Will the Minister of State clarify whether, if IPSC activities do not involve simulated combat training or techniques, people will be free to carry out the activities unmolested by the law? If he can clarify that this is the case, then I certainly will be open to withdrawing my amendments. If he cannot, then I shall have to push this to a vote because I believe it is bad law, being rushed through without being properly considered and without due regard for the legitimate interests of respectable citizens.

Senator Eugene Regan: We have now established that other EU member states recognise this sport and do not seek to ban or criminalise it. That tells us a good deal about the approach

[Senator Eugene Regan.]

of the Minister. There is no objective justification for this measure. In a context of 233,000 firearms in the country, a small proportion of which are revolvers or pistols, it seems entirely disproportionate. The Bill seeks to introduce a comprehensive and very strict regulatory and licensing regime for firearms. To pick out one sport and victimise the people involved in it when there is European recognition of it seems rather perverse.

Senator Mullen referred to members of the Fianna Fáil parliamentary party in this House and indicated they do not really agree with the Minister. If we continue to analyse the situation we might be led to believe that no one in the Fianna Fáil parliamentary party, apart from the Minister, believes in banning this sport. However, that gets us nowhere because everyone can play that game. I believe the Minister of State, in his presentation, was mincing his words somewhat in terms of his conviction on this issue, but then again, if only the Minister for Justice, Equality and Law Reform would listen to Members of the parliamentary party, things would be all right and this particular section of the Bill could be deleted. In a way it is somewhat cynical. The fact is the Minister, with the full force of Government, is pursuing this approach. It is discriminatory and not objectively based. I have suggested in my amendment that discretion should be left to the Minister to regulate the sport by means of a statutory instrument if he deems fit. The reservation should be allowed in the legislation to allow the Minister to be able to revisit the issue following consultation and review on foot of international best practice in this area.

The measure is discriminatory and disproportionate in the context of the overall legislation and of proper regulation and a proper licensing regime with no inconsistencies between the awarding of licences for firearms. Within that context, to pick on this particular sport without any hard facts to justify the action seems discriminatory and disproportionate and leaves the Bill open to legal challenge. I do not wish to speak further on the issue because the Minister, Deputy Dermot Ahern, is set on rejecting any amendments of this or any type to any legislation that he brings before this House. Once he has made up his mind on an issue he is not for turning, notwithstanding any submissions, observations or insights which may emanate from a debate in this House or the Lower House.

Senator Denis O'Donovan: He accepted two amendments from the Labour Party yesterday.

Senator Eugene Regan: IPSC shooting is a recognised sport internationally and within the EU. It has been characterised by the Minister and in this legislation in a way which is not necessarily justifiable. I do not believe it is justifiable, however, by accepting the amendment I have tabled, the Minister could leave this open for review and further examination. The amendment leaves to him a discretion following that examination to regulate this sport in a proportionate manner. It is incongruous in the context of a general revision of the regulatory and licensing regime to ban a sport that is internationally recognised, and in particular recognised by member states of the EU, which one would expect to apply the very highest standards and have the same concerns regarding any leakage into the criminal fraternity. There are ways of regulating that and those member states have been able to do that without banning and criminalising sportspeople involved in this sporting activity.

I understand the essence of the sport to be to test the shooting skills of participants in a safe and fun environment and for the love of their chosen sport. If there is any evidence that this is a dramatisation of what the sport is really about, the Minister is obliged to bring that evidence and provide that justification for this draconian measure of criminalising the people who are, and have been for some time, involved in this sport. It is discriminatory, disproportionate and open to challenge, and I persist in my amendment.

Senator Alex White: The arguments of Senators Regan and Mullen are well made, particularly in this regard. Senator Regan touched on it as he finished. I am very taken with what Senator Mullen said and I agree with him wholeheartedly when he criticised the Minister for essentially adopting the position of, "Trust me". The Minister tells us he has taken all the advice, spoken with the Garda and been assured the measure is necessary, been persuaded of a risk to public safety associated with this activity and he proposes to legislate against it. That is what the Minister is saying to the House.

I have no objection to, and would expect, a responsible Minister for Justice, Equality and Law Reform to take advice from the relevant bodies and seek to understand the risk, if there is one. I expect a Minister to break it down and scrutinise those advisors and experts who are advising him or her to come up with the best policy, as the Minister and Government see fit, particularly where there is an apprehension of a risk to public safety. That is an important role of any Minister. What, however, is the role of the Parliament? Is it simply to nod at the Minister or Minister of State and say, "Yes, Sir, we understand you have taken this advice, we accept your bona fides and what you can say, and you can have your legislation exactly as you have proposed it"?

Do we have any role in examining the basis for or argument in favour of the change? If so, Senator Mullen is right that we should be allowed to share in and see the basic information, advice and risk assessment the Minister has seen. Why is that information not shared with us? It is a fundamental question and criticism by Senator Mullen. Senator Regan also makes this point. It is not enough for the Minister to come into the House and assert a risk. He must demonstrate, at least to some level, to parliamentarians and the public that this risk exists.

Other Senators made this point regarding other legislation. It is exactly the same approach that has been taken to other measures, particularly this week and last week. I believe an active decision has been made by the Minister, members of the Government or whoever at that level that either it is not necessary to persuade people in the Parliament, or there is a very peculiar view on what parliamentary scrutiny entails. I do not know about the people in the Fianna Fáil parliamentary party, for whom I have respect, although I am not particularly interested in them in this case and I do not say that in a disrespectful way, because this is the Parliament. Parliamentary scrutiny is not about just nodding and saying, "Yes, Sir, we will do as we are asked".

I am uncomfortable as a citizen, parliamentarian and parent with any proliferation at any level of any kind of guns. I am personally very uncomfortable about that. However, I know that in rural Ireland and in other contexts in this and other countries, guns are manufactured and exist. In some contexts, including military contexts, guns are often a necessary evil. They are manufactured and used in certain contexts, whether military or otherwise and in those contexts they are, perhaps regrettably, required. We want to regulate them and ensure they do not get into the wrong hands. We want to ensure there is no spread of the use or availability of firearms in any context that can be avoided. I agree with the objective 100%.

To return to the sporting activity involved here, which Senator Regan reminds us is recognised in many other countries, surely the burden falls on the Minister who wants to ban this activity not just to assert but to tell us why it would constitute a genuine threat to public safety. I was not in the Chamber when the Minister spoke but I heard some of what he said in my office. I have heard the Minister's colleague, the Minister of State, Deputy Curran, speaking on Second Stage on this issue. There is no justification other than this general sense that it is an undesirable activity. In the Minister's Second Stage speech he said, "In so far as it is akin to police and military tactical training, it is an undesirable activity". There is always this peculiar formulation. That is a slightly dishonest phraseology. Is it akin to police and military tactical

[Senator Alex White.]

training? There is the other phrase, which is a catch-all phrase covering a multitude, which the Minister of State, Deputy Curran, said on Second Stage — I do not know if the Minister of State, Deputy Moloney, today repeated it or anything like it — that it was not rooted in any tradition in Ireland. As if not having a tradition of it alone, if true, would be a reason for introducing the very draconian ban that is proposed, which should have no place in our society.

On Second Stage the Minister also made the point that the majority of what are called mainstream shooting organisations have dissociated themselves from this activity. I have not had enough time to establish whether this means that they simply do not engage in it, have no interest in it or in some way have condemned it. I am genuinely asking this question and it is not just rhetorical. Have these organisations urged the Minister to ban this activity and if so on what basis? What is their rationale that this should be done?

As I am sure all of us do, I come from the point of view of not wanting in any sense to be party to any inappropriate proliferation in the use of firearms. However, we are entitled to be treated with the sort of respect with which I am sure the Minister of State would expect to be treated were he over here. That is, the Minister of the day should demonstrate, not just assert, what the risk to public safety entails and why this measure is so necessary to meet that threat.

Deputy John Moloney: Senators have expressed the view that they feel the Minister is acting unilaterally in not taking into consideration sound advice. Senator Alex White asked on what his advice is based, what his strategy is and how he reached this point. I will talk for a minute about the Fianna Fáil parliamentary party which seems to attract enormous interest in here and in the Sunday newspapers. Other parties never seem to be quoted, but ours does.

Senator Alex White: Apparently it all happens there rather than in Parliament.

Deputy John Moloney: I recognise that. There is no big deal about the fact that Members went to a parliamentary party meeting and queried the Minister on aspects of legislation. That happens every week. An item on the agenda is forthcoming legislation. People are invited to participate. It is not a matter of the Minister coming in and saying to the——

Senator Rónán Mullen: The question is whether they were as placated as he said they were.

Deputy John Moloney: I will come to that. It is not a matter of coming into the parliamentary party meeting every Tuesday and facing Members who will ask a Minister questions. The opposite is the case. There is an invitation on the agenda to engage in conversation or debate regarding forthcoming legislation. I do not believe the Minister attempted to placate people by offering some safeguards or rubbishing their proposals. That was not the case — I will try to come to that.

In response to Senator Mullen, I wish to clear up the issue of whether the Minister was just sitting in his office and decided to begin this legislation rather than referring to certain advices. The advices to which he was referring would have included that of the Garda Síochána. The International Shooting Sport Federation is a member of the International Olympic Committee and is in charge of Olympic shooting events. It does not and will not support IPSC shooting in any form. It is important to take into consideration that a governing body associated with the Olympic Games does not and will never support IPSC in any form.

Senator Rónán Mullen: Is it a turf war?

Deputy John Moloney: I took note of what the Senator said about a turf war. I do not think it can be brought down to simply regarding it as a turf war between groups. If I tie into the

question Senator Alex White asked a few minutes ago, I will show the Senator that it is not just a turf war between organisations.

Senator Rónán Mullen: How do we know?

Deputy John Moloney: I will come to that. I acknowledge the Senator's point as to why I can come in here and quote certain organisations. He is quite properly asking whether they are simply saying they do not condone or whether they support the Minister. I will come to that in a few minutes to explain on what their level of support for the Minister is based.

I am not trying to be soft on advices from the Garda. I recognise the issue of civil liberties. When I was involved in the pub trade, the Garda would often make submissions to the Minister regarding licensing laws, opening hours, under-age drinking controls etc. Any Minister would take those advices, just as advice is being taken here now. Senator Alex White asked to see the advice the Garda gave the Minister. I can only refer to the submission by the assistant commissioner, in the final paragraph of which he stated that he recommended that practical shooting, which is clearly compared to combat shooting and not target shooting, should be removed and banned as this type of training in weapons is not legitimate and could be utilised by criminal elements. It would not be in the best interest of the citizen or the State for the Minister to ignore that level of advice.

Senator Rónán Mullen: What about interrogating the advice?

Deputy John Moloney: I would not take that letter as the final reason for the Minister coming to this position. We were also made aware that numerous Garda superintendents have made the same submission.

A few minutes ago I responded to Senator Regan that other European countries have no difficulty in this area, and he has relied on that response to strengthen his case.

Senator Eugene Regan: Partly.

Deputy John Moloney: I will respond to him by making the point that it is not allowed in Great Britain, which has a total ban on handguns. The Senator asked if it is allowed in certain European countries why it is not allowed here. While I am not trying to take a direction from our nearest neighbour, the fact that handguns are prohibited in the UK shows that the sport is not permitted there. It depends on each state's thinking in the terminology of sport. That explains our thinking and that of the UK in that context.

Senator Regan also made the point about fairgrounds and carnivals. While the target is moving, the practitioner is not standing still. There is a world of difference here. That is only a basic point I make there.

Senator Rónán Mullen: The coconut shy will be next.

Senator Eugene Regan: The Minister of State is scraping the bottom of the barrel.

Deputy John Moloney: It is not scraping the barrel. The central point here is the co-ordination of the eye and arm movement. There is a world of difference between people running at a moving target with a very high calibre handgun versus standing still. The issue is one of safety. It brings me back to the points raised by Senator Mullen. Do we want people running with high calibre loaded guns, running against the clock in an obstacle laden course? Certainly the Minister does not want it, nor does the Garda, as it has made clear.

[Deputy John Moloney.]

I wish to come back to what I regard as the basic point. Senator Alex White has put it up to the Minister to ascertain on what he is relying. I will read into the record a letter from the director of the National Association of Regional Game Councils, which I believe we all agree is a respectable association that is involved in sport. I only received this letter on 25 June. The director, in referring to a meeting of mainstream shooting associations which occurred on 11 December last, wrote:

> I wish to confirm that the associations in attendance unanimously decided that practical pistol shooting was the cause of serious damage to the reputation of traditional shooting as practised by Irish shooters heretofore and was given an undeserved bad impression of competitive pistol shooting generally. The associations present also unanimously determined that with immediate effect none of them could approve of, or support practical pistol shooting.

To my mind that clears the issue that one of the Senators raised as to whether the association was going along with the ban or simply condoning the Minister's position. The association was definite in its view. The director also wrote: "That was the position then and to my certain knowledge that remains the position today as none of the associations in attendance at that meeting have given any indication that they have changed their position on the matter." The director went on to state:

> Even today, I have received emails from both the NTSA and the NASRPC, both of which reiterate their previous stated opposition to practical pistol shooting. As for making formal public statements at this stage, it is my belief that doing so would only feed this debate further. However I am concerned to hear that the impression has been given to some politicians that practical pistol shooting enjoys support from some of the associations which met in Leixlip last December.

He was writing on behalf of people I consider to be, as I am sure do the Senators, respected sports enthusiasts involved in this area of sport and he reiterated that the association fully supports the Minister's position. I do not believe for a second that this legislation is being rushed through.

I am in the company of four lawyers but I am not a lawyer so I am not into debating in that respect, nor am I into debating Shakespeare. My position remains that indicated by the Minister and therefore I cannot accept the amendments. I did not study much Shakespeare, but from having Macbeth drummed into me in school, one quote I remember was to the effect that if it was to be done, let it be done quickly.

Senator Rónán Mullen: That is certainly the philosophy at the moment.

Deputy John Moloney: Therefore, I cannot accept the amendments.

Senator Rónán Mullen: The quote "Bubble, bubble, toil and trouble" comes to mind. The Minister of State did not indicate that if no combat technique or training was involved in the IPSC, it would escape——

Deputy John Moloney: I apologise for not replying to that point. The reality is that there is combat training involved. I would not say that it is training for combat purposes and it is important to stress that, but the activity engaged in is one that is about combat purposes. I am not saying that there is an ulterior motive involved, but it is certainly not a sport. That is what I believe.

Senator Rónán Mullen: In general terms, *mens rea* , or the guilty mind, is one of the requirements before one is reached by the criminal law. As the Minister of State said, there are exceptions where one can have strict liability and so on, but in general terms, disregard to the intention of the party carrying out a certain action is not a great basis for establishing a criminal offence. That is certainly the case here.

We are probably dealing with one of those situations where we are at a disadvantage from not being able to view this kind of activity. It is unsatisfactory that we are being asked to take at face value the Minister of State's assurance that some wise and good people have told us that he should take this course of action. It is also unsatisfactory that we are being asked to take at face value his assurance that there are many people involved in shooting sports who agree with his course of action when what we would like to be able to do, as Senator Alex White eloquently said in his contribution, is to ask questions about that, to hear from the horse's mouth, so to speak, why we should take this course of action and to interrogate those who advocate it as to their motivation and the case they make.

I am not ascribing any motivation to the other bodies the Minister of State cites as supporting this legislation, but it may well be the case that there are people involved in other types of gun sports activities who believe they will not be thanked if they do not support what the Minister is proposing and he might bring forward something even more draconian, which could except them. I am entitled to say that is a possible motivation. I am also entitled to say, and it would be irresponsible of me not to suggest, that it may be possible that there is a degree of competition as between certain organisations for resources and support. It is not unknown for one sporting body in this country to regard another sporting body or activity as being something of a rival. There are all sorts of reasons the Minister might enjoy support in this respect.

The Minister of State has said that a sport that involves using a gun or firing at targets at high speed if one is moving is a problem in this respect because one might be simulating some sort of war game. I stress again, that approach is too sloppy, given the activity involved in paintball sport would also equip people for combat. That fact that those participating in that sport might not be using a real gun and that they are only firing pellets of paint seems to be beside the point when there might be real guns of equivalent weight that they could be using and through their taking part in paintball activity, they might acquire many skills of a combat kind. All the Minister of State is saying is that this activity involves a person running and shooting at the same time at targets that do not even resemble human or animal targets.

It seems that is an unnecessary incursion into citizens' rights to practise a particular skill. People run and people shoot as part of normal sporting activity. That they should do both at the same time need not concern us too much if it is properly regulated. If the Minister of State is willing to take the opportunity, my amendments offer him the chance to regulate the activity. We can establish conditions under which this running and shooting activity can take place. We can establish rules as to where the guns are maintained and what type of initiation is required before people are entitled to participate. We can do many things, and many things would be preferable to this crude and unfairly inclusive measure.

Senator Eugene Regan: The Minister of State conceded that the rest of Europe recognises the IPSC's shooting sport as a legitimate sport. I referred to the position in Austria, Belgium, Denmark, Finland, France, Germany, Italy, Malta, the Netherlands, Norway, Poland, Portugal, Sweden, Switzerland and the United Kingdom. I am not sure the Minister of State's point in retort to what I suggested is relevant to the debate. Those are recognised sports in those countries, including in the United Kingdom.

Acting Chairman (Senator Paul Coghlan): Does the Minister of State wish to respond further?

Deputy John Moloney: I appreciate the courtesy but I am not accepting the amendments.

Acting Chairman: Is Senator Mullen pressing his amendment.

Senator Rónán Mullen: I will not press amendments Nos. 1 and 2 as I will be supporting Senator Regan's amendment.

Amendment, by leave, withdrawn.

Amendment No. 2 not moved.

Senator Eugene Regan: I move amendment No. 3:

In page 24, line 22, after "shooting" to insert the following:

"save and except any firearm used for legitimate and controlled sporting purposes as may be specified in Regulations".

I am pressing my amendment.

Amendment put. The Seanad divided: Tá, 23; Níl, 28.

Tá

Bacik, Ivana.
Bradford, Paul.
Buttimer, Jerry.
Callely, Ivor.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.
Healy Eames, Fidelma.
McCarthy, Michael.
McFadden, Nicky.
Mullen, Rónán.
O'Reilly, Joe.
O'Toole, Joe.
Phelan, John Paul.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Níl

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callanan, Peter.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
de Búrca, Déirdre.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Keaveney, Cecilia.
Leyden, Terry.
Norris, David.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Quinn, Feargal.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Tellers: Tá, Senators Maurice Cummins and Eugene Regan; Níl, Senators Déirdre de Búrca and Diarmuid Wilson.

Amendment declared lost.

An Cathaoirleach: Amendment No. 4 has been already discussed with amendment No. 1. Is the amendment being pressed?

Senator Rónán Mullen: Yes. I move amendment No. 4:

In page 24, between lines 40 and 41, to insert the following:

"(5) For the purposes of this section, an activity shall not be designated 'practical or dynamic shooting' by reason alone that it entails the use of specified firearms and/or that it entails aiming and firinig at particular targets in rapid succession where the said targets are not designed to represent human or animal figures, and where no combat or other defence techniques are entailed in the said activity.".

Amendment put and declared lost.

Amendment No. 5 not moved.

Section 33 agreed to.

Sections 34 to 52, inclusive, agreed to.

TITLE.

An Cathaoirleach: Is the Title agreed?

Senator Rónán Mullen: No.

Question put: "That the Title be the Title to the Bill."

Senators: Vótáil.

An Cathaoirleach: Will the Senators claiming a division please rise?

Senators Rónán Mullen, Shane Ross and Feargal Quinn rose.

An Cathaoirleach: As fewer than five Members have risen, I declare the question carried. In accordance with Standing Order 70 the names of the Senators dissenting will be recorded in the Journal of the Proceedings of the Seanad.

Question declared carried.

Bill reported without amendment, received for final consideration and passed.

Enforcement of Court Orders (Amendment) Bill 2009: Report and Final Stages.

An Cathaoirleach: Before we commence I remind Members that a Senator may speak only once on Report Stage, except for the proposer of an amendment who may reply to the discussion on the amendment. In addition, each amendment must be seconded.

Amendment No. 1 is related to amendments Nos. 2, 4 and 6 and all will be discussed together. Is that agreed? Agreed.

Senator Eugene Regan: I move amendment No. 1:

In page 3, between lines 11 and 12, to insert the following:

[Senator Eugene Regan.]

"2.—The Act of 1940 is amended—

(*a*) by the repeal of sections 6 and 9, and

(*b*) by the insertion of the following sections after section 5:

6.—Where a debtor is liable, by virtue of an instalment order, to pay a debt and costs either in one payment or by instalments and such debtor fails to make such payment or fails to pay any one or more of such instalments accruing due while such an order is in force at the time or times appointed in that behalf by such order, the creditor may, at any time while such order is in force or within 12 months after it has ceased to be in force, apply to a Justice of the District Court for an Attachment of Income Order.

7.—'Attachment of Income Orders' means an Order made under section 8 or section 17.

8.—(1) On application to the relevant court, by a creditor named in a court order, the court may make an attachment of earnings order.

(2) An attachment of earnings order—

(*a*) shall be an order directed to a person who (at the time of the making of the order or at any time thereafter) has the debtor in his or her employment,

and

(*b*) shall operate as a direction to that person to make, at such intervals as may be specified in the order, deductions of specified amounts.

(3) An attachment of earnings order shall not be made without the consent of the debtor unless the court is satisfied that the debtor has, without reasonable excuse, defaulted in the making of any payment under a court order.

(4) An attachment of earnings order shall—

(*a*) specify the normal deduction rate, that is to say, the amount of the debtor's earnings which the court considers reasonable to be applied in satisfying the court order, but such rate should be no greater than is necessary for the purpose of—

(i) securing payment of the sums falling due from time to time under the court order, and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the court order and any costs incurred in proceedings relating to the order which are payable by the debtor,

(*b*) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the debtor, the court considers it proper that the debtor's earnings should not be reduced by a payment made in pursuance of the attachment of earnings order,

(*c*) contain such particulars as the court considers appropriate for the purpose of enabling the debtor to be identified by the person to whom the order is directed.

(5) The particular of an attachment to earnings order may be agreed on consent by the debtor and the creditor in advance the hearing of an application under this section and may be ruled on by the Court as an order under this section.

(6) Payments under an attachment of earnings order shall be in lieu of payments of the like total amount under the court order that have not been made and that, but for the attachment of earnings order, would fall to be made under the court order.

9.—(1) A court registrar or court clerk as may be specified by an attachment of earnings order shall cause the order to be served on the employer to whom it is directed and on any subsequent employer of the debtor and such service may be effected by leaving the order at, or sending the order or a copy of the order by prepaid registered post to his or her place of business or residence in the State.

(2) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall comply with it within 10 days of it being served on him or her.

(3) On any occasion where a person makes, in compliance with an attachment of earnings order, a deduction from a debtor's earnings, he or she shall give to the debtor a statement in writing of the total amount of the deduction.

(4) Where an attachment of earnings order is served on any person and—

(*a*) the debtor is not in his or her employment, or

(*b*) the debtor subsequently ceases to be in his or her employment, that person shall, within ten days from the date of service or, the date of cesser, give notice of that fact to the court.

(5) An order made under subsection (1) shall be confidential and the employer shall not make it known to any person other than those persons necessary for the payment of wages, and such persons shall themselves have a duty not to disclose the existence of an attachment of earnings order.

10.—Upon application to the court for an attachment of earnings order, or at any subsequent time which the court deems fit, the court may—

(*a*) order the debtor to give to the court, within a specified period, a statement in writing signed by him or her of—

(i) the name and address of any person by whom earnings are paid to him or her,

(ii) specified particulars as to his or her earnings and projected earnings and as to his or her resources and needs, and

(iii) specified particulars for enabling the debtor to be identified by any other employer, including any future employer,

(*b*) order any person appearing to the court who has the debtor in his or her employment to give to the court, within a specified period, a statement signed by that person, or on his or her behalf, of specified particulars of the debtor's earnings and projected earnings.

11.—Where an attachment of earnings order is in force—

[Senator Eugene Regan.]

(*a*) the debtor shall notify the court in writing, within 10 days of every occasion, in which he or she leaves any employment, or becomes employed or re-employed,

(*b*) the notice referred to in paragraph (*a*) shall include particulars of his or her earnings and projected earnings from the relevant employment,

(*c*) any person who becomes an employer of the debtor and has knowledge that an order is in force shall, within ten days of acquiring that knowledge, notify that court in writing that he or she is the debtor's employer, and include in the notification a statement of the debtor's earnings and projected earnings.

12.—(1) Where an attachment of earnings order is in force, the relevant court shall, on the application of—

(*a*) the employer concerned,

(*b*) the debtor, or

(*c*) the person to whom payments are being made under the order,

determine whether payments (or any portion thereof) to the debtor of a particular class or description specified by the application are earnings for the purpose of the order, and the employer shall give effect to any determination for the time being in force under this section.

(2) Where an application under this section is made by the employer, he or she shall not incur any liability for non-compliance with the order as respects any payments (or any portion thereof) of the class or description specified by the application which are made by him or her to the debtor while the application or any appeal in consequence thereof or any decision in relation to the application or appeal is pending, but this shall not, unless the court otherwise orders, apply as respects such payments (or any portion thereof) if the employer subsequently withdraws the application or abandons the appeal.

13.—(1) Where a debtor is in the service of the State, a local authority for the purposes of the Local Government Act 1941, a harbour authority within the meaning of the Harbours Act 1946, a health board, a vocational education committee established by the Vocational Education Act 1930, or a committee of agriculture established by the Agriculture Act 1931, or is a member of either House of the Oireachtas—

(*a*) in a case where a debtor in the service of the State is employed in a department, office, organisation, service, undertaking or other body, its chief officer (or such other officer as the Minister of State, by whom the department, office, organisation, service, undertaking or other body is administered, may from time to time designate) shall, for the purposes of this Act, be regarded as having the debtor in his or her employment,

(*b*) in a case where a debtor is in the service of such an authority, board or committee, its chief officer shall, for the purposes of this Act, be regarded as having the debtor in his or her employment,

(*c*) in any other case, where a debtor is paid out of the Central Fund or out of moneys provided by the Oireachtas, the Secretary General of the Department of

Finance (or such other officer of the Minister for Finance as that Minister may from time to time designate) shall, for the purposes of this Act, be regarded as having the debtor in his or her employment, and

(*d*) any earnings of a debtor paid out of the Central Fund or out of moneys provided by the Oireachtas shall be regarded as paid by the chief officer referred to in paragraph (*a*) or (*b*), as the case may be, the Secretary General of the Department of Finance or such other officer as may be designated under paragraph (*a*) or (*c*), as the case may be, as may be appropriate.

(2) If any question arises in proceedings for, or arising out of, an attachment of earnings order as to what department, office, organisation, service, undertaking or other body a debtor in the service of the State is employed in for the purposes of this section, the question may be referred to and determined by the Minister for Finance, but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the Court.

(3) A document purporting to contain a determination of the Minister for Finance under subsection (2) and to be signed by an officer of the Minister for Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and be deemed, unless the contrary is shown, to contain an accurate statement of that determination.

(4) In this section references to a debtor in the service of the State include references to a debtor to whom earnings are paid directly out of moneys provided by the Oireachtas.

14.—(1) The relevant court may, if it thinks fit, on the application of the creditor or the debtor, make an order discharging or varying the antecedent order.

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, within ten days of it having been served upon him or her, comply with its terms.

(3) Where an employer affected by an attachment of earnings order ceases to have the debtor in his or her employment, the order shall, in so far as that employer is concerned, lapse (except as respects deductions from earnings paid after the cesser by that employer and payment to the person in whose favour the order was made of deductions from earnings made at any time by the employer).

(4) The lapse of an order under subsection (3) shall not prevent its remaining in force for other purposes.

15.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the court order.

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the relevant court shall give notice of the cesser to the employer.

16.—(1) Where an attachment of earnings order has been made, any proceedings commenced under section 8(1) of the Act of 1940, for the enforcement of the court order against the debtor shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect.

[Senator Eugene Regan.]

(2) An attachment of earnings order shall cease to have effect upon the making of an order under section 8(1) of the Act of 1940, for the enforcement of the court order against the debtor.

17.—(1) The Minister for Social and Family Affairs shall make regulations to address circumstances where—

(*a*) a person who is entitled to income support, and

(*b*) has defaulted on the discharge of a court order,

so as to enable the court to make an order directing the Minister to deduct sums from any amounts, not below the protected welfare rate, payable to the debtor by way of income support, in order to secure the payment of any sum which is or forms part of the court order.

(2) The regulations shall specify the protected welfare rate, that is to say, the rate below which, having regard to the resources and the needs of the debtor, the Minister considers it proper that the debtor's income support should not be reduced by a payment made in pursuance of the attachment of earnings order and for the purpose of this section the protected welfare rate shall be prescribed by the Minister, to be reviewed annually.

(3) The regulations may include provision—

(*a*) that, before making an application, the court shall make an enquiry as to the debtor's means,

(*b*) allowing or requiring adjudication as regards an application, and provision as to appeals and reviews,

(*c*) as to the circumstances and manner in which and the times at which sums are to be deducted and paid,

(*d*) as to the calculation of such sums (which may include provision to secure that amount payable to the debtor by way of income support do not fall below prescribed figures),

(*e*) as to the circumstances in which the Minister is to cease making deductions,

(*f*) requiring the Minister to notify the debtor, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification,

(*g*) that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Minister.

(4) In this section, 'Minister' means Minister for Social and Family Affairs.".".

This amendment provides for attachment of earnings to discharge or contribute towards the payment of a debt. It arises from an efficiency argument as it would save court and Garda time and protect the interests of the creditor in receiving some satisfaction for a debt that is due. It would also obviate the need to invoke the rather draconian measure of imprisonment which gives no satisfaction to a creditor in the discharge of a debt.

It also arises based on the premise of the Bill which is to deal with the implications of the judgment of Ms Justice Laffoy on 18 June 2009 in the Caroline McCann case which specifically refers to the concept of attachment. Ms Justice Laffoy mentioned the proportionality test set out in the judgment in Heaney *v.* Ireland which states that intervening in the liberty of a person may be justified depending on whether it is proportionate. The test of proportionality is that the means chosen must:

> (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;
>
> (b) impair the right as little as possible, and
>
> (c) be such that their effects on rights are proportional to the objective.

Ms Justice Laffoy states:

> Having in place an effective statutory scheme for enforcement of contractual obligations, including the payment of debt, is unquestionably a reasonable and legitimate objective in the interests of the common good in a democratic society. The means by which effectiveness is achieved may reasonably necessitate affording a creditor a remedy which entitles him or her to seek to have a debtor imprisoned, but such means will constitute an infringement of the debtor's right to personal liberty guaranteed by Article 40.4.1° unless they pass the proportionality test.

It is a very straightforward principle. I do not wish to repeat what was said on Committee Stage, but this is rather important. She goes on to state:

> The application of elements of the test to s. 6 [of the 1940 Act] illustrates that it is a disproportionate interference with the constitutionally protected right to liberty for the following reasons:
>
> (a) The objective of imprisoning a debtor for failure to comply with an instalment order is to procure the discharge of the arrears of instalments. A statutory procedure under which a debtor who is unable to discharge the arrears is imprisoned because of the absence therein of procedures, including procedures which give effect to the debtor's right to fair procedures under the Constitution, which ensure that the Judge ascertains that the debtor is unable to discharge the arrears, cannot be said to be rationally connected with the objective. Such a procedure is arbitrary, unfair and not based on rational considerations. It is an unreasonable and unnecessary interference with the debtor's right to personal liberty.

As I have said before, the Bill goes some way towards dealing with the issues arising in section 6 of the 1940 Act. The second set of circumstances to which I referred is the application of elements of the test to section 6. She finds it is a disproportionate interference with the right to liberty.

The purpose of the amendment is to attach the income or resources or payments which may be accruing to a debtor from a third party for use in discharging the debt. This process should be undertaken before the draconian measure of imprisonment. The second reason given by the judge is:

> (b) In circumstances in which a debtor has some resources to meet the debt, a statutory scheme which does not require the creditor to seek redress by attaching those resources, does not impair the debtor's right to liberty as little as possible.

[Senator Eugene Regan.]

In other words, it is disproportionate. That is the basis of this amendment.

I do not propose to go over the arguments advanced on Committee Stage with regard to this comprehensive amendment which was drafted to provide for attachment of earnings but also to qualify that in a way that is not unduly onerous for a debtor while giving some satisfaction to a creditor. It emerged in the response from the Minister of State, who was speaking in the House on Committee Stage, that the procedure of attachment is not novel but applies particularly in the area of family law.

The issue does not appear to me to be insurmountable, notwithstanding the urgency of the legislation and the speed with which it is being pushed through the Oireachtas. The Minister could encompass this provision which would appear, on any fair reading of the judgment of Ms Justice Laffoy, to be necessitated by that judgment. Since the Bill is designed to deal with the implications of that judgment, why is this aspect being ignored?

3 o'clock

I appreciate the suggestion that the matter is rectified by the proposed addition to the 1940 Act of section 6(8)(*b*), under which the judge must establish that "the debtor has no goods that could be taken in execution under any process of the court by which the judgment, order or decree for the debt was given". This does not satisfy the requirement arising from the judgment and, in this regard, the Bill is flawed.

In the current economic climate, where significant numbers of people are, for different reasons, being forced into debt and related financial difficulties, the absence of a procedure whereby they can be relieved of the threat of imprisonment and can be guided to find a way to make a contribution from their earnings or social welfare is unacceptable. Such a process would be far more appealing than the prospect of imprisonment and the associated hardship and ignominy. I commend the amendment to the House. Given the imperative arising from the judgment of the High Court on these constitutional principles, the purpose of the Bill to follow through on that judgment, and the present economic circumstances, this amendment is worthwhile, appropriate and timely.

Senator Ivana Bacik: I second the amendment. We debated this issue at length on Second Stage, and I spoke in support of it. Having read Ms Justice Laffoy's judgment several times, especially the relevant passage at pages 81 to 82, it is clear she is of the opinion that the proportionality test in Heaney *v.* Ireland can only be fulfilled where there is provision for some type of attachment of earnings procedure. She points out that to be proportionate, any legislative scheme allowing for a person's imprisonment must impair his or her constitutional right to liberty to the least possible extent. She further states that where a debtor has some resources, some means of paying the debt, but there is no provision in legislation for a scheme of attachment of earnings, the system proceeding directly to imprisonment, then the debt enforcement system is disproportionate because it does not ensure the constitutional right to liberty is impaired as little as possible.

Ms Justice Laffoy describes it as disproportionate and in breach of the constitutional right to liberty to lock up a person for non-payment without first checking whether there is some mechanism for attaching their earnings and income. That halfway house measure must be possible to satisfy the constitutional test of proportionality. This is the only possible interpretation in reading the Laffoy judgment. I do not see how else one can fulfil the Heaney test of proportionality. As we all acknowledged yesterday, the Bill provides for very welcome improvements in the current regime for enforcement of debts and will certainly make it less likely that debtors will be imprisoned. However, a careful reading of the judgment in the McCann case points to the requirement that as well as providing safeguards to ensure people are imprisoned less easily for non-payment of debts, a halfway house scheme must also be

introduced whereby some attachment of earnings mechanism may be used by a judge before proceeding to the last resort of imprisonment. If the system does not allow for that halfway house, it allows for the imprisonment of people in a way that is disproportionate and which impairs the constitutional right to liberty.

Senator Regan has expressed this well in amendment No. 1. It is a complex and detailed provision which refers to the need to ensure there are protected earnings rates and protected welfare rates for attachment of earnings and welfare orders. This is something to which Ms Justice Laffoy referred, namely, the need to safeguard a minimum standard of living for the debtor. All these safeguards are included, but the key principle the amendment seeks to address is that without some type of attachment of earnings scheme, the legislation will be regarded as disproportionate and may, therefore, be found unconstitutional in the way the regime provided for in the 1940 Act was found constitutional in the Caroline McCann case.

The Minister of State, Deputy Curran, indicated yesterday that in the first six months of this year, 186 people have already been imprisoned for non-payment of debts. We should also be mindful of the human stories of those imprisoned. I related some of the pertinent background information about Caroline McCann yesterday who owed money to the credit union, as referred to in the Laffoy judgment. As I said, she is a single, unemployed mother of two who left school at age 14, lives in social housing and has a history of alcohol abuse and psychiatric illness. That is the reality for many debtors who face court proceedings. It may not have benefited Caroline McCann but some type of attachment of earnings regime should be inserted in the legislation to ensure there is a halfway house safeguard so that a judge does not proceed straight to imprisonment when confronted with a debtor who has not made repayment.

Senator Alex White: I support amendment No. 1. I am interested in the Minister's response, especially in respect of the points made regarding the implications of the Laffoy judgment. I agree with Senator Bacik that it seems to be a mandatory requirement to satisfy the proportionality test invoked in that case and upon which the judgment was partly based. I had hoped to have an opportunity to look again at the judgment, but the Minister will appreciate there was insufficient time to do so given that we had to deal earlier today with another of his July statutes. My reading of it is that the proportionality test is as mandatory a requirement as the obligation to distinguish between an inability to pay and a wilful refusal to pay. That distinction is well made in the Bill, which we have welcomed. That having being done on the basis of the tests outlined in the Laffoy judgment, it is equally a requirement that the law should provide for an attachment procedure in circumstances where the absence of such a procedure runs the serious risk of rendering that part of the law unconstitutional.

Even aside from the question of constitutionality, the Minister would probably agree that an attachment procedure has inherent value in itself. If I understood him correctly, the Minister of State, Deputy Curran, indicated yesterday that whereas there would be a large measure of support on the Government side for the inclusion of an attachment procedure, he was of the view that it would be more appropriate for that to be considered at a later stage when the Law Reform Commission has reported on this general area. Even if the Minister does not accept there is a constitutional difficulty, it makes sense in any event to include an attachment procedure in this measure. We are all agreed that everything possible must be done to ensure debts are paid, short of the ultimate sanction of imprisonment. That is one of the contexts in which this Bill has been brought forward, a point made strongly by the Minister of State yesterday when he argued that imprisonment should be avoided if at all possible. One of the measures that will help to avoid the use of this ultimate sanction is the inclusion of an attachment of earnings procedure for persons facing difficulty in repaying debts. It has inherent value if there is not a constitutional question mark over it.

[Senator Alex White.]

In terms of the broader objective of the legislation, an attachment order also has value to a creditor. Creditors who are owed money will probably be more impressed by the possibility or likelihood of being paid the money owed than the prospect of the debtor being sent to prison. All creditors, whether large or small, want to be paid rather than see someone led off in chains, as it were. Attachment to earnings orders appear, therefore, to have an inherent value as a public policy instrument and to the individual creditor whose rights we are also interested in protecting.

The case that there is a constitutional question mark over the legislation appears to be unanswerable, although I await the Minister's response in this regard. Given that the Minister has chosen not to appeal the Laffoy judgment in relation to the matter of ability to pay versus refusal to pay, I do not understand the reason he is not following the decision, which he has no choice but to accept, in respect of the absence of an attachment of earnings procedure and the effect it has on the rights of the people involved. On that basis, I strongly support the amendment and look forward to the Minister's response.

Senator Jim Walsh: Attachment to income is a good principle and one which Senators discussed on Second Stage. It is a less costly way to address the issue of debt than imprisonment. Senator Quinn cited a case of a person who was imprisoned for a debt of €1,700 at a cost of some €23,000. From the perspective of the State, an attachment to earnings procedure is clearly a good idea.

Where a debtor is liable by virtue of an attachment or instalment order, such orders should cover more than the debt owed. I have listened to what my colleagues, some of whom are barristers, have said about the Laffoy judgment. The amendments to the 1940 Act will ensure a debtor who is in breach of an instalment order must come before the court and be advised that he or she may face imprisonment. In addition, the Act has been amended to shift the onus of proof and require the creditor to show that the debtor has the assets and capacity to pay the debt. This provision must overcome the constitutional difficulties arising from the McCann judgment.

During the Second Stage debate, the Minister of State indicated that the Law Reform Commission is examining issues surrounding debtors and creditors with a view to producing recommendations. We should await the report of the commission for a number of reasons. Issues such as social welfare fraud and certain aspects of tax fraud, albeit not cases involving excessive amounts, and other matters should be brought within the attachment order procedure. We must simplify the system for recovering debts, whether they are due to the State or another citizen. While I am taken with the concept of attachment orders and support the principle involved, the amendment is premature.

Senator Liam Twomey: The failure of the Government to challenge the High Court judgment amounts to an acceptance of Ms Justice Laffoy's ruling in the McCann case. If a similar case arises following the enactment of the legislation, it could go before the High Court and the McCann judgment will serve as the precedent.

The Minister of State referred to the possibility that a stake could be placed on goods. Goods do not equate to income. We still have not received a satisfactory answer from the Government on whether the Laffoy judgment could be used to bring down the legislation. Unless the Minister provides a clear-cut answer on this matter, we will have to ask him to refer the legislation to the Supreme Court for an opinion. If he fails to do so, the Laffoy judgment will be used in future cases and may bring down the legislation, as occurred with the 1940 Act.

Senator David Norris: I welcome the opportunity to contribute to the debate on this legislation, on which I also contributed on Second Stage. I mention in the presence of the senior Minister that the legislation appears principally to be a response to the McCann judgment. I recognise also that Ms Justice Laffoy issued a very good judgment in the case. I wish to put at the centre of this debate the human experience of the debtor. The Minister should note that many Senators greatly appreciate the work of the Northside Community Law Centre, without which the McCann case may not have reached a satisfactory conclusion.

While I compliment the Minister on having responded to the McCann case, as I stated on Second Stage, he has responded to half of the problem rather than the full problem. This may well be the reason my colleague, Senator Walsh, asked Senators to wait for the report of the Law Reform Commission. Different Governments have frequently asked us to wait for this or that report to be published. Unfortunately, I have always found this approach to be rather haphazard.

Senator Regan's amendment is considered and detailed but also clear and efficient. It is interesting to note that it is almost exactly the same length as the Bill, which tells us something about the degree of concern and interest the Senator has devoted to the matter. I am fully in favour of the idea of attachment and urge the Minister, even at this late stage, to take the matter on board.

The whole point of the McCann judgment was to avoid circumstances in which citizens are sent to jail. The amendment appears to be another mechanism, in this case an efficient one, to ensure that with regard to debt, a citizen is not needlessly sent to jail for a non-violent crime which, while possibly aggravating and financially dangerous for the other side, is not a crime of violence. Why should the taxpayer have to pay to keep people in jail over debts, some of which are for small sums? The attachment of earnings procedure appears to be an efficient method to address this matter and it is one of which I approve.

The reason I commented on the length of the amendment and compared it with the length of the Bill was that any difficulties or concerns I had appear to have been met by Senator Regan. For example, I was concerned that a circumstance could arise in which a person's income was attached to such an extent that he or she would experience difficulty in meeting the requirements of life, including the education of his or her children and so forth. I note, however, that section 8(4)(*b*) of the amendment requires that the protected earnings rate must be specified so that the court will determine a level of income below which, as a result of the attachment order, the person in question should not have to pay. I like the idea of consent in subsection (5) which states:

> The particular of an attachment to earnings order may be agreed on consent by the debtor and the creditor in advance the hearing of an application under this section and may be ruled on by the Court as an order under this section.

The phraseology "in advance the hearing" sounds a bit odd. Presumably it means "in advance of". Perhaps the Minister can advise as to whether a preposition was left out or if this is legal language. If it is, it is a bit odd considering that the Minister has committed himself to using ordinary language. There may well be a simple explanation and I see that the Minister's advisor is smiling.

Deputy Dermot Ahern: We did not draft it.

Senator David Norris: The Minister did not draft it. It was Senator Regan, the *fausseur*. Is the Minister disposed to accept this amendment? It is so good, I assumed it came from the Minister. However, I think the preposition has been left out. It looks to me almost like a

[Senator David Norris.]

conciliation process — the kind of thing that sometimes happens on the way into court when parties agree and no blood need actually be shed. I commend this amendment which is good and well thought out. The defence that the Government has offered for its apparent reluctance to accept it, seems principally to be that the Law Reform Commission may look at this in the future.

I think we are taking amendments Nos. 1, 2, 4 and 6 together. Amendment No. 4 seems to be reasonable on the part of Senator Regan. It would be almost like a biblical parable if, for example, A was in debt to B, and C was in debt to A, and C was paying money to A, but A was refusing to pass it on to B. It would be aggravating for poor B to watch money flowing into the pockets of somebody who had already borrowed money from them. The amendment therefore seems to be perfectly reasonable. There is no reason why an ancillary debt of that nature should be protected.

Amendment No. 6 proposes to insert a new section 17A as follows:

> All instalment orders made under the aforementioned section must be served, personally, on the judgment debtor and must contain a notification of the consequences of failure to comply with such an order...

It is a good legal principle that people must get direct and proper notification which must be served appropriately. I am very much in favour of this amendment. On Second Stage, I said the Minister was going excellently half the way, but Senator Regan has provided another 40% or 50%. I hope therefore that the Minister will consider these amendments positively.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I thank Senators for acknowledging that we have put significant checks and balances in the Bill concerning the implications of the Laffoy judgment. In my 21 years as a practising solicitor, from 1976 to 1997, I had some practical experience of the use of instalment orders, garnishee orders and judgment mortgages, to try to use every trick in the legal book to get money or, as they say, blood out of a stone. It is a frustrating experience for somebody who is owed a debt to get money from people who wilfully refuse, even though they have the resources. When one gets the instalment order, people often say they will pay a fiver a month, that the person owed will never get the ultimate amount and that it will be made a painstaking experience. It is a frustrating experience for those who are owed money. It needs reform which is one of the reasons the Law Reform Commission was requested to review this matter.

I do not accept what Senator Norris says about the Government's attitude being haphazard. It is anything but haphazard in that we are taking a long-term look at it and are consulting with various people. The commission has already done some work, but will do a consultation process in September and will ultimately report on a complete reform of this area. I would welcome that. If we were to accept Senator Regan's amendment, we could be rightly accused of second guessing what the Law Reform Commission will ultimately report. It is important therefore to allow that consultation process to go ahead.

I have sympathy with the concept of attachment, which works pretty well with maintenance orders. It must be said, however, that 50% of those who end up in prison do so as a result of non-payment of maintenance orders, so the attachment was no good in those circumstances. There is a multiplicity of ways in which people can recover a debt. I am digressing a bit in telling the story of a case I took great pride in when I was a practising solicitor many years ago. It concerned an elderly couple who were badly assaulted by their next door neighbour in a row over a fence. The gardaí would not get involved, even though an assault took place, because it was one person's word against another. There was no criminal prosecution so we

took a civil prosecution. This couple had been badly beaten. In the man's case we got £5,000 and £2,500 for the woman, which was a huge amount of money 20 years ago. We tried to go through the courts with instalment orders which we obtained, but it comes back to the central point. In my experience, and I think it would be the experience of most legal practitioners, the courts err on behalf of giving people their freedom. It is only when the creditor has gone to the nth degree that the debtor ends up in prison. In my recollection very few people were put in prison in my area during my time practising law. To come back to the story, I tried to get the money for these nice people who were from Canada but living locally in Dundalk at the time. We went though all these instalment proceedings but, of course, the fellow never paid. We probably did get a committal order against him but I do not think it was enforced. I took a personal interest in the case because I felt the man who assaulted the couple should not be let off. I therefore registered the judgment as a judgment mortgage against the assaulter's property. We left it there and did not apply for an order for sale, as one is entitled to do under a judgment mortgage. I thought no more about it and the people never got paid. Then about 15 years later I got a call from a local solicitor who was in the process of selling a house and was literally closing the deal that day. He did what are called the searches and, lo and behold, he came across this judgment mortgage which was registered against the property, as well as another mortgage with the building society. He could make neither head nor tail of this mortgage, but it transpired it was the mortgage I had registered on behalf of the people concerned. He obviously could not sell the house that particular day therefore. I then had to try to locate the people who had returned to Canada after the assault, without having received their money. Eventually we tracked them down and I was delighted to be able to tell them that they were going to get £7,500 plus interest at 11% for about 15 years. It was a lovely little box for them subsequently. I am digressing, but the story illustrates the difficulty a debtor must go through to get satisfaction.

Senator David Norris: It is a very good story, but I think it was the creditor.

Deputy Dermot Ahern: Did I say "debtor"? I meant to say "creditor". The 1940 Act is an old Act but we have put in a range of balanced safeguards and protections. We took into account what Senators said yesterday. We consulted the Attorney General on the safeguards and we are satisfied those built into the Bill are correct. We have gone further in the legislation in that no debtor can be imprisoned until the court has heard from him or her. If he or she refuses to attend, he or she obviously can be held in contempt under section 12. I understand from my officials that no Senator disagreed with the fact that this is a necessary provision. The High Court also stated that it was necessary that the debtor be apprised by the judge of his or her entitlement to legal representation. This is fully accounted for in the point.

Ms Justice Laffoy's final point was that the court "applies fair procedures in the hearings of the creditor's application, and does not make an order for arrest or imprisonment, unless it is satisfied that the failure to pay is due to wilful refusal or culpable neglect." This is extensively addressed in the Bill which provides that the debtor must be informed in the summons, which will be personally served if possible. We are again nodding in the direction of an amendment by Senator White on the consequences of that process. The debtor must be brought before the court to be further informed by the judge of his or her rights, including legal aid and the possible consequences. The Bill goes further still, by listing a range of options that are open to the judge, including the making of a variation order, requiring the parties to participate in mediation.

The money advice and budgeting service was referred to in the House. In my time as Minister for Social, Community and Family Affairs between 1997 and 2000, I was very instrumental in building up that service to what it is today. When I started in public life, the ESB used to

[Deputy Dermot Ahern.]

switch people off. That does not happen anymore because MABS is there for everyone, and it is an excellent service.

I accept what Senator Bacik said about the lady in question. The couple in my case own the house, and judgment mortgages do not apply to people in local authority houses. I appreciate that there are people who do not have the resources and perhaps do not have the legal advice. Perhaps they have a health issue which may prevent them from getting that advice. My experience has been that the courts have erred very much on the side of caution in this respect.

We have addressed an urgent need that was identified by the High Court decision. It does not deal ultimately with the overall process, which may very well be radically overhauled by the Law Reform Commission when it comes to give a view on this. I would recognise that the Government would be more than willing to do away with or change the existing system if that is what was recommended. We should give a chance to the Law Reform Commission to bring forward its recommendations. Approximately half of those imprisoned at any given time are maintenance debtors where there is already an option of attachment. It seems this is not the complete panacea to all the ills associated with the issue.

I thank Senator Regan for tabling this amendment and for highlighting the necessity to have an attachment of earnings, but I suggest we leave it until the Law Reform Commission has reported.

Senator Eugene Regan: I wonder why we go to so much trouble in this Bill and not remedy this particular defect in existing legislation. The Minister has correctly outlined the number of safeguards that have been introduced in the Bill that deal with the outcome and the implications of the Laffoy judgment. However, he cannot pick and chose the bits that he wants to deal with. The judge has stated in express terms that the legislation fails the proportionality test. Where one does not have a statutory scheme that does not require the creditor to seek redress by attaching those resources, then this is a failure. These are constitutional principles to which the Minister is duty bound to have regard. This judgment was not appealed as it was clearly "slam dunk" on the constitutionality of the legislation, given the serious implications of non-payment and non-compliance, but I do think the Minister is picking and choosing which bits he is going to implement in this Bill. Why run the risk of leaving this Bill open to challenge? Anyone challenging the Bill can simply quote the specific ruling of Ms Justice Laffoy.

The Minister has also made the case for this amendment in his exposé about the painstaking difficulties of getting money and recovering debts in court. The fact is that the attachment procedure is the most efficient procedure because it has immediate effect. It is a procedure which does not leave things hanging in the air, avoids the threat of imprisonment and at the same time provides a mechanism for the creditor to recover some if not all of the debt he is seeking. The ultimate outcome of the Minister's refusal to accept this amendment is that we still have the big stick of imprisonment rather than the more considered approach as outlined in Ms Justice Laffoy's judgment.

I commend amendment No. 6 to the Minister. There is an issue with personal service of the summons for an instalment order, in that it should be served personally and the implications of non-compliance should be spelled out to the person being served. This principle, which again was established in the judgment, applies not only to the committal summons but to the instalment order itself. There is a requirement that the instalment order be served personally and that notification be given of the consequences of failure to comply. This amendment is not to the 1940 Act, but to the principal Act of 1926. The amendment states that all instalment orders made under the aforementioned section must be served personally on the judgment debtor and must contain a notification of the consequences of failure to comply with such an order, includ-

ing the impossibility of imprisonment, pursuant to Order 6 of the Enforcement of Court Orders Act 1940. The endorsement on the order would inform the debtor that failure to comply could result in the issuing of a committal summons, so it comes before that, as a result of which the instalment order could be varied. The court may order mediation, in accordance with this Bill. The court may order attachment of debt owed to the debtor by a third party. The court may order imprisonment with or without a stay of execution. On page 83 of her judgment, Ms Justice Laffoy highlighted this as a weakness in the system. I appreciate that the Bill seeks to address it at a later stage — the committal stage — of the whole process. The principle is established when this process is initiated at the instalment order stage, however.

An amendment of this type is required to fully implement and take account of the implications of Ms Justice Laffoy's judgment. It is important that instalment orders are served personally. It is also a question of efficiency. When one moves to the committal stage, the full implications of the provisions of the legislation before the House come into play. I refer to the legal aid provisions etc. This amendment will ensure that instalment orders are registered with the individuals on whom they are personally served. It should be immediately brought home to people that an order has implications — it is not something they should put aside or throw in the bin. I am seeking to avoid many problems and hasten the process of recovering debt. I commend it to the Minister of State.

4 o'clock

I will explain the logic underpinning amendment No. 4, which is a variation on the proposal to which I have already referred. The proposed new section 6(7) of the 1940 Act, as provided for in the Bill before the House, will ensure that various processes take place. Section 6(7)(*a*) provides for a process of variation of the instalment order and is followed by section 6(7)(*b*), which provides for a process of resolution by mediation. The logical next step would be to provide for a process of attachment orders, before moving on to the imposition of a prison sentence, albeit stayed, and finally the more draconian measure of arrest and imprisonment. That is the logic of amendment No. 4.

The Minister is fully aware that it costs approximately €2,000 a week to keep a prisoner in jail. The number of people who are imprisoned for non-payment of debt was mentioned on Committee Stage. They spend an average of 24 days in prison. One can add up the cost of that. We need to avoid such direct costs and minimise the indirect costs and additional problems associated with overcrowding in our prisons. These amendments have been tabled to improve the Bill and ensure it complies fully with Ms Justice Laffoy's judgment in the McCann case. I ask the Minister to reconsider the position in relation to these amendments.

Acting Chairman (Senator Kieran Phelan): As this is Report Stage, the Minister cannot comment further.

Senator Eugene Regan: In that case, I will press the amendment.

Amendment put.

The Seanad divided: Tá, 23; Níl, 26.

Tá

Bacik, Ivana.	Fitzgerald, Frances.
Bradford, Paul.	Hannigan, Dominic.
Buttimer, Jerry.	McFadden, Nicky.
Cannon, Ciaran.	Mullen, Rónán.
Coffey, Paudie.	Norris, David.
Coghlan, Paul.	O'Reilly, Joe.
Cummins, Maurice.	O'Toole, Joe.
Donohoe, Paschal.	Phelan, John Paul.

Tá—*continued*

Prendergast, Phil.
Quinn, Feargal.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Níl

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callanan, Peter.
Callely, Ivor.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
de Búrca, Déirdre.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Keaveney, Cecilia.
Leyden, Terry.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Tellers: Tá, Senators Maurice Cummins and Eugene Regan; Níl, Senators Déirdre de Búrca and Diarmuid Wilson.

Amendment declared lost.

An Cathaoirleach: Amendment No. 2 has been discussed with amendment No. 1.

Senator Eugene Regan: I move amendment No. 2:

In page 3, to delete lines 12 to 34, to delete page 4, to delete page 5, to delete page 6, to delete page 7, and to delete page 8.

Senator Maurice Cummins: I second the amendment.

An Cathaoirleach: Is the amendment being pressed?

Senator Eugene Regan: Yes.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Government amendment No. 2*a*:

In page 4, to delete lines 1 to 5 and substitute the following:

"(*c*) provide information in ordinary language of the options available to the judge of the District Court under *subsection (7)* at the hearing of the summons,

(*d*) state that the debtor may be arrested if he or she fails to appear before the District Court as directed, and

(*e*) be served on the debtor by personal service, unless the judge of the District Court directs otherwise.".

Deputy Dermot Ahern: As I mentioned in dealing with Senator Regan's amendment, in light of discussions yesterday, we talked overnight to the Attorney General on this. There were two

helpful amendments from Senators Bacik and Alex White and we have incorporated the main points made in those into this amended paragraph. New paragraph (*c*) provides that the summons will set out in ordinary language the options available to the judge of the District Court under subsection (7). This will include the variation order and the mediation option. Paragraph (*d*) is the old paragraph (*c*) unchanged, merely renumbered. Paragraph (*e*) is the old paragraph (*d*) with the proviso "unless the judge of the District Court directs otherwise" inserted. This will enable the court to make directions as to other service options if the summons cannot be served. I am satisfied that these small changes are warranted and I thank the Senators for their assistance.

Senator Ivana Bacik: I am very grateful to the Minister for accepting my amendment from yesterday and acknowledging that in his speech. I put the amendment on Committee Stage last night and we voted on it. The Minister of State, Deputy Curran, indicated he could not accept it but I am delighted there has been a change of mind overnight and that it has been accepted. This is an important principle and I am very grateful to the free legal advice centres for advising us all in a briefing paper of the need to ensure information is provided at an early stage to a debtor of the consequences of a failure to appear and of the possibility that a variation could be made to an instalment order. We had a lengthy debate on that last night.

I am delighted the Government has accepted the amendment I proposed and the principle behind it. Its wording is more elegant than mine was, given that mine was rather rushed, however the basis of it is the same. At paragraphs (*c*) and (*d*) the new provisions ensure the summons served on the debtor at the first stage in the process will provide information to the debtor in ordinary language of the options available to the judge of the District Court under subsection (7) at the hearing of the summons.

In my amendment I had said the information that should be provided in ordinary language was that the debtor could seek a variation of an existing instalment order. This is fuller, and it emerged during the debate last night that all the options available to a judge at the hearing of the summons should be outlined to the debtor in ordinary language. The Minister had expressed the view that it might be unbalanced to tell the debtor about the possibility of a variation application. I contested that and said I did not see why the debtor would be told of the sticks, the possibility of arrest and imprisonment, but not the carrots, the possibility of variation and mediation.

The policy behind this legislation, with which we all agree, is to ensure a higher number of debtors appear before the court and that they are encouraged to appear before the court with a view to escaping imprisonment and ensuring there is some payment of the debts owing to the creditors. I did not see there was an issue of balance and it seemed entirely appropriate that debtors would be given all the information at the earliest stage in ordinary language about the nature of the District Court hearing and that this would encourage them to attend.

Fewer than one in five debtors engage with the court process, according to Courts Service statistics, so it is in the interests of debtors and creditors and the public good that they are encouraged. The summons should also state that the debtor may be arrested if he or she fails to appear before the District Court. That was already in the legislation and it is very important. The amendment put forward by Senator Alex White, that there should be provision for the judge of the District Court to direct otherwise and by personal service, was also accepted.

I very much welcome the Minister's acceptance of my amendment. I am delighted the carrot will be incorporated into the summons as well as the stick. It is important we have it in the legislation. The Minister of State, Deputy Curran, indicated yesterday that an information leaflet might be provided but it is far more important that the information is there in the

[Senator Ivana Bacik.]

summons for a debtor to see very clearly at the earliest stage possible. Hopefully we will see more debtors appearing before the court and engaging with the process.

The FLAC report that came out this week points out that the sanction of imprisonment should be removed immediately for those who are unable to pay their debts, and this Bill addresses that in a very welcome way. To nobody's credit, FLAC also recommends the State should move towards the removal of imprisonment as an option in debt cases and should look instead at effective non-penal remedies to be employed for non-payment of debts, not just where people are unable to pay. That is the broader reform I would like to see, and this Bill, unfortunately, does not address that. While it is very welcome in that it ensures, as far as possible, that people are not imprisoned for inability to pay, it still allows for people to be imprisoned for non-payment of debt.

Having said that, I am delighted to have my amendment accepted. I am delighted debtors will henceforth be given information in ordinary language in the summons about the options available to the District Court judge at the hearing of the summons. That is a very important and welcome improvement to the Bill.

Senator David Norris: I add my voice to that of Senator Bacik. I compliment her on getting this amendment passed. On behalf of the House, I thank the Minister for showing this degree of flexibility. It is a very important point, which a number of us made on Second Stage. Senator Bacik put the amendment down, argued very clearly for it and, obviously, impressed the Minister and his advisers. It strengthens the Bill, democratises it and allows the debtor to fully participate in the process in a way which can only be positive for the whole outcome.

Senator Bacik emphasised many of the legal and human aspects, but I would like to emphasise the ordinary language aspect. That is terribly important because it is by virtue of the ordinary language that this information becomes accessible, and it is usable only when it is accessible. If it is wrapped in legal jargon one can print it on note paper, send it through the letter box or read it out to the people, but it will not make the slightest difference. It must be accessible and that permits the citizen to exercise his or her rights.

I endorse what Senator Bacik said about prison. It is futile. It is a waste of time, money and effort sending people in such civil cases to jail. It is not at all worthwhile and I look forward to the time when the only people in jail will be those who are a danger to themselves or society in some really practical way. Although this is not the time to discuss them, there are many other ways people can be encouraged to pay off their debts to society, such as community service orders, but sending people to jail is very foolish.

The Minister said very few are jailed, but there are many more than one might imagine. There were approximately 200 last year. That is quite a large number of people affected by this. A large number of people are being put in jail for non-payment of television licences, and that is completely daft. That is one of the reasons I welcome this, and I hope they will be covered by it. I raised it under the Broadcasting Bill and was told it was an inappropriate location.

I support Senator Bacik. I am very glad the Minister accepted the amendment. I congratulate her. This is what the Seanad is for. The fact that this was done overnight shows how much more we could do with these Bills if they were not galloped through the Seanad.

Senator Alex White: I also warmly welcome the Minister's amendment. It is a positive addition to the Bill. It is important that we on this side of the House acknowledge when the Government is prepared to deal with issues and objections and draft amendments we bring forward, and we should welcome it. Senator Norris mentioned the late night aspect of this Bill.

I am sure the Minister is extremely busy and is working very hard. I can see his officials are also working extremely hard. Although these matters may not be particularly detailed, they still involve issues of principle and procedure. It is impressive that they could be turned around overnight in the manner in which they were as has been said. It is publicly known that the Attorney General is legendary for his late night if not around the clock working. I can see some smiles coming in my direction from people sitting behind the Minister who probably have direct experience of it. I am sure the Minister knows it also. It is impressive.

Deputy Dermot Ahern: It is a bit like the Minister.

Senator Alex White: I started by acknowledging that. The Minister must not have been listening to that part. I accept the Minister and his officials are equally applying themselves and taking careful note of what is said. It very much vindicates the position taken on this side of the House about the manner in which the legislation was proposed to be marshalled through the House. We had a completely unnecessary skirmish here yesterday about whether there would be some sort of gap — we sought half an hour — between Committee and Report Stages. Ludicrously even that was not granted yesterday. In the end because of how the debate proceeded we had the overnight break, which allowed the Minister and the Attorney General to consider these matters and make changes. That simply would not have occurred were it not for the completely unnecessary, stubborn and ridiculous attitude taken by the Leader to the debate on this legislation.

I do not know whether the position of the Leader was adopted in consultation with the Minister — I would be curious to know if it was. However, even if it was not, it was wrong and foolish. No legislation should be pushed through any parliament in the manner that was suggested. The position taken by us is now entirely vindicated by what the Minister has done, in fairness to him, by agreeing to some, but not all, of the amendments tabled. It should be a lesson for other legislation before these Houses, some of which is even more important and momentous in its likely implications and effect. It requires and admits of the most detailed scrutiny, which requires time. At least we had the overnight break and made good use of it.

I welcome what in net terms are two additions. One was already in the Bill and the other was proposed by Senator Bacik and was also advocated by FLAC. We have taken note of its very considerable expertise and application to the issues in this legislation. I very much welcome what the Minister has done for the reasons Senator Bacik originally proposed and explained.

I will not press the amendment we tabled because I accept the Minister has dealt with the issue in his amendment. I do not want to prolong matters unnecessarily or return to an excessively legalistic analysis of the words used. However, I had a certain concern over the formulation which states that the summons should "be served on the debtor by personal service, unless the judge of the District Court directs otherwise". I had a concern that might give latitude to a judge not to require service at all. However, I believe the comma that appears in the middle of it saves it in the sense that the flexibility given to the District Court judge seems to relate to the manner of service rather than the fact of service. I will live with that. I thank the Minister for his attention to what was proposed.

Deputy Dermot Ahern: In defence of the Leader of the House, to be fair I had no conversation with him on this matter. We listened to the comments that were made by Senators overnight. We are amenable to amend legislation based on the comments people make.

Senator Maurice Cummins: That was all we asked for yesterday and we were refused it.

Deputy Dermot Ahern: To be fair to the Leader of the House, obviously because of the time pressure we wanted this legislation finished as soon as possible so we could take it into the Dáil on Friday.

Amendment agreed to.

Amendment No. 3 not moved.

Senator Eugene Regan: I move amendment No. 4:

In page 5, between lines 26 and 27, to insert the following:

"(*c*) If he or she considers it appropriate, where another person is indebted to the debtor or the debtor is in receipt of payments from such third person by reason of employment or otherwise, make an order that all debts or payments owing and/or accruing from such third person to the debtor shall be attached to answer the judgment or order, but where such third person disputes a liability to the debtor, instead of making an order that execution shall issue in that case, may order that any issue or question necessary for determining any such liability be first tried before the court.".

Senator Frances Fitzgerald: I second the amendment.

Amendment put and declared lost.

Senator Alex White: I move amendment No. 5:

In page 6, line 39, after "order" to insert the following:

", being the amount specified in that behalf in the order under subsection (7)(*c*) or (*d*)".

There would appear to be a lack of absolute clarity as to the amount of money a debtor would be required to pay in order to be released from prison, if that is on the agenda for the debtor. I draw the Minister's attention to this net point. The new section 6(10)(*b*) deals with the possible release of a person who pays up and states the person "is entitled to be released immediately upon payment by him or her or on his or her behalf to the District Court clerk concerned or to the Governor of the Prison for the District Court clerk, of the sum of money consisting of the amount of all instalments of the debt and costs which have accrued before, and are unpaid at the date of such order".

I have proposed an amendment referring back to sections 6(7)(*c*) and 6(7)(*d*) because there arguably could be a discrepancy here. It might be suggested that the two are not identical. They are described in sections 6(7)(*c*) and 6(7)(*d*) as "the amount of the outstanding debt and costs". That is what lies behind any order of imprisonment. However, in order to get out, the sum of money is described differently as "the sum of money consisting of the amount of all instalments of the debt and costs which have accrued before, and are unpaid at the date of such order". Yesterday the Minister of State, Deputy Curran, told us it was not necessary to make any change and there was no difficulty. I want this provision to work as we all do. Why are there two different descriptions of the sum of money? There is one description of the sum of money for the order that might be made for imprisonment, but there is a different description of the sum of money to be paid in order to be released. I believe that it could be argued that the two were not the same. My amendment effectively links the release money, if I can call it that, with the imprisonment money, if I can call it that, being the amount specified in the section 6(7).

Senator Ivana Bacik: I second the amendment. I spoke on the amendment last night. We are grateful to the Minister for reviewing what we said in the Seanad last night. We can anticipate that he is aware of the arguments in favour of this simple clarifying amendment.

Deputy Dermot Ahern: Overnight we consulted with the Office of the Attorney General on the amendment and it sees no necessity to amend the section. Section 6(10) commences "Where a debtor is imprisoned on foot of an order made under subsection (7)(*c*) or (*d*)". We believe that is sufficient in that it links the two and there should be no doubt as to the amounts payable, the sum of money consisting of the amount of all instalments of the debt and costs which have accrued before, and are unpaid at the date of the order. Obviously it may not necessarily be the amount in the original order and may be a lesser sum.

Amendment, by leave, withdrawn,

Senator Eugene Regan: I move amendment No. 6:

In page 8, after line 46, to insert the following:

"3.—The Enforcement of Court Orders Act 1926 is hereby amended by the insertion of the following section, after section 17:

"17A.—All installment orders made under the aforementioned section must be served, personally, on the judgment debtor and must contain a notification of the consequences of failure to comply with such an order, including the possibility of imprisonment pursuant to section 6 of the Enforcement of Court Orders (Amendment) Act 1940, as amended by *section 2* of the *Enforcement of Court Orders (Amendment) Act 2009* and the District Court Rules applicable to such proceedings may make provision for same.".".

Senator Frances Fitzgerald: I second the amendment.

Amendment put and declared lost.

Question, "That the Bill, as amended, be received for final consideration", put and declared carried.

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

The Seanad divided: Tá, 31; Níl, 20.

Tá

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callanan, Peter.
Callely, Ivor.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
de Búrca, Déirdre.
Doherty, Pearse.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Keaveney, Cecilia.
Leyden, Terry.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
O'Toole, Joe.
Ormonde, Ann.
Phelan, Kieran.
Quinn, Feargal.
Ross, Shane.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Níl

Bacik, Ivana.
Bradford, Paul.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.
Healy Eames, Fidelma.
McFadden, Nicky.
Norris, David.
O'Reilly, Joe.
Phelan, John Paul.
Prendergast, Phil.
Regan, Eugene.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Tellers: Tá, Senators Déirdre de Búrca and Diarmuid Wilson; Níl, Senators Maurice Cummins and Eugene Regan.

Question declared carried.

Business of Seanad.

Senator Donie Cassidy: I propose an amendment to the Order of Business. I propose to extend the debate on Committee and Remaining Stages of the Health (Miscellaneous Provisions) Bill 2009 until 5.30 p.m. Private Members' business will be taken from 5.30 p.m. until 7.30 p.m.

An Cathaoirleach: Is that agreed? Agreed.

Health (Miscellaneous Provisions) Bill 2009: Committee and Remaining Stages.

SECTION 1.

Acting Chairman (Senator Fiona O'Malley): Amendments Nos. 2 and 3 are related to amendment No. 1 and they will be discussed together by agreement.

Government amendment No. 1:

In page 5, subsection (4), line 31, to delete "*section 62*" and substitute "*sections 60 to 64*".

Minister of State at the Department of Health and Children (Deputy John Moloney): Amendment No. 2 corrects a typographical error in the Health Acts. The error in question is in section 53(1B) of the Health Act 1970, as inserted by the Nursing Homes Support Scheme Act 2009. That section incorrectly refers to section 6(2)(*c*) of the Nursing Homes Support Scheme Act. It should read section 6(1)(*c*), as that is the correct cross-reference. Amendment No. 3 is consequential upon amendment No. 2. It amends the Long Title of the Bill to reflect that the Bill will amend the Health Act 1970.

Amendment No. 1 is essentially a technical drafting amendment. The Bill currently provides for the commencement of provisions by ministerial order, with the exception of section 62 of the Bill, as passed by Dáil Éireann. It is proposed that certain other sections will also now come into operation on enactment. These are section 60, the proposed new section 61 and sections 62, 63 and 64 as renumbered.

Section 60 provides for the transfer of ministerial responsibility for the local government superannuation scheme, health sector, from the Minister for the Environment, Heritage and Local Government to the Minister for Health and Children. Section 61 is the proposed new section which corrects a typographical error in the Health Act 1970. Section 62 — section 61

in the most recent printed copy of the Bill — amends the Hepatitis C Compensation Tribunal Act 1997 to remove age limits for travel insurance benefit provided in accordance with that Act. Section 63 — section 62 in the most recent printed copy of the Bill — provides for an amendment to the Mental Health Act 2001 in order to address difficulties in the operation of the Act that have arisen following a recent High Court judgment. Section 64 — section 63 in the most recent printed copy of the Bill — makes technical drafting amendments to the Health Act 2007.

The Minister believes that these particular provisions should come into operation as soon as possible and is therefore proposing that the Bill provide for this to facilitate timely and efficient commencement. Other provisions of the Bill are different in nature and will come into operation at different times and by ministerial order. I ask Senators to support those technical amendments.

Senator Frances Fitzgerald: If I correctly understand what the Minister of State said, the amendments will bring those sections into play immediately the Bill is passed.

Deputy John Moloney: Yes.

Senator Frances Fitzgerald: We support much of what is in the Bill. I did not get an opportunity to speak during the debate on Second Stage. I pay tribute to the work of those agencies that will come under the remit of the Department. The work of the board and staff of the Crisis Pregnancy Agency has been exemplary in recent months and years.

Senator Phil Prendergast: Hear, hear.

Senator Frances Fitzgerald: The rate of abortion has gone down in this country, which is a very welcome development. The initiatives the agency has taken have been superb. Its work has been based on research and its literature has been excellent. I hope the Minister of State will ensure that the kind of work the agency did, and the initiative that it was able to show, will continue within the structures under which it will now operate. That is important in respect of the issues with which it is dealing, and that it will have that kind of freedom and support to do the kind of work that it did. The agency's work showed a lot of initiative, it was proactive, positive and sometimes cutting edge. Cutting-edge initiatives are needed in this area to have an impact and the agency certainly had that. I hope that will continue.

The same applies to the Women's Health Council and the work the other agencies have done. They have certainly put in a huge effort, but there is one area about which we have concerns, which were well articulated in the Dáil and in the Seanad when Senator Twomey spoke on the Bill. Perhaps the Minister of State will come back to us with further information on this section, the implications of which we expressed concern about given, in respect of sectioning, we are speaking about a vulnerable group of people. Effectively, this service is being privatised. How will issues such as standards, safety and procedures be dealt with? These issues are not dealt with anywhere in a statutory manner.

5 o'clock

Deputy John Moloney: Is the Senator speaking about the Mental Health Bill?

Senator Frances Fitzgerald: No, I am speaking about section 63 of this Bill.

Deputy John Moloney: I apologise, I lost track of what the Senator was saying.

Senator Frances Fitzgerald: The changes being made in this Bill are being made on foot of the High Court case. The Bill does not set out in statutory form the qualifications required by personnel in this area. I do not wish to cast any aspersions on the people currently carrying

[Senator Frances Fitzgerald.]

out this work but there have been many scandals in the UK and elsewhere arising out of the privatisation of parts of the health service, particularly when issues such as standards have not been addressed. This problem has also arisen in respect of patients in other countries with mental health difficulties. There is huge scope for poor quality service and for potential abuse.

Acting Chairman: We are discussing amendment No. 1 to section 1.

Senator Frances Fitzgerald: The Minister of State said it references the other amendments and has spoken to them.

Acting Chairman: The Senator wishes to discuss the other amendments now.

Senator Frances Fitzgerald: Yes. The Minister of State said the amendments relate to sections 62, 63 and a number of others. I am addressing them now as the Minister of State said these sections are to be implemented immediately after the Bill has been passed.

Acting Chairman: Is it agreed to take amendments Nos. 1, 2 and 3 together? Agreed.

Senator Frances Fitzgerald: There are implications for the sections to which I am speaking arising out of those amendments. That is the key concern we have about this legislation. We are also concerned this is being introduced separate to mental health legislation and does not put on a statutory footing the issue of standards. Can the Minister of State reassure us that there will not be future difficulties or abuses about which we will all be concerned?

Deputy John Moloney: I take on board the Senator's initial point and understand her fears in regard to amalgamation of certain services such as the Rape Crisis Centre and Women's Health Council. I reiterate the point made by the Minister on Second Stage that we are in changed economic circumstances. We must remember that mission statements outside of these groups must remain intact regardless. I will take up with the Minister the Senator's request for the provision of reassurance to this House in regard to the future role and input of the agencies.

It is important to clarify the position in regard to the "privatisation" for want of a better word, of admissions. There are some safeguards in this regard. While I share the Senator's concern in regard to when these safeguards will be given legal status and recognition, it is important to first consider why admissions are being carried out by people not previously associated with the provision of State services. This arose as a result of an increase in the number of involuntary admissions during the past couple of years. It is also important to point out that the privatised service came about not as a result of staff shortages and difficulties not of the making of PNA or SIPTU nurses, but as a result of extra demand from professionals to bring in voluntary staff due to a lack of adequate staffing. I accept that explanation may not be sufficient.

I will move on now to the next part of the Senator's question. This is an "interim" — a word that arose last night and keeps cropping up — arrangement.

Senator Liam Twomey: It is a little bit like Government.

Deputy John Moloney: I believe it to be a most generous interim arrangement. I understand that aspects of the Mental Health Act are to be reviewed next year. The measure currently being introduced is an interim measure. I agree with Senator Fitzgerald that — I do not say this just to get off the hook on this one — we must ensure the necessary safeguards and protocols are put in place. In the meantime, we must examine what type of personnel are

involved. When one uses the word "privatisation" it is presumed one is talking about a group of competitors in the field who are vying for this work.

The reality is that only one company is doing this work. All of the staff of this company are trained psychiatric nurses whose terms of employment are reviewed on a yearly basis. This, I believe, places a certain level of responsibility on the private provider to ensure its staff are at all times clued into mental health support in terms of the Mental Health Act. Also, all of the staff work in close liaison with the Garda Síochána, which itself infers the Garda will be aware of the personnel with whom it is working. Most important, by way of the provision of comfort to Senators and families and patients, will be the fact that all of the regulations operated by the private company are in tandem with the recommendations of the Mental Health Commission. While they do not have legal status, the private company has a specific professional interest in ensuring that its employees comply with the safeguards laid down. I fully accept that safeguards and protocols have no legal status and I understand the Senator's concern in this regard.

I ask Members, while accepting that a day can be too long when something is wrong, to be patient in the context of this being an interim measure which will be properly legislated for. I do not foresee a situation arising whereby we will have adequate personnel in the nursing profession to assist in voluntary admissions given we are moving towards a community support service in terms of mental health as set out in A Vision for Change. I assure Members that matters such as the type of personnel that can work in this area, their terms of reference and what legal standards will apply will be legislated for.

Senator Frances Fitzgerald: Where a dispute or incident arises about which there is concern will this be investigated by the Health Service Executive or the Mental Health Commission? The Minister of State said that the Mental Health Commission does not have a statutory responsibility in this area but it does have an interest here. When the legislation in this regard is being drafted it will be important to ensure someone has statutory responsibility to deal with difficulties or serious incidents that may arise in this complex area.

The Minister of State said there is only one company involved. I presume there is nothing to prevent another company getting involved, in regard to which a question of vetting arises. I want to make it clear that I am not making any suggestions in regard to the current company that is involved. Vetting of personnel in this area could equally be an issue. Does the Minister of State expect this issue to be addressed by way of legislation, given the sensitive nature of the work and the need for the highest standards and understanding of the issues involved from a legal and mental health point of view?

Deputy John Moloney: I understand from where the Senator is coming in this regard. Senator Fitzgerald asked who would bear responsibility for any difficulties that arise for patients, their families or the hospital concerned. Responsibility would lie with the HSE rather than the commission because the company involved is contracted directly to the HSE. Some time ago there was a change whereby the employees of the company became employees of the HSE for the sake of regulation. No cost factor was involved, it was purely a transfer of responsibility. There is nothing to stop another company vying for part of the market but the HSE would have to be satisfied that the other contractor would have equal status and responsibility.

The vetting of staff is the most important area. Current practice in terms of the contract for the service requires the external agency to provide suitably-qualified mental health professionals, such as qualified psychiatric nurses and allied health professionals. The professionals would have to meet the standards required by the Mental Health Commission. Often when we think of privatisation of services, we think of the quick buck merchant but this is far from that.

[Deputy John Moloney.]

They must conform with the regulations of the Mental Health Commission, they must be qualified professionals and, taken in context of the review each year, they must have Garda clearance.

The guidelines for the external assisted admissions service will be revisited in light of the amending legislation due shortly. To say something will arrive shortly in the context of mental health is never enough but the amended legislation will deal specifically with the questions of protocols, safeguards and the assurance that the people who will participate in this activity will be fully qualified, and monitored by the HSE, the Department and gardaí. HIQA standards will also apply.

Senator Geraldine Feeney: From my time on An Bord Altranais, the regulatory body for nurses, I have a sense of checks and balances here. The regulatory body would have high standards, particularly in the fitness to practice area. If there was an incident related to patient care or safety, if the fault lay with the nurse, the checks and balances exist and he or she would be called before a fitness to practice inquiry of An Bord Altranais. It is comforting to hear the vetting of staff is so important and that there must be Garda clearance. The nurse would have to have a clean certificate of good practice to be charged with patients of this nature.

Deputy John Moloney: The issue revolves around people's qualifications and the company that employs them. The agency has been in existence since 2006 and more than 600 people have been involuntarily admitted since then. The contract for the external assisted admissions includes as a minimum requirement that the assisted admission team should comprise at least two skilled mental health professionals, one of whom must be a registered psychiatric nurse, with a minimum of three years' relevant experience working in a mental health setting within the last four years. Of the 600 missions supported by this agency, there have not been any complaints from the families, the patients or the centres.

Senator Liam Twomey: It is important to recognise that this is an interim measure and that there will be proper protocols in the area when the Mental Health Act is reviewed.

Psychiatric nurses from institutions can participate in bringing in patients at present, not all of the work must be done by this team. The problem has often been that gardaí are not anxious to get involved with this type of work because no criminal offence has been committed, they are assisting someone to be placed involuntarily in a psychiatric institution. Gardaí do not like having to lead in this area. If the team is not available, and I have seen this myself, we must put together a team from the psychiatric institutions. That is what happens in the south east and I am sure the situation is the same elsewhere and that it works just as effectively.

Senator Phil Prendergast: In a situation where a hospital has been visited by the Mental Health Commission and found to be unsuitable for the purpose of modern psychiatry and caring for patients, how would this legislation apply? If the patients are kept in a place that is not fit for purpose and nurses are operating in almost medieval conditions, what effect will the legislation have?

I agree with Senator Twomey that psychiatric nurses frequently must escort patients from the community into the hospital, voluntarily or involuntarily, and they are well aware of the legislation covering that. Gardaí frequently assist for whatever reason. The systems operate, not everything is broken. How will the legislation affect those hospitals where the Mental Health Commission has identified deficiencies?

Deputy John Moloney: I did not mean to create the impression that all of the involuntary admissions were being conducted by private agencies. Involuntary admissions are still being

carried out with the support of existing staff in the services. The majority of cases where the outside agency assisted have occurred in the Dublin-Wicklow region. Throughout the country the demand for staffing in the psychiatric area is not as great as it is in Dublin. To ensure people who might harm themselves are brought to the centre in the absence of staff numbers, the HSE decided to involve the external agency.

There has been some confusion about the role of gardaí. Gardaí cannot be called to assist at an admission because the clinical director does not have sufficient staff to effect the admission. In other words, the Garda cannot be used. If a clinical director wants to take an involuntary admission and there are difficulties in providing staff, he or she cannot rely on the Garda. While I know the Senator is aware of this, it is important to realise that gardaí cannot be called on their own. The 2001 Act provides that where a clinical director believes a patient is likely to cause immediate and serious harm to himself or others the Garda can be requested to assist members of staff to admit or return the person to an approved centre.

The proposed amendment simply provides that the Garda may be called upon to assist members of staff or authorised persons. There are no changes proposed with regard to the power to enter a premises by force. Such power is confined to the Garda and is not available to members of staff of the approved centre or the authorised officer. We are talking about approved personnel who have been properly vetted. The Garda is there as a stand-by and its members' particular professional expertise is relied upon.

I take the point made by Senator Prendergast. I presume she is asking about the process of involuntary admission whereby external agents or existing psychiatric nurses are asked to escort somebody, if that is the right word, to a centre that is below standard.

Senator Phil Prendergast: Yes.

Deputy John Moloney: All I can say is that there is legislation dealing with admission procedures, which includes guidelines in this regard. If, for example, the Mental Health Commission has designated a centre as not being fit for purpose, I doubt somebody would be assigned to it, although I am only voicing my own opinion. I find it difficult to believe somebody would be assigned to a centre that was not up to the minimum standards required.

I am aware that the Senator could speak about places close to where she and I live. All the centres will not be brought up to the required standard overnight, but there is a commitment in A Vision for Change to community mental health supports. I am due to come to the House again in September to reaffirm this, and I will explain how we will have centres that are up to standard. There is a certain doubt out there about whether we will be able to sell properties and keep the money in mental health. I take this opportunity to confirm to the House that I intend to review A Vision for Change in October and make clear commitments for the remaining six years of its lifetime. I am not presuming I will be in this job for six years, but whoever is will need to stick to those guidelines and ensure centres are of a particular standard. I take the point made by the Senator. Yes, there are centres that are not up to standard, but they are approved centres due to the personnel involved in them.

Senator Phil Prendergast: I ask the Minister to clarify one point. At the moment, if admissions are required to go into a unit that has been deemed substandard and not fit for modern-day psychiatry, there is no option. The staff are not doing anything wrong because there is nothing else in place.

Deputy John Moloney: Absolutely not. I did make the point that there must be an approved centre and that one can consider approved centres based on two criteria, namely, the structural condition and the staff. Of these, the staff are the more important aspect. We can both confirm

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that we have centres that are not up to a standard we would like to live in, but the staff are on a par with the best. We have a long way to go to ensure the required standards are reached.

Amendment agreed to.

Section 1, as amended, agreed to.

Sections 2 to 60, inclusive, agreed to.

Acting Chairman: If only all Bills were dealt with this quickly.

Senator Liam Twomey: Keep going. The Acting Chairman is doing great.

Senator Frances Fitzgerald: The problems arise at a later stage.

Senator Liam Twomey: There will be a bualadh bos at the end.

NEW SECTION.

Government amendment No. 2:

In page 20, before section 61, but in Part 8, to insert the following new section:

"61.—(1) Section 53(1B) of the Health Act 1970 (inserted by section 34 of the Nursing Homes Support Scheme Act 2009) is amended by the substitution of "section 6(1)(*c*) of the Nursing Homes Support Scheme Act 2009" for "section 6(2)(*c*) of the Nursing Homes Support Scheme Act 2009".

(2) The amendment (effected by *subsection (1)*) to section 53(1B) of the Health Act 1970 is deemed to have been included in that provision with effect from the passing of the Nursing Homes Support Scheme Act 2009 and that provision (as amended by *subsection (1)*) shall come into operation in accordance with section 2 of the Nursing Homes Support Scheme Act 2009.".

Amendment agreed to.

Section 61 agreed to.

Question, "That section 62 stand part of the Bill", put and declared carried.

Question, "That section 63 stand part of the Bill," put and declared carried.

Section 64 agreed to.

TITLE.

Government amendment No. 3:

In page 5, line 15, after "OF" to insert "THE HEALTH ACT 1970,".

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments and received for final consideration.

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

The Seanad divided: Tá, 35; Níl, 13.

Tá

Bacik, Ivana.
Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callanan, Peter.
Callely, Ivor.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
de Búrca, Déirdre.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Hannigan, Dominic.
Keaveney, Cecilia.
Leyden, Terry.
Mullen, Rónán.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
O'Toole, Joe.
Ormonde, Ann.
Phelan, Kieran.
Prendergast, Phil.
Quinn, Feargal.
Ross, Shane.
Ryan, Brendan.
White, Alex.
White, Mary M.
Wilson, Diarmuid.

Níl

Bradford, Paul.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Healy Eames, Fidelma.
McFadden, Nicky.
O'Reilly, Joe.
Regan, Eugene.
Twomey, Liam.

Tellers: Tá, Senators Déirdre de Búrca and Diarmuid Wilson; Níl, Senators Maurice Cummins and Liam Twomey.

Question declared carried.

Telecommunications Services: Motion.

Senator Dominic Hannigan: I move:

That Seanad Éireann:

— recognising the importance of rural Ireland to the social fabric of the nation;

— recognising the level of isolation felt by many residents in rural Ireland;

— recognising the benefits in social communication brought about by Broadband access; and

— recognising the importance of broadband availability for the setting up and running of rural based businesses,

calls on the Government to:

— restate and confirm its commitment to providing a comprehensive National Broadband Scheme to all of rural Ireland by September 2010; and

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— agree to implement the proposals of Irish Rural Link to ensure that the 12,000 rural homes and businesses not covered by the National Broadband Scheme will have access to broadband.

I welcome the Minister for Communications, Energy and Natural Resources, Deputy Eamon Ryan, to the House. In the short time he has been in office, the Minister has brought considerable energy to his role, which has been greatly appreciated by Senators on all sides.

The advent of the Internet has been one of the most significant changes to have impacted on our lives in the past 20 years. Internet access is now an integral part of modern life. It simplifies activities which were once time consuming or difficult, including paying bills, purchasing clothes and food, winning new business and staying in contact with friends, family, employees or other businesses. Unfortunately, access to this essential service is still dependent on where one lives. While access is largely universal in urban areas, this is not yet the case in rural areas. As with postal and telephone services, a universal service obligation should be in place to ensure every homeowner in Ireland has access to quality broadband.

Earlier this year, the Minister announced the national broadband strategy which all of us welcomed. In summary, the strategy seeks to provide 100% coverage in rural areas to enable those living in such areas to have access to broadband by the end of 2010. While the objective of the strategy is supported by all sides, certain issues arise with regard to delivering on this aspiration. The purpose of this debate is to obtain a restatement of the Government's commitment to reach the 2010 target and explore how we could extend the strategy to ensure that all homes in rural areas are served.

The national broadband scheme needs to go further than at present. Proposals such as those tabled by Irish Rural Link can help to make practical improvements for rural areas and improve rural life in several key areas, for instance, in retaining and generating rural employment, assisting with communication and combating the isolation experienced by many rural dwellers.

The need to extend rural broadband services is obvious to me from the work I have been doing in the north east. In the past six months, I have carried out a detailed survey about life for families living in rural parts of County Meath. I intend to launch the results of the survey in the next few weeks but in advance of doing so I can refer to some of the clear messages emerging from it. The research is based on responses from 700 families living in rural parts of County Meath, from rural cottages along the border with Ulster through to dormer bungalows at the edges of the greater Dublin conurbation.

Some very interesting facts have emerged about rural life in County Meath and, by extension, life for people living in other rural areas. Almost one quarter of respondents work in or from the home in non-farming jobs. The individuals in question are computer literate and would benefit greatly from faster Internet access. In addition, 8% of the rural population of County Meath comes from outside the State. While this figure is lower than the figure of 10% obtaining in urban areas, it is still a high proportion of the population. Many of these individuals consider fast Internet access essential to allow them to maintain contact with their loved ones in their home countries. This can be done through services such as MSN Messenger or Google Talk or through facilities such as Skype, which allows people to have video calls on-line with friends and family.

Communications tools such as these can be used both by new arrivals and long-term residents who want to keep in touch with family and friends who have moved overseas. This would be of major benefit to rural communities. One of the findings of my survey is that social isolation is a major issue in rural areas. More than one third of respondents — 35% — see their neigh-

bours just once per month and, in some cases, the frequency of social contact is even lower. The ability to avail of state-of-the-art communications services has the potential to help many people combat the isolation they feel in their daily lives.

I do not accept that people of a certain age or background would not use the Internet to access services. The near universal use of mobile telephones and texting shows that good technology will be adopted by one and all. This applies also to the Skype service. My father, who is aged in his 80s, uses Skype to communicate with his grandchildren and writes on the walls of his Facebook page. My point is that lack of access rather than age prevents people from using the Internet.

While the national broadband strategy goes some way towards ensuring that rural dwellers have access to broadband, it must be viewed as a first step. Ireland's rural population is dispersed, hence providing a service to it is difficult, but some issues presented by the proposed mobile wireless broadband service will be offered by the chosen service provider 3. First, there are technological limitations. For instance, the speed will probably be limited to less than 2 mbs/sec. That is hardly reassuring for someone wanting to take on a company based in Japan where speeds of up to 100 mbs/sec are now becoming standard.

According to ComReg, mobile broadband is only suitable for people who are not heavy users and do not require a high-end broadband service. In addition, mobile broadband may be unable to support some of the tasks that many people require, such as VOIP and games. Skype will be difficult to use unless people sign up for 3's service and they will have to pay an additional premium to do so.

There are also issues concerning timescales. This strategy is meant to be in place by 2010, but in order to meet these deadlines we will need to erect 390 telecommunications masts around the country. Currently, however, only 230 such masts are in place, so a further 160 will need to work their way through the planning process. As any politician knows, many people are concerned about these masts so it will be difficult to get the planning permission through in time. Does the Minister really expect the planning process for these new masts to be straightforward? I am worried that this will not be the case. We need to know if the Minister has a plan B. Is his commitment to deliver 100% access absolute or just an aspiration?

I note that up to 12,000 homes and businesses will not be served by the national broadband strategy. I welcome the announced revision and amendments to the proposed rural development programme in that it specifically states how those 12,000 businesses will be provided with broadband. These businesses fall outside the national broadband service area. In essence, the Department is going to incentivise the provision of satellite broadband services to these homes and businesses. It will probably be done by way of a grant to cover the installation costs up to a maximum figure, but can the Minister tell us what the maximum will be? The cost of installing a dish can be as high as €800 per dwelling so the cost of covering those 12,000 units would entail an investment by the Department of almost €10 million. Will that money be forthcoming?

I also query the issue of access to the satellite system. One of the suppliers, Avanti, is having trouble in providing sufficient capacity for the potential number of users. Does the Minister consider that there will be sufficient satellite capacity to deliver the broadband service likely to be requested by thousands of additional users before the end of 2010?

As regards the availability of funds, up to €250 million has been put towards this programme, both from the EU and the Government. Will additional funds be available to provide broadband to the aforementioned 12,000 homes and businesses? Will additional funds be available for alternatives if it is clear that we cannot reach 100% coverage by the chosen strategy?

Broadband access is essential for the maintenance of a proper quality of life in rural areas. It can help to combat isolation and promote communication. In addition, it can help to maintain

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and increase rural employment. The national broadband strategy goes a long way towards meeting the needs of rural Ireland, but we need a reinstatement of the Minister's personal commitment to ensure that 100% coverage will be delivered by the end of next year.

Senator Phil Prendergast: I welcome the Minister to the House. I formally second this timely motion which calls on the Government to restate its commitment to provide a comprehensive national broadband scheme to all of Ireland by 2010 and to ensure that the 12,000 rural homes and businesses not covered will have access to broadband. Severe disadvantage exists for small and medium enterprises that do not have access to broadband. Some have already gone out of business because they could not compete on the same level as businesses with a broadband connection.

All infrastructure concerning the roll-out of next-generation access to all parts of the network needs to be subject to fast-track planning rules. All schools, colleges and other educational institutions need priority in Government planning and tenders should be invited for the provision of wholesale high bandwidth access. All new housing developments, apartments and public buildings should have ducting in place to provide for ease of access to services providing broadband. That needs to form part of new building standards regulations and should also apply to new roads. Beautifully finished schemes must often be ripped up to allow for pipe laying and ducting, with a resultant disruption to businesses. We cannot afford such disruption in these times.

The variety of prices offered by providers of broadband access is mind-boggling. When we see television advertisements for what is available in the UK, it is apparent that we are suffering a severe price disadvantage.

I have met many people in rural areas who cannot get broadband. The national broadband scheme map is seriously flawed. It was set up on the basis that everyone within 5 km of an enabled exchange would be able to access broadband or avail of wireless connections, but that is not so. Issues such as the quality of copper wire and line of sight are also problematical factors for those trying to compete on a level playing field.

Ireland does not have competitors who are in a position to invest in the best systems, which places us at a severe disadvantage in these straitened times. Digital TV is widely available and there should be a means of using current technology to advance services to those who are currently denied them. The proposals by Irish Rural Link to address deficiencies in accessing broadband in rural areas should be implemented by the Minister as a matter of priority.

I would like to put on the record some facts about where we stand with broadband compared to other countries: Ireland is eighth of 18 for the average price per additional megabyte after reaching the bit/data cap; 28th of 30 for average advertised download speeds; 29th of 30 for the fastest advertised connection offered by the incumbent operator; and 28th of 30 for the fastest advertised connection available among all surveyed operators. The data are from October 2007.

The high prices charged by Eircom, which ComReg proposed, should be reduced. The European Commission's approval for "last mile" charges is welcome but it needs to go further. Funds should be directed to upgrading schools broadband with measurable criteria such as quality and consistency of service. The Department has acknowledged that while broadband in schools is vital, its impact is considerably blunted if children are unable to access broadband of comparable speed and quality at home.

Ireland is still the most expensive country in the world for telephone line rental charges. Long-term investment in Eircom's networks is required if we are to stay in the market for jobs and future investment.

Minister for Communications, Energy and Natural Resources (Deputy Eamon Ryan): I am glad to respond to this timely motion on rural broadband. I will begin by going through some of the general details but without getting bogged down in too many statistics. We could all quote figures from 2007, but they are probably out of date now because broadband numbers have doubled since October that year. We are now up to approximately 1.25 million subscribers, while the figure was less than half that two years ago. One must be careful in throwing statistics around, but roughly 1.25 million houses now have broadband access, which represents about 64% of households. Although 70% of houses have a computer, one might ask why we are not over 75%. If one does not have a computer, however, one does not have the mechanism for immediate access to broadband. Crucially, according to the latest statistics, 83% of companies, including small and medium employers, are now using broadband. There is an immediate economic benefit from that development, particularly in rural areas, since it provides business with the same connection as urban users.

Thomas Friedman's famous book on this issue, entitled *The World is Flat*, indicated that one has common access from downtown New York to Tubbercurry. The Internet is the same for all. There is a great opportunity for us to develop services in rural Ireland as an export commodity by selling them through the Internet. Services currently account for about 45% of our exports, and the estimate from the ESRI is that this could be up to 70% by 2025. Much of the growth will be in traded services, in which we have a great advantage due to location, language and our enterprising culture. In the last few years, we have developed an ability to trade internationally. We are good at it, and we should aim to do it in services, where we have a real competitive advantage.

6 o'clock

How can we provide the next generation of networks that will be vital to provide that economic development? We published a paper on next generation broadband, having gone through the consultation process a number of weeks ago. It states that a competitive market will deliver many of the networks that we need. If we look at where other countries have been successful in getting faster broadband at cheaper prices, one of the key characteristics is a competitive market between a cable operator and a fixed-line operator. They can provide much higher speeds on their fibre or cable networks, and that is where real improvement in service quality occurs. There is not just a competitive market between the fixed line and the cable company, but also between the fixed wireless companies, satellite companies, mobile companies and there has been a major new investment recently in WiMAX technology. Competing platforms in a market will give our people the best broadband service. Such a competitive market is much better to make some of the investment decisions and technological changes.

We also stated in that paper that we think a collaborative approach will help us develop our networks quicker, that the size of our country, the nature of the market and the nature of evolving technology means that we do not just follow a competitive policy, but that we can get competing companies working in collaboration on some of the investments that need to be made. The business is often not easy. The return obtained from some of the expensive fibre deployment is not a certainty. If a collaborative approach can be taken, whereby a mobile company works with a fixed-line company and can carry some of the traffic on the other company's network, then we start to get a better business model. Having a number of different wholesale operators on a network is the way in which we can get networks built quickly. That is the broad message I sent out to the markets and the investment community in that regard.

The regulator has an important role, and its policy document determines regulation and follows our own framework document on the broad policy approach. It will be important in providing a signal to the companies as to how that investment might best take place. The Government's role is not just to leave things to the market. This is an area of crucial social and economic importance for the country, and we have clearly said that where we can actually

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value and address needs that the market would not provide quickly enough or cheaply enough, then we will do so. We are engaged in several initiatives that represent a positive contribution to that competitive collaborative market. One of our biggest initiatives has been the building of fibre optic networks around most Irish towns that otherwise would not have been built. The metropolitan area networks consist of fibre cable which we install in rings, connecting to the key business centres, residential areas, retail centres and public buildings. Today we signed the second phase of our management contract for those metropolitan area networks. The company that managed the first phase has now been commissioned on a 15-year timeline to provide the management of those fibre optic networks in 60 additional towns. This is a long-term investment and some parts of it have been difficult, such as how to develop the last mile into somebody's house or business, or how to get backhaul from smaller Irish towns where the volume of traffic is low and the economic cost is reasonably high.

That medium to long-term investment in fibre networks in our towns is starting to work. The volume of traffic on them is continuing to rise inexorably. We have started to see major investment decisions by the likes of our mobile companies, such as Vodafone, which are committing to those networks as part of their long-term network development strategy. These companies see the volume of data increasing so exponentially that they need to get onto fibre networks quickly. Those metropolitan area networks were the right investment for our country and would pay off in the long term.

We have made a similar investment in fibre connectivity for the rest of the world. One of the first interventions by the State dealt with the global crossing fibre optic connection into the country, which provides massive expansion in bandwidth, ahead of market demand and ahead of the obvious commercial return. It brought massive amounts of foreign direct investment in data centre businesses here that have been very beneficial to our economy. We have just landed another cable on the northern side of the island, coming in near Derry. This will provide the fastest broadband connection across the Atlantic. It has massive capacity for us to connect with North America and to serve as a link between Europe and North America. That is a large State and EU subsidised project to provide high speed broadband connectivity across the North and down through Cavan, Monaghan, Louth and into Dublin. It represents a further part of our investment where the State is working with the private sector to develop the backhaul network.

We also stated in our policy paper that we would use other ducting owned by the State along our motorways, railway lines and waterways. These can provide ducting on an open access basis for any and all companies involved in the market. We have much fibre access ducting in State ownership, and it is right for us to use it with the clear belief that the volume of data is only going to increase. We need to provide the backhaul ducting that will facilitate such traffic.

We also upgraded our broadband for schools this month. All 4,000 Irish primary schools have broadband connectivity, as we have put a scheme in place for four or five years. We want to go further and faster. We want to provide the best cutting edge speeds that other schools are providing, such as 100 MB connectivity. Within each school, we can provide a wireless connection system so that every classroom has access to that high-speed network and the class does not need to go to a computer room. That is important because it will free up the education system to start using a range of access devices to teach people in a new and innovative way. Why not have a French class over Skype video transfer into a French classroom? Why not have that cultural exchange without having to travel? Why not go into California Tech University and draw down some of the on-line lectures from the best physics classes in the world? That is all possible when one starts to put up whiteboards or provide access to students via high-speed broadband, which allows them to get under the hood of the technology that will determine this century. We are doing it.

Last month we went out with a request for tender to put in high-speed connectivity for the first 78 secondary schools. When we put in that high-speed 100 MB connectivity to the school, it will be much easier to get connectivity to the neighbouring business park or houses in those areas. This is a crucial investment in education and in broadband.

I have been privileged to be a member of the European Council of telecoms Ministers over the last two years. The Commissioner has been very progressive on behalf of the consumer, and has brought down roaming charges across Europe by forcing the industry to do so. There has been very progressive legislation in the telecoms package. We have also been able to tap into the European recovery and stimulus plans. In my energy brief, we have been able to draw down €100 million in support funding for the east-west interconnector we are building. Senators have mentioned that we intend to revert to the EU, as suggested in the European economic recovery plan, to apply for further support for our rural broadband initiative. This is one of a range of initiatives needed to complete the picture in rural areas.

Senators mentioned the national broadband scheme, which is probably the most progressive of those initiatives. The new wireless system that is being used as part of that initiative is at the cutting edge. I am fascinated by the speeds currently being attained. It was suggested two years ago that such speeds were impossible. The speeds for which people are planning in two or four years' time are a multiple of what we can achieve today. Ireland, which has had difficulties with its fixed-line and cable networks, is starting to deploy many more mobile systems ahead of other countries. More than a third of a million people are using and accessing mobile broadband in Ireland. The mobile broadband we are providing in rural areas, which would not otherwise be covered, is the latest and most advanced technology in the world. Having been tested here, it may well offer the solution being sought by the US and UK Governments as they, like us, attempt to cover rural areas.

This broadband scheme has been rolled out in 150 electoral districts, comprising 15% of the total area we are looking to cover. According to the technological results we are getting, it is providing the sort of high-speed solution people want. Under EU state aid rules, however, we are precluded from providing the scheme in question in certain areas. I refer to areas in which those who are not served by broadband represent a small percentage of the population of the area as a whole. If 5% or less of the population of a rural electoral district does not have broadband availability, we are precluded under EU state aid rules from providing a solution for the whole electoral district as that would be seen as a distortion of a functional market. As Senators have mentioned, people in approximately 12,000 homes might not be able to get broadband services because of the state aid constraints that apply to certain electoral districts. We are saying we will look after the people in question by providing a scheme of the nature that was outlined earlier. We will make a capital grant available to assist some form of development which does not have to involve satellite broadband. A range of different technological solutions might apply. We will provide grant support to facilitate the extension of broadband services to the last few houses.

It is important as a first principle in the development of a new digital knowledge society that we will have truly universal coverage across our country. We have to submit the outline of our scheme to Brussels by 15 July next. Now that we have been involved in so many interventions and support schemes, we can be said to be quite experienced. We have pursued a range of initiatives, including the metropolitan area networks, the national broadband scheme and Project Kelvin. We are getting quicker and better at it. We will seek EU approval and funding for this scheme. We intend to introduce the new network in a way that offers universal coverage to those who wish to connect to it.

[Deputy Eamon Ryan.]

We will then have to start to increase our use of these technologies. We will try to increase the proportion of houses with computers from 70% to as close as possible to 100%. We need to recognise that mobile phone devices will increasingly serve as our computers, access systems and notepads. They will soon be able to do everything mainframe PCs did three years ago. That is where we need to be as a people. It will create employment and have social and environmental benefits.

I am happy today because further progress has been announced. Real actions are taking place as we roll out our national broadband scheme, deliver cables across the north Atlantic and provide really high-speed broadband connectivity in our schools. We are not where we want to be, which is in the top three, but we are getting there. We are pulling ourselves up. We were lagging behind but we are now in the middle of the pack. We need to be ambitious if we are to excel in this area which offers an economic opportunity to this trading island.

Senator Joe O'Reilly: I join my colleagues in welcoming the Minister, Deputy Ryan. I appreciate his interaction with this House. I congratulate my colleagues in the Labour Party on the quality and appropriateness of this motion and its exposition. I await with interest the outcome of Senator Hannigan's survey for which I applaud him. I hope we will learn lessons from it when it is published.

Over the years, the Government's engagement with broadband and new generation broadband, and its delivery of such services in rural Ireland has been marked by a certain tardiness. It took the Government a long time to become fully aware of the importance of broadband. I am not sure whether it has fully dawned on the Government to this day. Broadband and new generation broadband are significant if we are to develop small and medium-sized enterprises and encourage people to settle in rural Ireland. Many people take access to forms of modern technology, including broadband, into consideration when they are deciding where to live. Quality of life issues, such as access to distance learning, are also important in this context. Broadband access is vital if people are to be able to avail of goods and services and market their own goods and services. The Government's tardiness in developing its awareness of the importance of broadband services was matched by its tardiness in delivering them. I will discuss that further later. There has been a difficulty in this regard.

The ability to avail of and afford broadband services is a big issue in rural Ireland, as it is everywhere else. By comparison with other EU member states, Ireland's level of broadband take-up is below average. Investment is important if that pattern is to be reversed. I welcome the Minister's decision to raise this matter at EU level, to which he alluded in his contribution. However, we are often slow to take such action. There is a precedent for positive investment in broadband services in rural communities. The European Commission recently authorised state funding of £3.4 million towards the delivery of broadband services in remote areas of Scotland. There has also been significant investment in the delivery of broadband in rural parts of Brittany. Rural communities in the German federal state of Baden-Württemberg have benefitted from similarly positive investment. The Commission's study of urban-rural variations in member states found that in Denmark and Luxembourg, fixed broadband networks have 100% coverage among the population. In Germany, 88% of the rural population enjoys full broadband coverage. It is clear that the well-developed economic powerhouses of Europe, three of which I have mentioned, have high levels of broadband delivery, including in rural areas. A report published by Forfás in December 2008 stated that addressing the regional differences in respect of broadband is one of the keys to economic growth and development. It emphasised that a wider range of higher-speed broadband services is needed.

While I welcome the national broadband scheme, the Minister will accept that the proposed date by which blanket coverage of the country will be achieved keeps being pushed out. The date currently being spoken of is December 2010. That is why I have said that everything the Government does in relation to broadband is tardy, slow and reactive rather than proactive. I suggest that the final date will be significantly later than December 2010. Senator Hannigan, in his excellent proposition of this motion, mentioned Irish Rural Link's argument that 12,000 houses are not covered by the broadband network. I accept the Minister acknowledged that point and promised to act on it. I suggest that should be done urgently. The Government is playing catch-up. Broadband services are of great importance to all aspects of this country's economic development, including cottage industries, home industries and the entire regeneration of rural Ireland. This cannot be stated sufficiently. It is a critical piece of infrastructure that we needed to be working on much sooner. Better late than never, however, and I welcome some of the initiatives to be taken. It is, nonetheless, very serious that there are 12,000 houses and businesses that cannot be accessed, even under the national broadband scheme, and this needs to be addressed. It is important for job creation etc.

We in Fine Gael propose an economic recovery agency that will establish a new "Broadband 21" company to invest €2.5 billion in ducting and fibre optic cable, amalgamating and building on the diverse infrastructure that already exists under the ownership of Eircom, Bord Gáis, the National Roads Authority, the ESB and the MANs. It is envisaged that all this should be incorporated and worked on in a co-ordinated fashion.

Eircom, I believe, needs support, as is clear in retrospect. None of us is without some blame in this matter. What happened with the privatisation of Telecom was clearly wrong, although it was a Government decision at the time. In retrospect, the decision to sell it off must rate very high on the league table of chronic or bad decisions. The Minister has promised that everyone in the country would have the capacity to receive broadband, but this is delayed, and as always this is regrettable.

In the last phase of MANs €80 million was spent. While today's announcement is welcome it has been a very slow process to arrive at a management system that would make MANs operational in that there is a large number of towns in the country with MANs infrastructure that is not functioning. That will be corrected, however, as a consequence of today's announcement and I welcome that.

I congratulate my colleague, Councillor David Blake, in Kingscourt, County Cavan, who has been pioneering this whole area, speaking about it locally and raising consciousness to the effect that MANs is not operational in that area, although it is installed there. I commend Councillor Blake on that work and draw the Minister's attention to the research he has done in this regard and for Carrickmacross.

While we welcome the positive aspect of what is happening today, we regret the tardiness of developing awareness and action and hope that a programme of action will now take place. I am very happy to support the motion. We cannot talk about this often enough. Traditionally, we have been conditioned to think of economic development just in terms of physical infrastructure. All that is important in terms of roads etc., but broadband is key infrastructure for creating and keeping jobs. Why should there be an apartheid system in this country between urban and rural around the broadband issue? That is wrong and it needs to be corrected immediately.

Senator Martin Brady: I move amendment No. 1:

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

[Senator Martin Brady.]

— recognising the importance of rural Ireland to the social fabric of the nation;

— recognising the level of isolation felt by many residents in rural Ireland;

— recognising the benefits in social communication brought about by Broadband access; and

— recognising the importance of broadband availability for the setting up and running of rural based businesses,

welcomes:

(i) the major expansion in broadband penetration in recent years, especially in mobile broadband which is especially suitable for rural areas;

(ii) the various Government interventions in broadband to date which have led to improved choice, quality and price of services;

(iii) the National Broadband Scheme which will make broadband available in those parts of the country not currently served; and

(iv) the proposed use of EU funding, available under the European Economic Recovery Plan, to address any outstanding unserved rural premises.

I welcome the Minister for Communications, Energy and Natural Resources, Deputy Eamon Ryan. He is a person for whom I have great admiration because with this Minister what one sees is what one gets, and he knows his brief from A to Z. He is a genuine person.

As regards broadband, I have listened to Senator O'Reilly and although we are from the same part of the country, Breffni, we do not agree on everything. Commonsense must prevail. Broadband, as the Minister has outlined, is very important, particularly in terms of investment, as Senator Hannigan has said. The Acting Chairman, Senator Feargal Quinn, was chairman of An Post and he must be given great credit for the job he did there, because he brought it to what it is today. He brought the staff and management with him and revitalised the company, bringing it in from the dark ages to a modern era in society. I believe An Post is a success today due in large measure to Senator Quinn's input, and that must be recognised.

Telecom Éireann was the main supplier of telecommunications in Ireland. It was built up with taxpayers' money from the old Posts and Telegraphs, P & T, days. One must give credit to the former Taoiseach, Albert Reynolds. I remember working in the old P & T, when people waited two or three years in Dublin for a telephone. Down the country one could be waiting seven years. If one was lucky to be well in with a Minister, he or she could give a ministerial directive and one could get a telephone as a result. To get a telephone at that time, 1972, it cost £160 for a connection. There was high, low and all types of risks. One might have had to pay €2,000 deposit if one was in the film business, for example, or something like that which was deemed to be high risk and two years' rental had to be paid in advance. We spent most of our time there telling people the reasons we could not give them the telephones we were providing. Leaving that aside, I shall return to broadband.

Broadband is not the only issue in terms of telecommunications. It is very important, of course, not just for business. It is important for people with disabilities who do remote working and so on. As Senator O'Reilly has outlined, there are many parts of rural areas where one cannot get broadband for technical reasons. I know the Minister has said there is no difference

as regards wireless broadband, but there is. It will cost three times the amount, as I have established.

A mistake was made in previous years, by the Government of which I am a member, in privatising Telecom. The day has come when we have to take control. In all aspects of telecommunications there is a large amount of copper cable in the ground, which cost an astronomical amount of taxpayers' money to instal, but which is absolutely useless. Why was the proper infrastructure not put in place along the way? This is my overview as to why that did not happen.

When I was in Telecom, I had great admiration for Mr. David Begg, the then general secretary of the Communications Workers Union. We held marches on the streets, with banners saying, "Fat cats, hands off Telecom Éireann". I was president of a small union at the time and participated in that campaign. We resolved that no way would Telecom Éireann be taken over. Not too long ago, however, the fat cats resolved to find a way around those objections by the union activists. They decided to dangle a little carrot and give the workers something. The unions opted to go along with this, deciding it was not such a bad idea. The result was the employees share ownership plan, ESOP. The union people saw this as advantageous and decided to get on the gravy train, as did everybody. One union person ended up getting €3 million a year. He resigned recently and another person who resigned from Telecom and is now in his place is getting an enormous salary plus a pension. Everybody got on the gravy train, but the customer suffered.

The present incumbent is the fifth owner of the enterprise since privatisation. They all went in, pillaged the place, put nothing back by way of infrastructure and ran away. They knew nothing about the business except how to pay themselves. With the €3 million a year, there were bonuses for non-performance.

If one wants to get a telephone in Dublin today, it takes six months. If one wants a telephone fixed, unless one knows somebody in Eircom, God knows when it will happen. To sum up, the question is how we can take control. Eircom is the main telecommunications provider, leasing its lines to competitors, as it is obliged to do. The only way to fix Eircom is to nationalise it, as we do with the banks, take it over and control it because we will never have control the way things are going. I thank Senator Quinn for his input into An Post. I worked there and he is still remembered for the good work he did.

Senator Joe O'Toole: With the permission of the House I intend to share time with Senator Doherty.

Acting Chairman (Senator Feargal Quinn): Is that agreed? Agreed.

Senator Joe O'Toole: I welcome the Minister to the House and I do not doubt his commitment on this issue. I worry about the slowness of the roll-out of broadband and I have discussed it with him many times over the years, long before he became a Minister. To confirm Senator Brady's points, I live 17 miles from here, 2 km off the N2, but I cannot get broadband at home, except wireless. I am paying three times, it does not support Voice-over Internet Protocol and it is quite slow compared to what I should have. This is a strategic issue.

When Senator Brady and I were active in our different unions, we both opposed what was done with Eircom. My line was somewhat to different from his. I was not that concerned about the privatisation of the service but I was concerned about the privatisation of the infrastructure. I spoke in this House at the time and used the example of Belmullet. I said I could never see us bringing what was then called, in the quaint language of the day, before broadband, the

[Senator Joe O'Toole.]

"information superhighway" to Belmullet. The same is true today. I thought, and still think, we should own the infrastructure and allow people to lease it out for service.

The reason has been explained in Senator Brady's points and in the text of the motion proposed by Senator Hannigan. The minute Eircom upgrades its telephone lines, people change their service to another provider. There seems to be some imbalance there. The business plans do not seem to support the upgrading of the service and the unbundling to come in on top of that. The business plan does not work and we must examine that. We need to move matters forward very rapidly. In terms of strategy, whether the railways, airports or broadband infrastructure, there are certain infrastructural issues we cannot allow out of the hands of the State for strategic reasons, and that includes the ones we are talking about here today.

Broadband releases an intellectual talent. Along the west coast of Ireland in particular it allows people to participate in a global society. It delivers equality. While people might be tied to their homes for cosmetic reasons, it allows them to become part of the global workforce. It copperfastens the principles in favour of regionalisation. It allows regions to be as important and accessible as cities. It allows cottage and home industries. People in the west can provide a Chinese translation service and have it delivered in a different time zone first thing tomorrow morning. Research, education of students and social cohesion, through e-mail, Facebook, Twitter and whatever can be supported only by broadband.

I could go on for hours about this. I know the Minister's views. I advise him not to get entrenched in the difficulties but to kick ass and ensure this is delivered on time. I do not understand why the Minister has amended the motion. I cannot see that the amended motion differs in any way substantially from what Senator Hannigan proposed. That is another thing that bothers me about how Government works. If the Minister, Deputy Eamon Ryan, had read that before becoming Minister, he would ask why we are doing this.

Senator Pearse Doherty: Tá an cheist seo pléite go mion-mhinic againn ag an am seo gach Céadaoin óna toghadh mé go dtí an Seanad. Léiríonn sin an tábhacht na ceiste do Sheanadóirí agus do pháirtithe, go háirithe agus sinn ag caint faoi forbairt réigiúnach agus tuaithe. Tá fadhbanna ann agus, cé go n-aithním go bhfuil an tAire ag déanamh obair mhaith leis na fadhbanna sin a réiteach, ceann de na fadhbanna is mó ná nach bhfuil an réiteach sin ag tharlú luath go leor. Dúirt an tAire go bhfuil an Roinn ag foghlaim agus ag feabhsú ach do na daoine atá ina gcónaí san iarthair go háirithe, áit ina bhfuil an tseirbhís seo gan, níl an dara rogha acu ach a bheith ag fanacht go dtí go bhfoghlaimeoidh an Roinn agus go gcuirfidh sí an tseirbhís seo ar fáil faoi dheireadh.

This debate is very important and I commend the Labour Party on placing this motion before the Seanad. Since I have been elected, most of the use of Private Members' time has been to debate broadband availability in different formats, including Eircom, speed, cost and availability. Sometimes when we debate broadband we look only at availability and that is the wrong debate. While it needs to be dealt with because there is a lack of broadband in huge parts of the country, we need to deal with the other aspects. We need to deal with the costs of providing broadband and the speeds. In some people's minds once one provides broadband everything is OK, but it does not work like that. In the same way we would not drive around in cars made for the 1940s or 1930s. One needs to grow with the times and keep up with the market in the rest of the world because we are competing with other regions. Technology is changing all the time.

Since the Minister has taken office he has done a substantial amount of work to deal with this issue. He said the world is flat when it comes to technology. The Minister knows, because every report has shown it, that while the country may be flat, there is a huge wall, known as

the digital divide, between east and west. My report, Awakening the West, has sown the digital divide that exists in this country. While the moves that have been made by the national broadband scheme and other schemes, for example the 12,000 houses and businesses the Minister talks about connecting, are to be welcomed, it is far too slow. It should not take a number of years to get the ball rolling so that the 12,000 houses that have been left out of the national broadband scheme have access to it. It will probably take another two or three years to deliver broadband to those areas. These businesses, communities and households deserve the same services as other areas. It is unfortunate the Government has allowed us to be in the position we are in today.

As a colleague from the Government benches mentioned, Eircom should be nationalised. It was a crime that Eircom was sold off and that Ministers are down on bended knee begging Eircom, a private company, to enable exchanges in rural Ireland and other parts of the country. That should not have happened. I am sure the Minister's party would have opposed it at the time and we must examine this issue. I did not have the chance to examine it, but my report has identified the excessive cost customers in this country pay for the service. The limited service is not good enough. We need to look forward and not just be catching up.

Senator Dan Boyle: I am very happy to speak to the Labour Party Private Members' motion on broadband this evening. I hope it might be able to reciprocate the next time the Green Party has Private Members' time. That is a reference to last week.

Senator Dominic Hannigan: We tried last week. We had this conversation before and we can have it again if Senator Boyle wishes.

An Cathaoirleach: Senator Boyle, without interruption, please.

Senator Dan Boyle: It is important this debate is held on a regular basis. The questions raised in moving the motion and the contributions so far will help in developing our broadband infrastructure. I was struck on hearing the opening contributions that the statistics related to October 2007. While there are many issues one can accuse the Minister of, to have him solely responsible for the state of Ireland's broadband infrastructure three months into office is not the fairest of political charges.

The time between then and now has seen significant advances. We are obviously hampered by policy mistakes and lack of investment and lack of proper prioritisation in the past. I am satisfied that reprioritisation has occurred, which is an important part of the infrastructure that is being developed and will be developed. It has certainly featured largely in many of the strategy documents the Government has produced in the past six months alone, for example the smart economy document. The deployment of computer-based IT with broadband facilities in key areas such as through the schools programme is another important element that shows the issue is being taken seriously. It will continue to be a priority and will reap economic and social benefits for the country as a whole.

The framers of the motion are also correct to point out that the impact of proper broadband infrastructure in rural areas will have a special benefit. The Government is aware of that and the strategies exist to try to bring it about. Senator Doherty mentioned some of the wider arguments we need to consider regarding availability, speed of access and cost. The argument seems to be over the technological platform that is used to help us get to where we need to be. Ideally if the work had been done before now, a cable-based system done through a national telecoms provider should have us at the level of many other countries that have higher specifications and usage of broadband. However, we are not at that stage and the Minister's policy of meeting the gaps in infrastructure by using satellite technology in particular is the right way

[Senator Dan Boyle.]

to go. The way to develop that ultimately is to work towards a fully cable-based system. However, we will not get there tomorrow and we will certainly not get there in the context of the investment that is available to us to put in place such an infrastructure. The Minister is also right to use satellite technology given that technology is quickly changing. It could be that we will have greater recourse to this in the future.

Regarding delivery, it is only 30 years ago that it took two and a half years to install a telephone in this country. We are now talking about many of the systems that people and businesses need to interact in the modern world with the advancement in that technology over that 30-year period. The Minister is sufficiently minded to ensure we have this as a proper policy priority.

In order to best marry the intentions of the Government and a successful implementation of policy, we need to bring more actors into it, including the role of the individual consumer and households and the roles played by other State agencies, such as local government. Despite how Opposition Members might seek to portray it, the strategy that brings about the highest possible broadband usage and the maximum development of an infrastructure is not down to one Department or one person within that Department. It requires a level of national buy-in that, while we like to think we are more technologically advanced than others are, may not exist. I remember debates and articles in many recent election campaigns about how IT was supposed to play a particular role in whether people got elected and whether usage was being made of it. Undoubtedly, the use of IT has increased in this scenario but as a proportion of communications and contact between politicians, candidates and the voters, it is still a low percentage. There is still a journey to travel and I am confident that the right measures are being put in place.

I anticipate future such debates which should concentrate on specifics. What are the technological blockages to prevent certain geographical parts of the country getting broadband? The history of electricity in this country started in the 1920s with Ardnacrusha and the rural electrification scheme, yet it was the 1970s before the Black Valley in County Kerry received electricity. There will be that mismatch between particular geographical circumstances and the ability to deliver technology. However, I am of the belief that they can and will be overcome. The policy is going in the right direction and takes account of the technological platforms that can be mixed and matched to achieve this. The optimistic deadlines can still be met. If there is a different approach that is better, I have yet to hear it.

Senator Larry Butler: I welcome the Minister to the House and congratulate him on the way he has mastered his brief in this regard. He is certainly moving in the right direction in terms of the different types of broadband that will come on stream in coming years. That will be evident within the next five years. We will see a major increase in the speeds and the designs of the new technology to come. There has not been much thought about the smart economy document published before Christmas. At that time people considered it as a bit of a gimmick. This document will probably prove to be one of the most important documents we have seen since Seán Lemass's document. We have an opportunity to dovetail our new technology, new broadband and new systems into this scheme. New ideas are coming forward in the generation of electricity and in how we can store wind power. Necessity is the mother of invention. It is important not to move too quickly. We are moving in the right direction. There are gaps in the system, which we could and should address as quickly as we can. However, we need to concentrate on the new generation of broadband that will come along whether it be in wireless or satellite. The Minister is saying that we should not depend on one system, but should have a

number of systems to use. A number of systems will come through the new technology. We may be wise not to be too far advanced in certain parts of that technology.

In the smart economy it is important to be able to do business from any part of the island. Broadband will play a major role in ensuring we have an efficient way of doing business, whether it be in Kerry, London or New York. That is what we need to deliver for the multinationals. Inward investment will only come to the country if we have the best available technology that meets the requirements of the investing companies. I accept that cost is important. However, if two solutions are available, one costing a penny and the other costing a pound, if the technology is required it may be worth paying the pound. That is the important thing about technology.

As the Minister said, it is also important to gear up our education systems with the new technology, which will allow us to acquire a better and more efficient education system. Students will be able to benefit from this system.

The Minister mentioned the interconnector for our electricity supply system, the provision of which has been supported by the EU. We have to examine how the EU can assist us in securing the best possible broadband system. It is important that we examine the interconnector for our electricity supply with a view to designing a more efficient system.

I do not have much more to add other than to compliment the Minister and to thank the Labour Party for tabling the motion. We have had a good debate on this subject. I thank the Minister for coming to the House for this debate. He is a regular visitor to this House. It is important he keeps us up to date on this area. I want to mention the success of the installation scheme throughout the country. It is an example of another innovation in terms of how we can use our resources to the best possible advantage. Well done to the Minister in that regard.

Senator Labhrás Ó Murchú: Cuirim fáilte roimh an Aire arís. Aontaím leis go bhfuil sé tráthúil go bhfuil an rún seo os ár gcomhair. Molaim an Lucht Oibre as ucht an rún a chur ar fáil dúinn. Tugann sé seans dúinn ár dtuairimí a nochtadh. Níos tábhachtaí fós, tugann sé seans dúinn tuairimí an Aire a chloisint freisin. Níl aon amhras faoi ná go leanfar leis an díospóireacht seo go dtí go mbeidh seirbhís leathanbhanda iomlán againn, ní hamháin sna cathracha agus na bailte móra ach faoin tuath freisin. Cruthaíonn na staitisticí réasúnta a thug an Aire go bhfuil dul chun cinn á dhéanamh. Os rud é go bhfuil folúntais anseo is ansiúd, dar ndóigh, ní chóir go gcuireadh sé aon ionadh orainn go bhfuil díospóireacht leanúnach á lorg.

The Minister rightly said it is timely that we are debating this motion. I compliment the Labour Party on selecting this subject for debate this evening. It would make one mindful of the infrastructure development that has occurred throughout the country in recent years. In the past everybody was not playing on a level playing pitch when it came to business. We need only think of our road infrastructure, a subject on which we had a debate similar to this one. The same applies to rail services, including rail freight services. People in isolated or neglected areas would have been able to argue that there was a distortion in the markets in that people in one area were better off in terms of the tools of trade than people in another area.

We are now living in modern times, dealing with the advanced technology, and the same points are being put forward, and rightly so. I am convinced, almost to the point of sounding like a broken record, that were it not for the people, particularly those in rural Ireland, having continued to make the points they made, we would not have the wonderful roads and improved transport services, including rail services, that we have today. What I hope will emerge from this and future debates is that the provision of broadband services will be kept live on the Government agenda and that progress in that respect will be monitored.

[Senator Labhrás Ó Murchú.]

I accept there is a huge onus on private service providers and we should remember that there are limitations to the extent that the State can intervene. The State can intervene 100% to address the existing issues. We must depend, therefore, on investment at all times. Those who have opportunities to invest have been short-sighted in not doing so in this area. Nowadays, wherever one's computer is, to all intents and purposes, is where one's office is. If 70% of Irish homes have computers, as was the statistic given, it is an indication of the great potential that exists in this area. We have to make a special case for people in rural Ireland because, in many ways, they always experience difficulties compared to people in the more developed areas. We all know of areas in rural Ireland where, if given half a chance, such support would not only introduce a level playing field for businesses but would foster community development.

Huge development has occurred in rural Ireland. In a rural area in County Clare in a matter of ten or 12 years I have seen new houses built and a new community developed, and without any particular focus or plan services have been provided. A hairdresser, a beautician, a person who repairs televisions and a doctor have set up business in the area. Organic development has occurred there. If broadband services are not delivered to rural areas, such development will not take place.

Senator O'Toole referred to cottage industries, which are dear to my heart. Given the current economic climate, we will have to focus more on supports for cottage-type industries, small businesses such as a man making wrought iron gates and employing five or six people and a person running a small bakery from home, selling apple tarts and scones. Such businesses are being set up, even though at times European bureaucracy has prevented such enterprise by almost deifying the idea of hygienic regulations etc.

Cottage industries have the best opportunity of surviving in the current economic climate. Big industries like Dell and others have gone to the wall and have had to let 15, 18, 100 or even 2,000 staff go, people who do not have a chance of getting another job in the current economic climate. Broadband provision can help to develop small industries. We should not take for granted that markets do not exist for the goods produced by such small industries. People are selling their own produce in markets at the weekend and such markets are popular. People even pay above the normal price for such produce because it is organic. People believe they are buying wholesome food and they do not have to check the ingredients. Such enterprises are blossoming, but those engaged in them must have access to the necessary communications infrastructure.

The Minister is worthy of high praise. I am not being patronising in saying that, but on any occasion I have heard him explain what is happening in this area, he has made some credible contributions to the ongoing debate on this subject. He has shown that we have recognised where there is a vacuum or problems in this area and that we have to respond to that. There is a question of the need to reprioritise in this regard. If we did not succeed in achieving the objective under the first tranche, it is not right to allow that process to move ahead without examining the changes that have occurred, particularly the changed economic climate, and the upgrading of technology services. Reprioritisation in this respect is necessary.

The objective of the national broadband scheme is to provide a broadband service at an affordable price, particularly to people in rural Ireland where there is no broadband service. I understand that there may be certain European restrictions on the extent to which the Government can intervene. It is useful to consider all those issues in this debate. I believe we all intend to play a proactive role in this respect in the future. The worst thing that could happen is that we might become despondent and believe that we do not have people willing to invest in this area and, therefore, such provision will not be delivered. It is not like that. There is still the

possibility of private investors coming forward. We should get across to people how important it is for them to be part of this development, even in terms of getting a return on their investment. The selection of 78 schools to be part of a pilot scheme is an indication that we are getting down to basics in that regard.

My compliments to the Labour Party on putting forward this issue for debate. I hope we will have continuing debate and that we can measure the progress as we go forward because it is one of the most important issues we will debate.

Senator Fiona O'Malley: I am sure the Minister of State with responsibility for housing, Deputy Finneran, will be just as interested in what I have to say. In this energy efficiency week it is important we turn down the air conditioning in the Chamber. It is very cold in here.

I am pleased to contribute to the debate. I welcome the motion tabled by the Labour Party. I agree with Senator O'Toole who expressed surprise that the Government has tabled an amendment. I do not think that is necessary. We are all on the same side in this area. We all recognise the need to move forward. It is a great tribute to the Minister that we recognise the personal commitment he has in this area. I heard praise from all sides for that commitment, which was evident in his contribution. I regret the Government chose to table an amendment because I do not think it is necessary.

Senator Hannigan indicated that what he hoped to get was a reiteration on the part of the Government of its commitment to the strategy. He got that. If that was the purpose of the motion, the Labour Party was successful in its aim. I do not know if the Government side intends to withdraw the amendment but it is not necessary to divide the House as there is no conflict between the positions of both sides.

The ideal would be 100% broadband coverage but as the Minister pointed out, not everybody has a computer anyway. That is another issue. It is one thing to have the infrastructure but it is another thing to have the hardware to access it. That is what we would aspire to.

I listened with great interest to what the Minister said about prioritisation, especially in rural areas, to maximise the benefit to the community, in particular in schools. That is a wise investment. Not alone does it pool the limited resource that is available but it does so for the greater good of the community. Not alone is one investing in schools, which are an important part of the community but also the students. It is important for them to be at the forefront of technology. The Minister alluded to the fact that the broadband speeds currently available were unimaginable two years ago. The rate of progress is very fast.

I do not have children but one can see how quickly they pick up new technologies and learn to use highly complex technical equipment. It is vital that children, especially in rural areas, have the same exposure to advanced technology as their counterparts in urban areas and other parts of the world. Given that we must order our priorities, it is good that schools are at the top of the list as it is an investment in the next generation. I welcome the work the Minister has done in that area.

Senator Hannigan referred to the 12,000 houses that remain without broadband access and the Minister responded to that point. Senator Ó Murchú referred to the constraints imposed by the EU on state aid, yet the European Union does provide us with the opportunity to access capital grants to ensure the final 12,000 houses will be provided with broadband access, in so far as that is possible. The cost of that provision cannot be ignored. Senator Hannigan indicated that the cost would be €10 million, which is no mean sum. We all know the value of a euro more now than we did six months or a year ago. We must assess what is the best way to use the limited resources we have. The Minister was given great credit for the work he has done since he became responsible for this area.

[Senator Fiona O'Malley.]

Senator Prendergast was criticised slightly for using figures from 2007, but they were the figures available to her. As more up-to-date figures become available, we must realise that it is a good news story that we need to sell it internationally. What is the point in politicians in this country doing ourselves down? We do not want the story that is picked up internationally to be that Ireland does not have a good telecommunications infrastructure. We need to sing from the same hymn sheet and provide an accurate and up-to-date message. The Minister is keen that the advances we have made are acknowledged. I accept the Opposition's view that the improvements have not come quickly enough and that there are complications in various places. That needs to be acknowledged. It is not easy to provide a new network throughout the country. Many speakers alluded to the difficulties in previous times in getting basic telephone equipment.

7 o'clock

I was also interested in what the Minister said about the progress of the introduction of broadband infrastructure. As I understood it, we have gone from A to C, skipping the B phase and all the mistakes that could occur at that stage. For that reason we are making great progress and moving a lot more quickly in terms of getting up the scale. Senator Prendergast referred to our position internationally. However, we are making progress and, as the Minister said, we are no longer at the back of the pack; we are in the middle. I accept that the place to be is up at the front of the pack. That is something on which we are all in agreement.

In welcoming the debate I also pay tribute to the Minister for coming to the House to discuss the matter with us. It is important we keep on top of things. He would encourage further debate in six months' time. Progress is rapid in the area of new technology and it is important to keep abreast of the changes and to keep our information up to date.

I was also interested in what the Minister said about competition. It has delivered better results for us, but one cannot just leave matters to the market. We are a small, confined country and that does present its own challenges. That is especially the case in rural areas where the cost of providing broadband for that last mile of road is such a challenge. There is, and should be, a commitment on the part of Government to provide broadband access to everyone in the country. The Minister recommitted to that intention.

Senator Alex White: I have an admission to make. I am at something of a disadvantage every week at this time when Private Members' business is taken because I am a member of a committee that only seems to sit at 5 p.m. on Wednesdays. I do not wish to share the burden of my problems with colleagues but it is relevant in the sense that not once but possibly three times Senator Boyle referred to the question of our participation in an important debate sponsored by the Green Party last week. I wish to put my position on the record in the same way that Senator Boyle was so anxious to put on the record his displeasure that we were not present for last week's debate. The principal reason for my not being here last week is that I was attending a committee which, I am sure colleagues will agree, is an important one. The Ryan report was recently published in respect of which everybody had a great deal to say. I accept it is not in order to deal with this issue now and that we will have an opportunity to debate the report at a future date in this House. The Cathaoirleach need not worry I will not stray into that debate except to say that I note that the Minister for the Environment, Heritage and Local Government stated that the best legacy that could be left to the victims of child abuse would be for an amendment to be made to the Constitution to confirm the rights of children. I agree with him. Obviously, the Green Party considers that to be an extremely important objective. My response, which I want placed on the record, is that it is a pity that party did not consider it sufficiently important to at any time during the past two years send a single representative to that committee.

An Cathaoirleach: That matter is not relevant now. The Senator must speak to the motion before the House.

Senator Alex White: I wish to respond to what Senator O'Malley said in this debate. She made a useful and forthright contribution in terms of content and of the procedure of this House and the manner in which we do our business, in particular during Private Members' time.

The Labour Party motion is a motion of substance and I thank Members for their contributions in that regard. However, it is hard to understand the basis for the amendment that has been tabled, given the considerable amount of meeting of minds on this issue. I did not, for the reasons I have outlined, hear the Minister of State's contribution. However, I understand from my colleagues that he gave a good account of his stewardship of this area. We believe that not enough progress is being made and that matters should be progressing far more quickly, a point also made many times by the Irish Rural Link organisation, most recently in February of this year. However, it would be churlish of us not to recognise that some progress has been made.

It appears appropriate that we take the challenge set down by Senator O'Malley. The purpose of the Labour Party in bringing forward this motion is to obtain from the Minister of State an account of his stewardship in this area and to establish from him the progress that is being made. It is important that we record and note this debate. The Minister of State has been happy to give an account of what is happening. We may not like the fact that so much remains to be done but the Labour Party and I are happy to accept that progress has been made. I see little point, therefore, in the House dividing on this motion this evening in circumstances where, essentially, as Senator O'Malley stated, the content of the motion and the amendment are the same. The Labour Party does not intend, in terms of procedure, to divide the House on this issue.

As Senator Boyle pointed out — I do not intend to have another cut at him — there is from time to time much posturing in this House on motions and amendments. Often little is achieved from what is essentially an old fashioned approach to issues on which we should be seeking to contribute to and, while disagreeing on, make progress on, in particular in the Seanad where perhaps not so much is at stake — that is not to denigrate the Seanad — in terms of the issues before us, which are often not matters of life and death.

I suggest, in the spirit of Senator O'Malley's contribution, that the Government consider not pressing its amendment in circumstances where the Labour Party is prepared reciprocally not to press its motion.

Senator Brian Ó Domhnaill: I take this opportunity to thank the Labour Party for providing us with an opportunity to discuss the broadband issue. In my time in this House, which is more than two years, there has been numerous discussions on the provision of broadband in Ireland. Each time we have debated this matter the issue close to most of our hearts has been the roll-out of broadband to all citizens in the country, be they living in Dublin, Cork, Galway, west Mayo or west Donegal. The universal availability of broadband provides economic, educational and telecommunications benefits. Progress has been made in respect of the delivery of broadband to Ireland. For example, the group broadband scheme was rolled out by the former Department of the Marine and Natural Resources, facilitated through the regional authorities working closely with local authorities. Thereafter, the national broadband scheme was approved in December 2008, the contract for which has been awarded to Hutchinson 3, trading as 3 Mobile, with a roll-out time of 21 months. It is hoped that service will be provided to many areas of Ireland during the next couple of months.

[Senator Brian Ó Domhnaill.]

It is important that the national broadband scheme is delivered on time. I have every confidence in the Minister's ability to ensure this happens. I come from a rural constituency in Donegal South-West which I am sure is similar to other constituencies represented by Members of this House and the Minister of State. Often, these rural areas are left unserviced by broadband owing to the economic difficulties of providing the service, which approach is the one taken by the service provides, be it Eircom or others. It has always been my view that they fell short in their commitment to provide broadband to areas where it may not be economically viable to do so. They had a public service obligation to provide broadband to all homes and businesses in the country but they did not do so for economic reasons, meaning that the Government now has to intervene.

The national broadband scheme will provide broadband to many areas across the country. I was glad to hear from the Minister of State that the remaining 12,000 homes and businesses in rural parts of the country will be provided with broadband and that is has been recognised that those homes and businesses deserve broadband connectivity. The European Commission has also recognised the importance of broadband access in these areas. It has been driving this issue for a number of years and is anxious to ensure that there is equality of broadband access across the European Union. Funding in this regard has been made available through the European economic recovery plan. It is hoped that the Government, in conjunction with the European Commission, can access that funding to ensure rural homes, many of them in my constituency, receive broadband. Townlands in my constituency with no broadband access include Brinalack, Dunlewey, Meenacladdy, Glasha and Bun an Inbhir. The majority of homes in those townlands have no broadband access.

Senator Dominic Hannigan: There must be more.

An Cathaoirleach: Senator Ó Domhnaill, without interruption, please.

Senator Brian Ó Domhnaill: There are. If I had time I would have contacted all the people in those homes and told them we were thinking of them in this House this evening. Those homes and many small businesses do not have broadband access. Currently, people can study in their home for a university degree, but people living in the homes in the townlands mentioned cannot do so. They could perhaps do so but the cost would be prohibitive. Many of them are utilising what Eircom refers to as "shared lines", a service not used in many areas. I impress upon the Minister of State and the Department to take up this issue with the service providers. Shared lines should be a thing of the past. The service providers say the reason they cannot change them is economic but this must be tackled as part of the broadband debate.

The recent announcement by the Minister that there would a pilot scheme rolled out to 78 schools is welcome and I hope it will act as a catalyst for broadband roll out to all schools. That will mean that a rural school involved in the scheme will be able to communicate over broadband with a school in Russia or France and interact for language reasons or to learn about the European Union.

Broadband provides a road in the sky. It provides Ireland as a small, open economy with a way to attract foreign direct investment. That has been proven in areas where foreign companies are locating themselves. They go to areas where broadband is universally available and that is why broadband roll out in rural areas is so important. I have a vision of people in rural Ireland being able to work for multinational companies from the comfort of their own homes if broadband was available. We must all look to the new Ireland we all aspire to and by providing broadband to rural areas we will cherish all of the children equally, as in the Constitution.

I welcome the opportunity to say a few words on this important motion for the economic well being of the country, urban and rural.

Senator Jim Walsh: I welcome the Minister as we debate this issue again, which demonstrates the importance of and our interest in the topic. Within the last few weeks we had an interesting debate about the connection between ICT, green energy and the smart economy that is being rolled out by the Government to cut back on CO_2 emissions. During that debate, we heard how through the smart transport system people will be able to identify the optimum route to work that will take the shortest time. The Oireachtas joint committee met in the new Eircom headquarters, where we saw the sophisticated, up to date conferencing facility that offers tremendous benefits. We interacted with the office in Belfast, showing a way to avoid people having to travel while enjoying the benefits of a face to face meeting. I see great potential for the Houses of the Oireachtas and I welcome the fact the Houses of the Oireachtas Commission has established a teleconference centre here that I hope will be widely used by Members.

Many people are concerned about the delay with the roll out of broadband but if we look at the statistics, seven years ago there were only 4,000 broadband customers in the country with little investment in the area. Today there are more than 1.25 million broadband customers, with investment in all aspects of broadband including mobile and satellite systems. It is essential we continue to do that because the roll out to schools is very important to familiarise the younger generation with the operation of computers because many of them will end up working on computers.

It is also important that we recognise the role of the private sector in this regard because it is the driver of this sector. The market has been liberated to allow private service providers. We can reflect on the fact that it may have been better if Eircom had been privatised subsequent to the roll out of broadband rather than in advance, when we could have had influence on the roll out and investment in it. Eircom becoming an equity play in the meantime did not assist the process of investment in the area.

The Government has clearly stated that it will only intervene where there is a failure of the market to deliver. To do that, it is providing grant aid under the recently concluded group broadband scheme. It is recognised that there are still many areas where the private sector has not been able to justify the roll out of broadband and where the failure of the market to bridge that divide means it must be addressed by the national broadband scheme. Currently 12,000 homes and businesses do not have broadband and they cannot be addressed under the national broadband scheme so I welcome the Minister's commitment that in view of EU recognition of the importance of broadband access, as highlighted by the report on European economic recovery, we will be able to access funds for the area. As we debate the Lisbon treaty, this is another example of the benefits of our membership of the EU.

I welcome the national broadband scheme, the group broadband scheme and the metropolitan area networks. By concentrating on these we will achieve the outcome we all want.

Senator Ann Ormonde: I welcome this opportunity to say a few words on the revitalisation of rural communities. I am interested in this area and have spoken on it at many seminars. The factors that contributed to population decline were economic trends, changes in farming patterns and infrastructural provision. I was worried that if those trends were not reversed, we would be in serious trouble. We must look at ways to revitalise our communities.

One way forward is to have the broadband vision of the future and look at how we interact that with our local community. As well as having broadband, we must look at our planning legislation and how local government and planners deal with one off housing for those who wish to live in these areas again. If we had broadband, cottage industries could start and give

[Senator Ann Ormonde.]

opportunities for young people in schools to get involved in computer training. This is an opportunity I want to see on the agenda not just today. We should come back to this again to get an update on how we are progressing on bringing broadband to all rural areas, schools, communities, small businesses and the ordinary person who wants to connect in any way he can to the outer community. We want to decentralise ourselves, not be always talking about urbanisation, and we need rural communities to be vital.

I welcome the motion by the Labour Party to recognise the importance of rural Ireland to the social fabric of the nation and to call on the Government to give a comprehensive national broadband scheme to all rural areas. I support that. It is the way forward; there is no question about it. However, we must keep asking the Minister to update us on his progress with regard to that vision for the future.

Senator Rónán Mullen: I dtosach báire, ba bhreá liom a rá go dtréaslaím le Pairtí an Lucht Oibre as ucht an rún seo a chur faoi bhráid an tSeanaid. Tacaím go mór leis. Nuair a théann mé abhaile faoin tuath, níl mé in ann an idirlíon a fháil leis an leathanbhanda. Caithfidh mé a rá go mbíonn frustrachas in ann dom i gcónaí. Is minic go ndéantar neamhaird ar riachtanais muintir na tuaithe. Ní bhíonn an aird chéanna á thabhairt ar an cheart atá acu tairbhe a bhaint as na caighdeáin céanna maireachtála agus teicneolaíochta.

I am happy to support the Labour Party motion. It is the second time today that I find myself in public agreement with Labour Party policy. It was Éamon de Valera who once said that if he got a positive editorial in the *Irish Independent* he would have to examine his conscience. Nonetheless, I find myself in agreement with the Labour Party today on several issues and I do not think it is anything to do with feeling a little giddy coming up to the end of the political term. Similarly to the issue of child benefit, which we discussed earlier, there is an important principle at stake in the broadband debate, namely, that of universality. It is not the mark of a society which takes democratic principles seriously to ignore either the welfare of children, in terms of child benefit, for example, or the geographically and economically marginalised, in terms of the question of rural broadband services.

I wish to focus first on the economic aspect of this issue. The Communications Workers Union, CWU, recently made a submission to the Department of Communications, Energy and Natural Resources as part of its consultation process on next-generation networks, NGNs. This submission discussed the importance of bridging the digital divide and the options for delivering high quality broadband to rural Ireland, and it did so in the context of the important role to be played by NGNs in helping to secure the economic and social future of this country. NGNs are the new generation of telecommunications networks that can provide multiple services over a single infrastructure. The submission pointed out that the development of a truly national NGN will have clear implications for efficiency and job creation and hence should be treated as a strategically important development, which will act as a guarantor of the island's future success as a small open economy on the edge of Europe, an economy whose success depends on maintaining a competitive presence in a highly globalised marketplace.

The CWU has listed the key elements required in order to facilitate the growth and development of an NGN in Ireland. These include a clear strategic vision from Government and an explanation of how it will realise its vision of a truly national NGN that leaves no one behind; a realisation and acceptance by the Government that leaving the provision of NGNs solely to the private sector will not be enough to deliver on this vision, given the specific challenges of our dispersed rural population; the corresponding realisation of the need for State intervention, the nature and extent of which, when clarified, will help to provide important clarity to the marketplace and information on where investment needs to be directed; and a revised regulat-

ory approach to NGNs that recognises that this phase of the evolution of the market is based on a new business model and that the regulatory approach required must facilitate sustainable competition and investment.

The digital divide must be acknowledged to be the critical obstacle to the fair and balanced development of the economy and society in significant parts of our island. It is a serious impediment to job creation, to the development of small and medium enterprises and to the development of a balanced society in which people have equal access to services. I make this point based on studies which have found a significant correlation between a nation's broadband quality and its advancement as a knowledge economy. Any failure of Government policy to deal with the challenge of the digital divide would send a critical message to those citizens affected that they cannot participate in the knowledge economy. It would represent a betrayal of the principle that nobody should be left behind.

Unfortunately, the aspirations of the CWU are not met by the current provisions of the national broadband scheme. I commend the work of Irish Rural Link, which pointed out that up to 12,000 houses and business premises are not covered by the scheme. This figure excludes those whose only broadband options are prohibitively expensive or of poor quality. As a person from rural Ireland, I can say that the ability of such areas to contribute to the Government's smart economy vision is severely constrained by the lack of broadband, high latency and contention ratios and relatively slow speeds. The NBS will not allow rural small and medium enterprises to fully realise their potential; hence the need to see beyond the strict letter of the NBS and adhere to the spirit behind its implementation. The Labour Party motion points this out forcibly, as does the CWU's call for a national NGN.

Other countries, which are also our competitors, are investing in high speed, high quality broadband. However, despite the Government's smart economy document, which was published in December, no coherent vision for a national broadband service has been tabled.

I will touch briefly upon another oft-neglected aspect of this debate, that is, the trend in Irish culture towards increasing technocracy and utilitarianism. To politically justify something, one is expected to answer the categorical question of how much money can be made from it or how much it will cost. The value of genuine communitarianism and social solidarity is being reduced to the balance sheet, as is the categorical imperative of human dignity. This is why, like other Members, I have much to contribute to debates about issues such as embryo research and care of the elderly and the disabled.

As the wording of the Labour Party motion stresses, it is vital that we recognise the importance of rural Ireland to the social fabric of our nation and the level of isolation felt by many residents in rural Ireland, not just older people. I do not wish to give the impression that we are not in the midst of an economic crisis and that we can be as fiscally liberal as we like. Cuts must be made and spending must be reduced, but society is not at the service of the economy. It must be the other way around; the economy must be at the service of our society, and an integral part of our society is our rural population.

Is ceist luacha í a bhaineann le dínit an duine. Is cuma má tá duine faoin tuath nó duine i lár na cathrach i gceist. Is cuma má tá duine nach bhfuil ar an saol go fóill nó seanduine i gceist. Tá sé riachtanach go mbeadh sé mar aidhm againn go mbeadh an meas céanna againn ar gach saoránach sa tír seo. Ba chóir dúinn bheith chomh dáiríre faoi na seirbhísí atá ar fáil do dhaoine faoin tuath is atáimid faoi na seirbhísí atá ar fáil do dhaoine sna cathracha.

Senator Brendan Ryan: My colleagues, Senators Hannigan and Prendergast, in proposing and seconding this motion, set out the issues as we see them and as highlighted by Irish Rural Link. As Senator Hannigan pointed out and as everybody here knows, access to broadband is,

[Senator Brendan Ryan.]

unfortunately, dependent on where one lives. Access is now almost universal in urban areas but not in rural areas.

The national broadband strategy, which was announced earlier this year and is welcomed, seeks to provide 100% rural access to broadband by the end of next year. The intention of the strategy is supported by all sides of this House, as is evidenced by the contributions tonight. The purpose of the debate is to obtain a restatement of the Government's commitment to the strategy and to ask the Government to extend the strategy to cater for those homes and businesses not covered by it. The strategy is a first step towards rural access to broadband.

The rural population is dispersed, which makes service provision difficult. However, there are issues with proposed mobile wireless broadband service offered by 3, including limits on speed. It is intended that the scheme be in place by 2010, but to meet this we need 390 telecommunications masts around the country, of which only 230 are in place, so a further 160 will need to go through the planning process. These are potential roadblocks ahead of which we must be wary. Local residents are concerned about mobile phone masts and this provides challenges to the Government. Isolated houses remote from masts will have difficulties which may need to be resolved by way of satellite. It has been proposed that a business broadband voucher scheme be introduced for businesses excluded from the NBS or having higher-spec requirements, and that community initiatives be encouraged. Community groups seeking to develop eco and enterprise works in rural locations must be guaranteed high quality broadband. A portion of available funds should be directed to upgrading broadband in schools.

Broadband access is essential for rural Ireland and helps combat isolation and rural unemployment. Senator Prendergast, in seconding the motion, noted the severe disadvantage for SMEs without broadband, with some going out of business as a result. All broadband infrastructure should be subject to fast-track planning rules and it should be noted that schools and colleges need priority for high bandwidth access.

I note the Minister's statement of the Government's commitment to the strategy, but how soon will that be delivered upon? Will availability of finance be an issue? He noted that new housing and new roads will have ducting in place for ease of access to broadband provision as part of new building standards regulations. He also observed that long-term investment in Eircom's networks is required.

I thank other Senators for their contributions. Senator O'Reilly described the Government's efforts as tardy in several dimensions and compared our performance unfavourably with other regions in Europe. Senator Brady proposed the Government amendment, stating that common sense must apply and noting where we came from in the past. He also asked why the proper infrastructure was not installed by Eircom and lamented that company's performance. Senator O'Toole expressed concern about the slowness of broadband connections and referred to his inability to access broadband services even though he lives only 17 miles from Dublin. He highlighted the opportunities broadband can provide for cottage industries in the west.

Senator Doherty spoke about the digital divide that exists in Ireland. Senator Boyle also contributed. Senator Butler referred to the opportunities for a smart economy and spoke about the gaps in the system. He indicated how the European Union might assist and observed that we may be wise not to move too quickly. Senator Ó Murchú spoke about the distortion of the market, similar to a previous debate on roads. He urged that this remain a priority issue and lamented the lost opportunities for private sector investment. He also referred to the special case for rural areas.

Senator O'Malley, like Senator O'Toole, expressed surprise at the Government amendment. She referred to the gap between the ideal of 100% broadband coverage and the reality that only

70% of homes have computers. She welcomed the schools initiative and noted that broadband provision cannot simply be left to the market. That is an interesting post-Progressive Democrats Party position and I am interested to see how it develops. Senator Alex White observed that insufficient progress has been made on the provision of broadband and asked why the House should divide on this matter. There were several observations in that regard. Senator Ó Domhnaill made the case for the roll-out of the broadband strategy and noted the progress that has been made but observed that Eircom has failed to fulfil its mandate to deliver broadband to all homes. He expressed the hope that townlands in Donegal will be serviced soon.

Senator Walsh noted the importance of the issue and the potential of technology and welcomed the roll-out to schools. He also referred to the failure of the market, particularly Eircom, to deliver to certain areas. Senator Ormonde spoke about the role of telecommunications in revitalising rural communities and the need to keep the issue on the agenda. Senator Mullen supported the motion, emphasised the need for rural broadband services and spoke about the digital divide. It was interesting that he succeeded in including in his contribution a reference to embryo research.

Even in parts of my constituency, such as Skerries, and my home in Portrane, which is only 20 minutes from the city centre, residents cannot avail of Eircom's broadband service because the physical telephone lines are so poor. This is not just a problem in rural areas. The sooner Eircom is taken over by a company that understands the industry and looks on this as a long-term investment the better. There is a strong case for nationalisation but the timing may be wrong. I thank the Minister for responding to the motion. I commend the motion to the House.

An Cathaoirleach: Is the amendment to the motion being pressed?

Senator Jim Walsh: I understand there is an agreement that neither the amendment nor the motion will be pressed.

An Cathaoirleach: The amendment to the motion is withdrawn.

Senator Jim Walsh: No, it is not being pressed.

An Cathaoirleach: If the amendment is not withdrawn, it must be put to the House.

Senator Alex White: On a point of order, colleagues on the other side of the House can be certain that if the amendment is withdrawn, the motion will thereafter be withdrawn.

Senator Jim Walsh: That is fine.

Amendment, by leave, withdrawn.

An Cathaoirleach: Is the motion agreed?

Senator Alex White: The motion is withdrawn.

An Cathaoirleach: The amendment and the motion are withdrawn.

Motion, by leave, withdrawn.

Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Bill 2009: Committee and Remaining Stages.

Sections 1 to 6, inclusive, agreed to.

Title agreed to.

Bill reported without amendments.

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

Senator Diarmuid Wilson: Now.

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

Senator Liam Twomey: Are any amendments due to be tabled in the Dáil?

Minister of State at the Department of Finance (Deputy Martin Mansergh): I wish to clarify a point I made in the course of my Second Stage speech. I understand it may be the intention of the Minister when the Bill goes to the Dáil to bring in an amendment of an enabling character to deal with the issue of parliamentary allowances where agreement would be reached between the Minister and the Houses of the Oireachtas Commission. Should that be the case, the Bill will have to come back to this House next week. I am clarifying this point for the sake of completeness and transparency. I take this opportunity to thank Members for their assistance in carrying the Bill thus far. As I said, it may come back to them next week.

Senator Liam Twomey: I thank the Minister of State for that clarification.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Diarmuid Wilson: Tomorrow at 10.30 a.m.

Adjournment Matters.

Special Educational Needs.

Senator Joe O'Reilly: Ba mhaith liom fáilte a chur roimh an Aire Stáit go dtí an Teach. The matter I raise is home-based July tuition for a special category of children. Children who qualify for this tuition receive one-to-one time with a qualified teacher for ten hours per week in the child's home, the teacher's home, a room in a local community centre or another appropriate location. This tuition provides the child with a routine and has the benefit of ensuring he or she does not become bored during the summer.

Owing to the special needs of the children in question, participation in summer schools and camps is not appropriate. They may, for example, have difficulty with toilet training, social interaction and normal socialisation. Providing special tuition in July gives parents important respite, makes an important contribution to the ongoing development of the children and helps prevent a year's good work in school being reversed.

Children who are deemed to be on the autism spectrum or to have severe to profound learning difficulties receive home-based tuition in July. The designation of children in specific categories is done by the National Council for Special Education. The system does not accommodate children who are deemed to have moderate to severe learning difficulties. While all the children at issue have some level of disability and feature on the continuum of special needs, the Department does not grant July tuition to those who are deemed to be in the moderate to severe category.

I have recently met a number of parents affected by this issue, including in one case a parent whose child was accepted on the scheme last year but not this year. In another case, the child

was not accepted on the scheme either last year or this year despite having much greater needs than some of the children who were accepted on the scheme. Given that the needs of the children in question form part of a continuum, it is difficult to delineate between their needs.

In my locality, the Holy Family school in Cootehill caters for children in the three categories to which I refer. July tuition hours should be provided to children with moderate to severe special needs because they need the tuition as much as other children. The parents need respite while their children who have difficulty accessing conventional activities for children need to be occupied. Such children have the same rights and needs as other children. They can benefit significantly from extra tuition, without which progress made during the school year could be reversed.

In addition to the reasons I have set out, the children in question should be provided with summer tuition on the basis of the principle of natural justice and our commitment to cherish all the children of the nation equally. While some may contend that one must be more circumspect and less lavish in times of scant resources, I contend that irrespective of how grave are our needs, no financial retrenchment or austerity measures should impact on an area such as special needs education. If one was doing a household budget involving retrenchment, as many of us have done or will have to do, one would not decide to reduce expenditure on food or education for one's children. This applies also in the case of special educational needs.

I ask the Minister of State to ensure a direction is issued requiring children with moderate to severe learning difficulties to have access to July tuition. This is especially important given that distinctions between the various categories on the spectrum are blurred. Such a direction would not involve much additional expenditure and would affect only a small number of children but would have important benefits.

Minister of State at the Department of Finance (Deputy Martin Mansergh): I am taking this Adjournment debate on behalf of my colleague, the Minister for Education and Science, Deputy Batt O'Keeffe. I thank the Senator for raising this matter as it provides me with the opportunity to clarify the current position with regard to the July provision scheme. The scheme is available to all special schools and mainstream primary schools with special classes catering for children with autism who choose to extend their education services through the month of July. It is also funded in respect of pupils with a severe or profound general learning disability.

The July provision scheme includes special nationally agreed rates of remuneration for teachers and special needs assistants involved in the programme. Participating schools also receive a special rate of capitation funding in respect of participating pupils. Funding is also available to facilitate the provision of school transport and escort services for the children. The Department writes to all relevant schools advising them of details of the scheme each year. All relevant schools are encouraged to participate in this initiative in the interest of the pupils in question.

The July provision scheme was first introduced in 1997 for pupils with a severe or profound general learning disability and has evolved and expanded over the past 12 years. In 2001, it was decided to include classes for children with autism in the scheme and a further expansion of the scheme in 2004 meant that all children with autism in receipt of resource support would be eligible for home-based July provision.

The scheme has now been in operation for 12 years and the Department considers it is timely for a review. A working group has been established to examine the scheme and it is expected that the review will be completed during the course of the next school year. On completion, the Department will then be in a position to consider any issues raised during the review. There are no plans to expand the scheme until this review has been completed.

[Deputy Martin Mansergh.]

I hope this clarifies the position for the Senator and I thank him once again for raising the matter. His timing is good as his views can be taken into account in the course of the review, which is in progress.

Senator Joe O'Reilly: I thank the Minister of State for his reply. While I am pleased the review is taking place, tragically it will not affect children in a couple of cases of which I am aware because they will be affected this month. I hope the issue will have been addressed by next year. As it would not be appropriate to give details of specific cases in the House, I will submit to the Minister of State details of a number of cases, including reports from psychologists showing that the children in question have similar or greater needs than other children availing of the scheme. The details could also be used as part of the review or in an examination of the cases in question.

Micro-Credit Banks.

Senator Nicky McFadden: I welcome the Minister of State and I appreciate that he is taking this matter. This issue is important from the point of view of the current economic climate. The concept of microcredit and micro-finance may not be too familiar to people in this country, but it was widely used during the 19th century in pre-Famine Ireland. In the extraordinary economic times we now face, we must open our current economic model to scrutiny. We must also suggest innovative ways of helping impoverished people to make a sustainable living.

The idea of micro-credit took hold in 1976, when Muhammad Yunus loaned $27 of his own money to a group of poor craftspeople in Bangladesh — mostly women who were trying to make bamboo furniture. They organised their own business and some 97% of the loans were provided to those women. All the loans were paid back. The idea is that small loans are given to poor people who would not usually be considered for this or any type of loan. The money is used to set up businesses and provide capital. Although no collateral is provided for these loans, the potential borrowers group together and become co-guarantors for each other. Effectively, they rely on each other to pay back the loan. It has been proven that these people are extremely trustworthy and do repay the loans in Bangladesh. The loan is paid back and banks make a small profit on the interest. This is how craftspeople in Bangladesh have proven that this is a successful way of sustaining a small business. The underlying philosophy is that these loans allow people to depend on themselves and their families, rather than on the state and international investment.

8 o'clock

For far too long we have depended on foreign direct investment, but we now need to start depending on ourselves as we are a resourceful people. The relevant labour market is made up mostly of self-employed and poor people in the developing world. If it has worked in Bangladesh, surely it can work for small businesses and poor people here. It is a business model that gained international recognition when the founder of the Grameen Microbank, Muhammad Yunus, won the Nobel Peace Prize in 2006. While the Yunus model has been most successful in the developing world, there is no reason why we cannot attempt to provide such a facility here. This economic model is worthy of our attention. The Minister of State has introduced innovative ideas and is one of the most resourceful Ministers we have, so I believe he would give this idea impetus if he were to back it.

There are many families on the breadline because their businesses have had to close for the want of a small amount of money. We are bailing out banks by investing huge amounts of money in them, yet they are refusing to give credit to small businesses. This is a problem in every town and village, and unless we find a credit solution to help small and medium enterprises, they will become unsustainable and unemployment will increase further.

The Yunus microcredit loans started as a small idea which has now harnessed widespread appeal. The closest we have in this country is the credit union movement. While credit unions are wonderful, they do not provide interest free loans. We could introduce the Yunus model in conjunction with the Society of St. Vincent de Paul which is willing to endorse the idea. The Yunus model has proven its worth in the developing world. Commercial banks have not engaged in this sort of business, as they only provide loans over €25,000 for small and medium enterprises. It seems that such banks do not consider small loans worthwhile.

Over the years, hundreds of thousands of people used the old loan funds system, which was lending to as many as 20% of Irish households. These were monitored by a central regulatory authority. Funds in the system were successful in mitigating informational, moral hazard and enforcement problems. The funds thus operated at a surplus in a market where intermediation by the banks seems not to have been possible. Special legislation provided that their goal was to relieve poverty by providing credit to the industrious poor on a large scale and at competitive interest rates without public funding.

Evidence from the loan funds offers new insights into capital formation in the Irish economy of the 19th century. It suggests that traditional notions regarding the economic activities of the Irish poor may need to be rethought. I urge the Minister of State to examine the microcredit model. While I had read about this idea before, it was brought to my attention again by a Franciscan priest from my home area of Athlone. He compared it to St. Francis in that it aims to help the poor to help themselves. It is a good idea which concerns decent values, getting back in touch with our culture, and relying on one another. I ask the Minister of State to consider it.

Deputy Martin Mansergh: I must apologise for a glitch in the system which means that copies of my reply are not available. However, I will furnish my copy to Senator McFadden when I have finished speaking.

Senator Nicky McFadden: I thank the Minister of State for the courtesy of his reply.

Deputy Martin Mansergh: I thank Senator McFadden for raising this subject, which I must admit I was not familiar with up to now. One always lives and learns, especially in the Seanad.

Credit has been likened to the life-blood of the economy. Since the severe deterioration in financial markets last September, all the Government's actions have been aimed at returning the flow of credit to the economy to ensure the financial needs of all in our society are being met.

The background to micro-credit banks has been well explained by the Senator. They have proved successful in other jurisdictions, providing start-up capital for small business to those who would not be able to access such capital from mainstream banks. The Government's social finance initiative plays a similar role in Ireland. At the heart of social finance is the concept of repayable loan financing provided at affordable terms for community-based projects and enterprises, and local development initiatives. The objective is to provide access to credit for projects that would not be able to access loan finance from the mainstream financial system. Social finance encompasses the provision of micro-credit, particularly for small enterprises.

The Social Finance Foundation was established in 2007 on a not-for-profit basis with €25 million of seed capital provided by the banking sector. It acts as a wholesale supplier of social finance for on-lending by specialist social lending organisations to support social and developmental projects and social enterprise in local communities. The primary objective of the foundation is to use social finance to support social and developmental projects in communities and social enterprises. A number of voluntary organisations have been active for some years in the area of social and micro finance. For example, Crann Credo and First Step have supported a

[Deputy Martin Mansergh.]

wide range of projects with social finance. First Step has specialised in providing micro finance for projects that cannot access funding from other sources.

The credit union movement is integral to the provision of credit to all in the economy. There are about 418 credit unions in the Republic of Ireland with approximately 2.9 million members and assets of about €14.2 billion. The assets are almost equally split between loans and investments. The unique model and diversity that credit unions bring to financial service provision in Ireland is critical to ensuring that the financial needs of all in our community are met. Community based financial services provided through credit unions are integral to meeting the credit needs of society. While the movement could not be expected to remain immune to the market difficulties, it has proved quite resilient to the forces that have caused such substantial disruption to the financial sector.

In the context of the bank guarantee scheme and recapitalisation, the mainstream banks have made important commitments to support business lending. An independent review of credit availability to ascertain the position on credit availability to SMEs in Ireland formed part of the recapitalisation programme. The final report of the review of lending to SMEs has just been received and once the Government has had an opportunity to review the report, it is committed to taking the appropriate actions based on its findings.

The Tánaiste and Minister for Enterprise, Trade and Employment has set up a clearing group to identify specific patterns of events or cases where the flow of credit to viable businesses appears to be blocked and to seek to identify credit supply solutions. The Minister of State with responsibility for trade and commerce has begun a series of regional meetings to discuss access to bank credit with key local stakeholders. A further measure of the recapitalisation programme was the reconfirmation by Allied Irish Bank and Bank of Ireland of their December commitment to increase lending capacity to small and medium enterprises by 10% and to provide an additional 30% capacity for lending to first-time buyers in 2009. Compliance with this commitment is being monitored by the Financial Regulator.

The Financial Regulator has introduced a new code of conduct for business lending to small and medium enterprise. The code took effect on 13 March 2009. This code applies to all banks and building societies regulated by the Financial Regulator. One of the three objectives of this SME code is to facilitate access to credit for sustainable and productive business propositions. The business lending code includes a requirement for banks to offer their business customers annual review meetings and to inform customers of the basis for decisions made. Where a customer gets into difficulty, the banks will give the customer reasonable time and seek to agree an approach to resolve problems.

The Financial Regulator has also introduced a consumer protection code for licensed moneylenders. Its general principles came into effect on 1 January 2009 and the remaining provisions come into effect from 30 September 2009. It applies to moneylenders licensed under the Consumer Credit Act 1995 and should result in greater consumer protection for customers, as moneylenders will be subject to many of the same provisions that pertain to other credit providers under the Financial Regulator's August 2006 consumer protection code. These include requirements for the entity to know important financial details regarding the consumer and to offer a product suitable to that consumer.

There are a number of initiatives in Ireland to meet all members of society's financial needs. We can certainly take inspiration from the micro-credit bank experience elsewhere and from earlier times in Ireland, as outlined by the Senator.

The Seanad adjourned at 8.15 p.m. until 10.30 a.m. on Thursday, 9 July 2009.