

SEANAD ÉIREANN

Déardaoin, 12 Samhain 2009.
Thursday, 12 November 2009.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Business of Seanad.

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

The need for the Minister for Justice, Equality and Law Reform to confirm whether a convention is needed for youths or the efforts being made to define the age at which a child is a child and an adult is an adult, given the lack of a single legal definition.

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

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion re vacancy on the Seanad Agricultural Panel, to be taken without debate at the conclusion of the Order of Business, and No. 2, Courts and Court Officers Bill 2009 — Committee and Remaining Stages, to be taken at the conclusion of No. 1.

Senator Frances Fitzgerald: The House passed the NAMA Bill yesterday with the support of some Independent Members. My party remains deeply concerned about the implications of the legislation for every man, woman and child in the country because of the major impact the potential debt arising from it could have on people's experiences and the risk to the taxpayer. Therefore, we remain deeply concerned about aspects of the NAMA legislation.

I join everyone else in expressing delight at the release of Fr. Michael Sinnott who was held in captivity in the Philippines since 11 October. It was joyous to listen to his strong interview this morning on "Morning Ireland". It showed great strength and his willingness to continue the work he has been doing for many years. I hope his health holds up and that his tough ordeal will not prove too demanding on him.

We need further debates on some of aspects of the NAMA legislation on which we touched yesterday such as whether the NAMA model contains a social dividend, negative equity, the pressures on some families with mortgage arrears and the need for strong and tough Government action with lenders. An interesting discussion about social democracy and christian democracy also took place. The point is, however, that it is not about any theory of democracy but what practical action can be taken by the Government to help the 420,000 unemployed. In that regard, the Tánaiste and Minister for Enterprise, Trade and Employment must attend the

[Senator Frances Fitzgerald.]

House for a useful debate on competitiveness and its attendant issues. The debate must include the move from welfare to work. The welfare system needs to be examined critically at this point because we cannot just leave people in the dole queues. We must discuss creative ways of moving from welfare to training and employment. It has gone beyond the time for such a debate. So much time was given to the NAMA legislation which was and will continue to be needed, but there must be a debate soon about tackling unemployment and restoring competitiveness to the economy. We must examine the detailed steps we need to take to make a difference to the lives of the 420,000 people in the dole queues.

Senator Joe O'Toole: There seems to be some confusion about access to live Seanad debates. On the Order of Business yesterday Senator Hanafin raised the importance of live-streaming. Perhaps he used the word incorrectly, but the Seanad is constantly available on live-stream at www.oireachtas.ie. He may have been referring to broadcasting, which is another matter. The debates are also available for listening at all times on the telephone number 01-6184001. Many Members are not aware of these facilities which were established by the Joint Administration Committee. It is important for those interested in an issue that they can listen to a debate on it without being here. Senator Hanafin's point, however, about broadcasting is crucial. Last Saturday the BBC announced it would make available coverage of all the United Kingdom assemblies and parliaments — the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly, the House of Commons and the Lords -on separate channels on its website channels and some digital satellite facilities. The Joint Administration Committee, of which the Leader and I are members, have been exploring this issue for some time.

I agree with Senator Fitzgerald's points on NAMA. I supported the legislation in every division in the past three days as a vote of confidence and leap of faith. I hope it works; otherwise we will be in deep trouble. We must remember the model might not work. We must keep an eye on this.

During the course of the debate yesterday the issue of whether Oireachtas Members should be able to lobby NAMA when it was tendering, buying property, initiating court actions and other matters was raised. Few things keep me awake at night but this bothered me. I am not getting at an individual Member or trying to open up the debate again. In that regard, I assure Senator Leyden that I am not saying this in a personalised way. However, I would like a debate, with the Cathaoirleach's support, in the House on how lobbying should happen. Members have their genuinely held views. However, we need to know when lobbying undermines fair process and becomes a perversion of justice. My concern is that the world has moved on. What was acceptable ten years ago or last year is no longer so. We have learned this to our cost in many ways and changes must be made. What I learned from yesterday's debate was that we all needed to make that change. I do not want to hear the word "righteous" thrown back at me. It is not about that but fairness. It is about ensuring one person does not gain an advantage over someone else because he or she knows a Deputy, Senator or county councillor. At the same time, it must be recognised that Deputies, Senators and councillors are required to and should make representations on behalf of the areas and people they represent. It is about finding that balance in a fair, honest and open way. I call for a debate on the matter.

Senator Terry Leyden: I would welcome such a debate.

An Cathaoirleach: There should be no interruptions.

Senator Ivana Bacik: I also welcome the release of Fr. Michael Sinnott. It is nice to have good news coming so soon after the release of Sharon Commins.

Like Senator Fitzgerald, I express the concern on the Labour Party Bench about the enormous risk that NAMA poses. We had fundamental disagreements with the NAMA legislation, which is why we voted against it. At the same time, as Senator O'Toole said, we all hope for everyone's sake that it will work. In that context, I am glad the Minister for Finance expressed support for the Labour Party's proposal of a credit mediator, an independent ombudsman, to intervene in cases where viable businesses are refused credit by the banks.

Now that the challenge of the NAMA legislation is out of the way, will the Leader have a debate on the greatest challenge facing us all — that of climate change? It is vital that the Seanad debate this topic before the December summit in Copenhagen that will be so critical for the planet's future. The Government promised a Bill on climate change — I note the Deputy Leader is nodding — and I have also introduced a similar Bill to the House. Will we have a debate on my Bill or the Government's in advance of the Copenhagen talks?

I also call for a debate on mental health. Yesterday we had an excellent seminar in the AV room with Shine and BodyWhys. I will be hosting a seminar next Wednesday at the same venue with a talk by Professor Harry Kennedy, Central Mental Hospital, on mental health in prisons. I ask all colleagues to attend.

Will the Leader have a debate on the conduct of debates in the House? Since I was elected two years ago, I have been impressed by the civility of the debating style across the Chamber, the fact that we do all have strong disagreements with each other but that we express our views with respect for others. I hope I have always been respectful in my debates. Unfortunately, yesterday, however, I think there was a lowering of standards in the House with a very personalised attack on me by a Member on the opposite side.

An Cathaoirleach: We cannot get involved in what happened yesterday.

Senator Ivana Bacik: The Member in question represented certain views of mine and expressed doubt about my opposition to the death penalty. I have a long track record both as a criminal justice and human rights lawyer. I will not take abuse nor accept misrepresentation of my views from the other side of the House, particularly not from fundamentalists and bigots with brass necks. I will be taking up the matter with the Committee on Procedure and Privileges.

An Cathaoirleach: The Senator's time is up.

Senator Ivana Bacik: I ask the Leader for a debate on how we conduct ourselves in the House. I hope we will see debates conducted with respect at all times.

Senator Dan Boyle: I support the call for a debate on climate change in advance of the Copenhagen summit. The recent report of the Joint Committee on Climate Change and Energy Security would be a good basis for such a debate and help to inform the Government when drafting the legislation.

I also support Senator O'Toole's call for a debate on the nature of lobbying. The review of the programme for Government promises to introduce legislation to register lobbyists. As we are entering into what we hope will be a new era, who knows who and its effects should be put aside in public life. While we are changing the nature of political life, there is a concern that in less open and accountable situations there are people bending ears and tapping shoulders for personal advantage and for those for whom they work. We must rid that culture from our society because we suffered from it politically and socially in the past. I would welcome such a debate.

[Senator Dan Boyle.]

As the death notices on our debate on NAMA are finally posted I agree with other Senators that there is an air of uncertainty about the legislation passed yesterday but there is greater certainty about it in the way it has been improved by the debate in this House than any of the alternatives which I believe would have invoked a greater cost and carried a heavier risk for the Irish people. We can all work together to make sure the Bill passed by this House will be the best legislation possible.

Senator Jerry Buttimer: I join with Senator O'Toole and Senator Boyle in asking the Leader for a debate on lobbying. If we have learned anything it is that the golden circle that pertained in Irish society can no longer rule and can no longer have access to power. The lobbying that went on in the Galway tent must be a practice from a bygone era that can never be allowed to happen here again. I call on the Leader, and on Senator Boyle, to come into this House before Christmas to put the commitment in the programme for Government into action. Let us have a register of lobbyists. Let us make politics and the way we do business open and transparent where people can have confidence, with access to power not based upon who one is but what is best for the country and the communities we serve.

Senator Frances Fitzgerald: Hear, hear.

Senator Jerry Buttimer: In the interests of the body politic I ask the Leader to revisit the question of the Seanad by-elections. I ask him, in an ecumenical gesture, to offer one of the places to a non-party candidate or to a member from the North and let this House be what it is, namely, a House representative of a wider section of Irish society.

Senator Mary M. White: For God's sake will you cop on?

Senator Cecilia Keaveney: Is that to do with ecumenics?

Senator Dan Boyle: The Senator's leader wants to get rid of it.

Senator Cecilia Keaveney: An abuse of the English language.

Senator Dan Boyle: Is Fine Gael not putting forward a candidate?

An Cathaoirleach: Questions to the Leader.

Senator Jerry Buttimer: I am asking the Leader, who professes to have the ear of the Taoiseach, to go to the Taoiseach and the Minister for the Environment, Heritage and Local Government, who proposes to be in favour of Seanad reform and have a different style of politics——

Senator Dan Boyle: It is a by-election. We have to have a by-election.

Senator Jerry Buttimer: ——and ask them to hold the three by-elections on the one day and to put forward a non-party candidate who will have a non-Government vote in this House.

Senator Labhrás Ó Murchú: I welcome the release of Fr. Michael Sinnott. It is a cause of great rejoicing for his family, the entire country and all people who are committed to helping those who are less fortunate than ourselves.

Listening to the radio interview this morning one could not but be struck by the sheer generosity of spirit Fr. Michael Sinnott displayed. He is an example to us all, even in our current difficulties, because it is evident now what one person can do by being selfless and at

the same time lift the spirits of other people. In many ways Fr. Michael epitomises all that is best in the church. When we think of the work the Church did, not just in Ireland but throughout the world, in helping the oppressed people, many of the priests, nuns and brothers did so at the risk of great danger to themselves. In many ways the kidnapping of Fr. Michael Sinnott underlines the danger to which they have exposed themselves. If those people were not available to do that work, a situation might arise where dictators could ride roughshod over the rights of people yet he stood up many times against the military and was prepared to state what he felt was right, both on humanity terms but also from a Christian point of view.

It should be stated that kidnapping someone to advance any cause must be one of the most heinous crimes, yet Fr. Michael Sinnott made no reference whatever to that this morning. He did not exaggerate in any way the terrible deprivation he suffered for those weeks. All he stated, and we could all take hope from this, is that he wanted to go back and continue the work he was doing. That is from a man who is 79 years of age in ill-health who has gone through this kidnapping ordeal. What problems have we in this country compared to that? There is a message for us all in that regard, namely, to be a little more selfless in dealing with people and to have more tenacity in helping those who are less well off than ourselves while endeavouring to bring some kind of united approach to ensure vulnerable people will not suffer more than they have suffered already.

Senator Rónán Mullen: I echo the remarks of Senator Lábhrás Ó Murchú. It is fantastic news that Fr. Sinnott has been released. As Senator Ó Murchú said, the heroic example shown by people like that should never be forgotten in this country. He is operating in a part of the world where people continue to suffer for their faith, and the conscientious expression of their faith. That is a daily reality for people in several parts of Asia. It is something that may be of more historical interest in Ireland but in the coming weeks we will be discussing freedom of conscience for people with particular religious and ethical views and I hope we will remember the importance of recognising people's freedom of conscience and their right to their deepest held convictions. It is precisely because of his deeply held convictions that a man like Michael Sinnott has given up his life to do the work he is doing for the betterment of humanity.

I would like a discussion to take place on courtesy in the House. Senator Bacik did Senator Walsh a disservice in suggesting that he was calling her credentials on capital punishment——

Senator Mary M. White: I want to say something about that.

An Cathaoirleach: I do not want to get involved in that now. I will not let that develop. I hope to try to control the House as best I can and I will not let people get involved in that across the floor. If that develops here, regardless of who starts, I will ask them to leave this House very quickly.

Senator Jim Walsh: On a point of order, a Chathaoirligh, you allowed Senator Bacik make the point this morning without direction.

Senator Dominic Hannigan: A Chathaoirligh, Senator Bacik is not here to defend herself.

An Cathaoirleach: I am not allowing anyone——

Senator Dominic Hannigan: If we are talking about courtesy we should wait until Senator Bacik is in the House and if she chooses to answer then she can do so.

An Cathaoirleach: She spoke earlier and I felt she spoke okay.

Senator Rónán Mullen: I was not about to criticise Senator Bacik or anybody. I merely intended to say that a certain leeway must be given to people in the House. To even imply that somebody might have a brass neck is not much of an insult. Some people in politics might even take it as a compliment.

There was much discussion yesterday about solidarity and Ireland's need to give witness. That was in the context of criticising other regimes about capital punishment, abortion and so on. A report about asylum seekers was published yesterday in *The Irish Times* which mentioned dozens of asylum seekers having difficulties with conditions in an accommodation centre in Sligo, with a child regularly getting a urinary tract infection and so on.

11 o'clock There is a challenge in the way we deal with immigration but we must never lose sight of a fundamental principle that everybody in this country is entitled to respect for their human dignity and whatever systems we have in place to deal with people who are applying for asylum, we must always treat them with the dignity worthy of human beings. We must not lose sight of that, and it is an issue on which we should have a debate.

An Cathaoirleach: It is my hope to protect the rights of all Members in this House in terms of anyone making remarks to them across the floor or through me. Members should realise that and not go down that road. That will do nothing for this House. I want that practice to stop immediately.

Senator Terry Leyden: I welcome the release of Fr. Michael Sinnott. He is a national hero and I hope he will be recognised as such when he returns home to Ireland in due course. I compliment the Minister, Deputy Micheál Martin, the staff in the Department of Foreign Affairs and all those associated with his release. The work that is done to address these issues, which is done silently and with great dignity, is a wonderful tribute to our services abroad.

I am sorry I kept Senator Joe O'Toole awake all night last night.

An Cathaoirleach: That has nothing to do with the Order of Business.

Senator Terry Leyden: It has actually——

An Cathaoirleach: It has nothing to do with it. We are dealing with questions to the Leader.

Senator Terry Leyden: The question to the Leader is about my concern for Senator O'Toole.

Senator Jerry Buttimer: Is it to prescribe medication for him?

An Cathaoirleach: The time Senator Joe O'Toole went to bed has nothing to do with the Order of Business.

Senator Terry Leyden: If the Cathaoirleach will let me proceed——

An Cathaoirleach: Yes.

Senator Terry Leyden: I ask the Leader——

Senator Jerry Buttimer: Will the Senator tuck him in tomorrow morning?

Senator Terry Leyden: In light of the point made by Senator O'Toole and what I stated here yesterday, over which I stand, on the right of public representatives to make contact with organisations, I request the Leader in due course when NAMA is fully established to seek to have regular debates in the House on the workings of NAMA to enable us to make our case to it through the Minister.

Senator Joe O'Toole: That is not the issue.

Senator Terry Leyden: That is an approach I would adopt. One can check my record. By the way, I have never in my life been brought before any tribunal on any activities. Neither has Senator O'Toole.

An Cathaoirleach: Questions to the Leader, please.

Senator Terry Leyden: That is the point I am making. It is a good one. Furthermore——

An Cathaoirleach: Senator Leyden can make those points without mentioning what time anyone went to bed or was kept up to.

Senator Terry Leyden: I have no idea what time Senator O'Toole mentioned.

An Cathaoirleach: Senator Leyden referred to keeping the man up. We are putting questions to the Leader. Come on, be serious about them.

Senator Terry Leyden: I am sorry.

Senator Joe O'Toole: I thank the Cathaoirleach for his support. I was shivering over here.

Senator Terry Leyden: This morning I woke up to hear that on "Morning Ireland"——

Senator Fidelma Healy Eames: At what time?

Senator Terry Leyden: ——I had been misquoted.

A Senator: Was the Senator with Miriam Lord?

An Cathaoirleach: Quiet, please.

Senator Terry Leyden: I had been misquoted on "It says in the papers". I should clarify the matter because——

An Cathaoirleach: The Senator will have another opportunity to do so.

Senator Terry Leyden: In fairness, Miriam Lord was clear in her article and has sent a clarification to RTE. I did not predict civil unrest. I ask RTE to provide for clarification as quickly as possible. I do not mind what I say being attributed to me but I do not like having something attributed to me when I did not say it.

An Cathaoirleach: The Senator's time is up.

Senator Terry Leyden: I am very sorry. There is just one more point I want to make.

An Cathaoirleach: No.

Senator Terry Leyden: It is an important point.

An Cathaoirleach: Please, Senator.

Senator Terry Leyden: I ask the Leader to inquire about the preparations being made to commemorate the 100th anniversary of the 1916 Rising. It is an important issue.

Senator David Norris: They are going to relocate the Abbey Theatre to the GPO.

Senator Terry Leyden: In 2011——

An Cathaoirleach: The Senator's time is up.

Senator Terry Leyden: ——it will be the 95th anniversary.

An Cathaoirleach: I ask the Senator to resume his seat.

Senator Terry Leyden: I ask the Leader to see exactly how we can recognise the event.

An Cathaoirleach: I call Senator Healy Eames.

Senator Terry Leyden: It could be a time for a resurrection of the people.

An Cathaoirleach: Will the Senator, please, resume his seat?

Senator Fidelma Healy Eames: I thank the Cathaoirleach and Senator Leyden for allowing me to speak. I am predicting that there could be civil unrest, unless the Government makes the interventions necessary prior to the budget.

A Senator: Every time this week the Senator has promoted it.

Senator Fidelma Healy Eames: There are 420,000 people unemployed. Yesterday I was told by the Union of Students in Ireland that in Cork there were students sleeping in cars, that in Tipperary there were students being evicted and that in Waterford IT there were 7,000 students to one counsellor. The reason for this is that grants are not being paid. Worse still — this is the bad news — I have been asking the Leader for weeks when will the Students Support Bill 2008 be brought before the House in order that there can be a framework for funding third level students.

I have three questions for the Leader on education matters.

(Interruptions).

An Cathaoirleach: Please allow Senator Healy Eames an opportunity to speak to the Leader.

Senator Fidelma Healy Eames: I thank the Cathaoirleach. Will the three teacher training colleges, St. Patrick's College, Marino College and Mary Immaculate College, be offering places on postgraduate courses this year? Normally, places would be advertised at this time and the colleges would be receiving many queries. Usually, they offer 400 places nationally with students starting the postgraduate course in primary education from February. The Minister for Education and Science must bear in mind that there were 78,000 births last year and that many teachers are retiring owing to the cuts made in the classroom and their fears about the retirement packages on offer. It may be folly not to offer the places mentioned.

I note that yesterday the National Economic and Social forum launched a useful report on child literacy and social inclusion. Its main recommendation is that literacy should be a national priority from the cradle to the grave. I completely agree and call for a debate on the issue in the House.

Senator Cecilia Keaveney: I congratulate all involved in the release of Fr. Michael Sinnott. At this time we should recognise, not only Fr. Sinnott and the Trojan work he has done but also the work of all missionaries, both religious and lay people, around the world. There have been a number of persons kidnapped and released in the recent past who have done tremendous work.

I support the idea of holding a debate on mental health and would like the concept behind music therapy to be incorporated in that debate because it is still an issue that one can obtain qualifications in Ireland but they are not recognised. It is pertinent in dealing with the issue of mental health as well as in a number of other medical conditions.

As we celebrate Science Week, I draw the Leader's attention to the fact that there has been a rise of 8% in the number taking up science subjects, which shows the success of the Government strategy. It is important that we promote the idea that science has multiple applications in respect of job opportunities and that when students finish the junior certificate and move towards the leaving certificate they should be confident in putting all their eggs in one basket by opting for biology, chemistry and physics, rather than biology, one of the language courses and one of the art subjects on offer to keep their options open. We have a role to play in saying there are many job opportunities in the science field and I ask the Leader to invite the Minister to come before the House to discuss the matter. On the development of websites, there is an interactive website in Britain which shows, for example, that while many want to be a beautician, somebody must produce the make-up required. There are opportunities that people sometimes do not see. The television programme "Crime Scene Investigation" and the CSI exposition in the Ambassador Theatre are doing as much as Science Week and the Young Scientist competition. We must keep that focus to provide the entrepreneurs of the future. I, therefore, ask for a debate on the matter that would link in with the debate held on Thursday last on skills needs.

Senator David Norris: I propose an amendment to the Order of Business as announced by the Leader, that No. 1 be taken with debate. Nothing could better illustrate the need for Seanad reform than this farce of an election. The people ought to know that the entire electorate to fill this important vacancy consists of 226 persons. Councillors are not even involved in this election. It is ludicrous. Let us have a debate on the matter.

I am involved in the committee under the Minister for the Environment, Heritage and Local Government, Deputy Gormley. It is perfectly clear that what is being targeted is the university seats. The people should know that in the Trinity College constituency there are 55,000 electors and that in the NUI constituency there are over 100,000. These are real constituencies. Let us have Senate reform and not be hypocritical about it. That is a rotten borough, about which there is no doubt whatever. The proof of the pudding is that the newspapers are full of who will get it. It has all been rigged by the Government. It is a reproach to democracy.

I welcome the release of that remarkable man, Fr. Sinnott, but let us not be hypocritical. From the Government benches, my good friend and colleague, Senator Ó Murchú, said something very important. He stated kidnapping was about the worst human crime and a travesty of all decency. There is a Nigerian man whose wife was murdered, whose two children were kidnapped and murdered and who himself has been threatened with kidnapping by the gang involved, yet he will be deported back to Nigeria on Saturday next, 14 November. Let every Member of the House who has spoken about Fr. Sinnott and stated this business of kidnapping is appalling write this day to the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, to ask that this deportation order be rescinded and the case be reopened and looked at. This man has the support of his community, parish and everybody who knows him. He is a decent man who, this minute, is living in terror of his life, that he will be sent back to Nigeria, kidnapped and murdered.

Senator Mark Daly: I welcome the release of Fr. Sinnott and join Senator Leyden, whose speech was cut all too short, in looking for a debate on how we should commemorate the 100th anniversary of the 1916 Rising.

[Senator Mark Daly.]

I ask the Leader to bring the Minister into the House to discuss the bureaucracy which prevents job creation by excessive Government regulation and unnecessary red tape. A recent report I commissioned on Valentia Island shows that on an island with a population of 600 persons the creation of 72 full-time jobs has been prevented because of excessive Government bureaucracy. In the case of a marina which has yet to be completed, the foreshore licence application is taking an inordinate amount of time to process. While I welcome the publication by the Government of the Foreshore Bill, we must get it into this House as soon as possible. Foreshores from Donegal to Kerry could be utilised better. In one case in Killybegs at present, a licence is taking over four years to be processed.

An Cathaoirleach: Members should not have their mobile phones turned on in the House.

Senator Mark Daly: In a boatyard in Valentia, 20 jobs await the withdrawal of a planning objection by two people who do not even live on the island. They come there for four weeks a year, yet they are objecting to the creation of 20 badly needed jobs on the island. Even the Government procurement processes and criteria for tendering Government jobs is such——

An Cathaoirleach: Has the Senator a phone in his possession? Phones are not to be left turned on in this House. It is not fair to those trying to record the business of the House.

Senator Mark Daly: The procurement processes for the Naval Service's RIBS — rigid inflatable boats — are excluding Irish contractors from tendering for these jobs. In the bizarre case where An Taisce ended up objecting to one of the——

Senator Jerry Buttimer: It is the Senator's phone.

An Cathaoirleach: If Members are going to bring phones into the House and leave them on, I will adjourn the House. Let them be turned off.

Senator Jerry Buttimer: We must be fair to the sound technician. The Senator has it right beside his microphone.

Senator Mark Daly: It is on silent.

Senator Jerry Buttimer: If it is on silent mode, it still comes on.

An Cathaoirleach: I ask Members not to bring phones which are turned on into the House. I am tired requesting that. Something has to be done about it. It is not fair. The Senator's time is up. He has made the point.

Senator Mark Daly: I ask the Leader to organise that debate.

Senator Phil Prendergast: I ask the Leader how he got on with the Minister for Health and Children, Deputy Harney, yesterday in regard to the vaccination programme and the volunteers who wished to be involved in the programme. I also point out that it would be no harm if Members in this House trained as first responders in the event of somebody suffering a cardiac arrest. It should be noted that the defibrillator is inside the door in the visitor's room in the main hall.

Senator John Ellis: I would like to be associated with remarks concerning Fr. Sinnott. We have seen something very positive this morning and I have no doubt the Department of Foreign

Affairs and everybody who lobbied and worked on his behalf are to be congratulated on a successful outcome.

I asked previously for a debate on carbon tax prior to the budget. I hope we will be able to do this in the context of any debate we have with regard to climate change and what is to happen down the road.

On the question of lobbyists, we are all lobbyists. If we are to have regulations with regard to lobbyists, it will have a detrimental effect on politics across the board. I am not suggesting lobbyists should be allowed to go way beyond normal lobbying. However, once one is elected as a public representative, one is a lobbyist, and let nobody say that is not the case because it genuinely is. We have to look at the matter in that context.

I was very worried to hear Senator Healy Eames' point that students were sleeping in cars in Cork, which is a terrible situation if it is true. I would ask our colleague, Senator Buttimer, to investigate it over the weekend and report back to us on Tuesday.

Senator Jerry Buttimer: I would be happy to.

Senator John Ellis: I say that for one simple reason. Who owns these cars? Do the students own them? Are they getting cars before accommodation? We have to be realists on this. I have no doubt Senator Buttimer will be able to report to us on Tuesday as to whether it is true or false.

Senator Jerry Buttimer: Will Senator Ellis come with me to Cork?

Senator Paul Coghlan: I share the delight at the release of Fr. Sinnott and congratulate everyone involved in helping to bring it about. It is wonderful for his family and for the Columbans. One hopes they can get on with the very good and useful work they are doing in so many far-flung places, especially in the Philippines, in a more peaceful way.

I share the concerns regarding NAMA. We had reservations about it. If it passes, then, in the national interest, we very much hope it will work. However, we still have grave doubts, as has been said this morning. There is so much to flow from it once its signed off on in Brussels, if it gets through the constitutional challenge which some are talking about. People have rights and there is a huge worry about the transfer of so many performing loans from every town and city in the country, with very worthwhile enterprises going into it against their wishes. Rights are involved here. While I do not know what will happen with regard to a constitutional challenge, the success of NAMA will depend on the detailed business plan which cannot be put in place until the legislation is through. I call for a debate on this issue.

As some comments have inadvertently sparked off a commentary on lobbying, I would also welcome a debate on that issue. I accept what has been said by many Senators.

Senator Mary M. White: Yesterday, the Joint Committee on Foreign Affairs heard a presentation by the Irish Farmers Association and An Bord Bia. The Irish farmers representative, Mr. Henry Burns, who is the chairman of the sheep producers in Ireland, told us yesterday that farm incomes fell by 13% in 2008 because of low prices for milk, beef and grain, and by a further 20% this year, which is frightening. The majority of people are not aware that farm incomes have fallen by that level this year. We must do something about it.

Agriculture and the export-dependent agrifood sector are among our most important industries. Some 270,000 people are employed in the agrifood industry, which accounts for 66% of our indigenous exports. As I said yesterday at the committee meeting, the multinationals and high-tech sectors are far sexier and more glamorous. However, if we do not sustain, maintain and develop our indigenous industries and our natural advantages, as well as our reputation as

[Senator Mary M. White.]

trustworthy producers and our worldwide renown for beautiful land that is suitable for agricultural products, we would be very foolish.

Last year, the food and drinks industry sold more than €8 billion worth of agrifood products to 170 markets around the world, which is a tremendous achievement, ably supported by An Bord Bia. To come to the crunch, the IFA and the Irish Exporters Association are calling for the introduction of an export-based, short-term, State-supported credit insurance scheme to supplement the capacity of the existing commercial market. Not only are indigenous food and drinks companies suffering from lack of credit, but the insurance companies are not covering their costs or protecting them. If goods are going to 170 markets, there will be dubious importers. I want the Government on a short-term basis of three to six months to introduce this export-based credit insurance scheme urgently. Our competitor Governments in the EU have done this. Why the hell cannot we do it?

Senator David Norris: Because we had a bad experience which led to the beef tribunal.

Senator Feargal Quinn: I second Senator Norris' call for a debate, even if it just one hour long, on the election in the Seanad. It appears Senator Buttimer and others have points to make and it would be worthwhile to have a one-hour debate.

I also add my word to the expressions of support on the release of Fr. Michael Sinnott. There is little doubt the lack of hatred and venom and the pure Christian spirit in his words are such that it is a reminder to all of us of what he is doing in the Philippines and the work he is undertaking there.

Yesterday, a judge in the United States issued instructions to both Visa and MasterCard to refund those who had been overcharged because of their excessive charges in recent years. I am mentioning this because a substantial sum of money is to be issued. The same decision was made in Europe last year, but it only applied to cross-border transactions. While other credit cards are also involved, Visa and MasterCard in particular have been found to be making excessive charges. Every consumer who has used a credit card has had to pay that extra cost to retailers. It is now in the hands of each of the 27 EU member states to change the law so that we can have the same situation, which would mean a reduction in the cost of using credit cards. We should do that, but it is up to each individual state to do so. I urge the Leader to contact the Minister for Finance to put it high on the agenda.

Senator Jim Walsh: I join those who have welcomed the release of Fr. Michael Sinnott. As many people will be aware, he is from Barntown in County Wexford and I am sure that his family and his parishioners will be rejoicing today over his release. Fr. Sinnott has championed social justice and displayed great Christian values in his life-long missionary work in the Philippines. This has been recognised by many in the media. He is a fine example of the work undertaken by missionaries. In that regard, I ask the Leader to arrange for a debate on the contribution our missionaries have made abroad, and in particular the reputation they have gained for Ireland in other countries.

A few years ago, I attended a reception in the Irish embassy in New Delhi. On that occasion, I met many Indian nationals who paid glowing tributes to the Christian Brothers, in particular, who had given them an education. The most prominent film star in India regularly attributes his success to the fact that he got an education through the selfless sacrifice of those who dedicated their lives to the service of others. It should be recognised as a very positive story.

I agree with Senators Leyden and Daly who sought a debate on 1916, including what might be done with the General Post Office. The proposal to transfer the Abbey Theatre to the GPO

premises has been discussed. It is imperative that whatever happens in that regard, there should be an historical interpretative centre there. Tourists who visit Kilmainham Gaol get a feeling for this country's history. That venue is not only educational but is also a great tourist attraction.

In the near future, the Leader should arrange for a debate on freedom of speech, which is essential, but especially in the Houses of the Oireachtas. We all saw what happened when free speech was inhibited and prevented, particularly in socialism in the Soviet bloc countries and the fall-out from that.

Senator Jerry Buttimer: That was not socialism.

Senator Jim Walsh: We should not allow it here. In that regard, there is a provision in Standing Order 38 for people to interject. I was interrupted 20 times yesterday, which is not acceptable in any debate.

I agree with Senator Bacik.

An Cathaoirleach: The Senator's time has elapsed.

Senator Jim Walsh: I welcome what she said. I am glad she concurs with me that there is no place in this Chamber for bigots or fundamentalists, whether atheists or religious.

Senator David Norris: Good.

Senator Jim Walsh: If we all recognised that and operated on that basis we would be doing a lot for the standard of our debates.

Senator David Norris: Goodbye.

An Cathaoirleach: As Chair, I must protect the right of each Senator to express his or her views even if other Senators do not agree with them. However, I must have the support of every Member in order to do that.

Senator Paschal Donohoe: I want to pick up on a theme that Senator Fitzgerald mentioned in her contribution, when she called for a debate on competitiveness and particularly on the interaction between our welfare system and how people work. There is an excellent analysis in *The Irish Times* today that merits discussion here. It compares the income for a married couple working in the PAYE sector with two children versus that of someone on social welfare. The income of a family working in the PAYE sector earning €35,000 — once tax is deducted and all the benefits are added — moves up to €36,078. An equivalent family on social welfare, with two children and neither parent working, will have a gross income of €40,261. There is difference between them of over €4,000. One of the things we learned when emerging from the last recession was the creation of so-called poverty traps. In that case, there was no incentive for those on social welfare to work.

Senator Frances Fitzgerald: That is right.

Senator Paschal Donohoe: I fear that, owing to what is happening with income tax and decisions that have been made concerning the social welfare system, there is growing evidence that the same situation could currently exist.

I want to make two practical suggestions to the Leader in this regard, the first of which adds a valuable dimension to the discussion taking place about the reduction of the minimum wage. If any such reduction takes place it would further widen the difference between those who are working and the unemployed. Second, there is a discussion on widening tax bands and increas-

[Senator Paschal Donohoe.]

ing tax rates for low to middle incomes. However, given the engagement between that and the social welfare system, the incentive to work and earn more would be reduced. This is an important issue and if time were devoted to debating it here, it would be time well spent.

Senator John Hanafin: In light of the recent excellent work by this Chamber on NAMA, I ask the Leader to note a fact that was not mentioned as much as it should have been that the rate we have received from the European Central Bank to buy the toxic assets is 1.5%. It fundamentally amounts to a Marshall plan for Ireland from Europe.

Senator Mary M. White: Yes.

Senator John Hanafin: If our banks went to raise that money in Europe, they would have to repay a multiple of that rate. The total cost of the impaired loans will be covered by the 8% we are receiving as a coupon from the banks for the €7 billion we have already given to them.

The Leader should consider a debate as the United Kingdom has indicated it will extend its nuclear capacity, in particular along the west coast. That puts the Irish east coast, including Dublin, in a nuclear zone. We have a real interest in this development. We should request that any new reactors will be state-of-art ones. In other words, if there is a shutdown of the cooler it will not mean that a meltdown will occur. In new reactors, the irradiated material is encased in a steel sphere, which is a much safer method of dealing with such material. It will put our nation at less risk.

Senator Dominic Hannigan: I note that Senator Walsh agreed with what Senator Bacik said. I agree with what Senator Walsh said about the need for a debate on the contribution made by Irish people overseas. I have seen at first hand the great work that has been done by some inspiring priests in places such as Malawi. I would like to extend that debate to encompass the young Irish volunteers who spend years working to help people in the developing world. I have met many of them. We should have a debate on the impact of Irish people overseas and how they are helping to make the world a better place.

I agree with Senator Mary White's call for a debate on exports. We had a fascinating meeting yesterday at the Joint Committee on Foreign Affairs concerning that issue. Representatives from An Bord Bia and the Irish Farmers Association attended that committee meeting. The devaluation of sterling by 30% has clearly had a hard impact on Irish producers and exporters in particular. I am seeking a debate on export-led growth. With food production and consumption set to double by 2030, there is a real opportunity for Irish producers, but only if we take it. However, the proposed amalgamation of An Bord Bia into the Department of Enterprise, Trade and Employment, as well as cuts in overseas enterprise programmes and embassies could have an impact on our ability to deliver growth. I ask the Leader to arrange for a debate on those issues.

Senator Lisa McDonald: I join others in welcoming the release of Fr. Michael Sinnott who is from the neighbouring parish of mine in County Wexford. No doubt his family are rejoicing this morning, as are the parishioners of Barntown and the Columban Fathers. I also wish to join in the request for a debate on the work of Irish missionary priests and volunteers overseas.

I have been asking since I became a Senator for a debate on domestic violence. Policy in this area is in need of reform. I will ask for this debate every week until the Leader allows it. Issues such as domestic violence which affect women are ignored. I assume Senator Bacik has asked for a debate on women in politics on foot of her recent report.

Senator Ivana Bacik: Yes.

Senator Lisa McDonald: I join her in calling for that debate to be put on the agenda some day soon so we can air our views. On the day of the debate, perhaps some of our male colleagues will join us and not leave it to the female Members. When the issue is put to the parties and when we seek candidate quotas, as suggested in the report, some, but not all, of the men will say they cannot find the women and do not know where they are. I ask that the male Senators join in the debate.

The budget is approaching and it is very important that we debate certain issues prior to it. It is very important to note the effect the budget will have on employers. The Tánaiste and Minister for Enterprise, Trade and Employment announced this week the extension of the employment subsidy scheme. We should consider this prior to the budget and determine how it could help keep people in employment. Perhaps we could discuss this prior to the budget.

I heard the calls for a debate on mental health and ask that it be allowed. In this regard, we need to consider the phenomenon of general practitioners giving medication to people with mental health issues. Their doing so is not appropriate and this needs to be dealt with in the debate.

Senator Eugene Regan: We have established the European Commission must be notified of the NAMA project. Whether it takes two or six months before it approves or attaches conditions to the project remains to be seen. Will we know what is notified to the European Commission? The Minister of State, Deputy Mansergh, ditched the business plan which we were led to believe underpinned the project and provided the financial detail. It is important that we know what is being said to the Commission and that our version in the Houses is not different.

The Government must also give notification of its restructuring plan for the banks. This is a legitimate issue for discussion in the House because it would allow us to ascertain the substance, and not just the form, of the legislation.

I join other Senators in congratulating all those involved in securing the release of Fr. Michael Sinnott. The good works done by missionaries in many of the countries in which they operate have a profound effect on the goodwill towards this country. This is true from both tourism and business perspectives. The *entrée* it gives to Irish people, be it in Mexico, India, the Middle East or any of the countries in which I have done business, is pronounced. The effect and impact of the missionaries' work over the years is evident today. The country is indebted to them and it is very important that we recognise that.

Senator Paul Coghlan: Hear, hear.

Senator Eugene Regan: A serious issue arises from statements made by the Minister for Finance, Deputy Brian Lenihan, in respect of pensions and possible measures to be introduced in the December budget, namely, the retirement of an extraordinary number of senior members of the Garda Síochána. Seven hundred and eight members of the force have retired so far this year by comparison with 243 last year. This is a really ham-fisted way to go about our business. We have passed all the legislation the Minister for Justice, Equality and Law Reform says is required to tackle gangland crime, yet we are forcing out the most qualified, able and experienced members of the Garda at the highest level. This will inhibit our efforts to control gangland and other serious forms of crime.

Senator Ivor Callely: I join other Senators in congratulating those who secured the release of Fr. Michael Sinnott. I concur with those who commented on the work of our missionaries overseas, and the work of those in Ireland who support those missionaries.

[Senator Ivor Callely.]

I support Senator Mary White's call for a debate on export-led growth. This is crucial and a number of days should be identified for holding such a debate.

With regard to the importance of cherishing the young and the benefits that accrue therefrom, I draw the attention of the House to the Focus on Fostering week of the Irish Foster Care Association. The initiative seeks to raise public awareness of fostering and stress its importance. Will the Leader ensure that an appropriate committee of the House will review the relevant criteria to ensure more people will qualify for fostering and adoption?

Senator Paddy Burke: In the debate on NAMA, which took place over recent days, a great case was made for the need to do something for hard-pressed people in negative equity who are in trouble with their mortgages. The Government is seeking to make cuts of €4 billion in the budget and perhaps cuts of €1 billion to the capital programme. At the same time we are making provision for the payment of fees of €2.5 billion to those working for NAMA. I gave a breakdown of these fees yesterday. A senior adviser is paid €3,000 per day and a junior adviser is paid €800 per day.

Senator Nicky McFadden: That is scandalous.

Senator Paddy Burke: I ask that we have a debate, next week if possible, on the fees to be charged in respect of NAMA. First Active was taken over at minimal cost. There could be up to 100 people in Irish Nationwide at present earning the fees to which I refer, some on €3,000 per day and more on €800. Can one imagine the cost of this in respect of a company that will be taken over or wound up in the very near future? The €2.5 billion to be paid in fees could be used much better to address the needs of the hard-pressed people in negative equity.

Senator Donie Cassidy: Senators Fitzgerald, O'Toole, Bacik, Ó Murchú, Mullen, Leyden, Keaveney, Norris, Daly, Ellis, Coghlan, Walsh, Hannigan, Hanafin, McDonald, Regan, Callely and Burke all welcomed the great news that Fr. Michael Sinnott has returned after having been in captivity. Many people all around the world were praying for his safe return. Thanks be to God he has returned after 32 days in captivity. It was a joy to listen to him on the radio this morning and note he was so strong after having been in captivity for such a long time.

As I often said on the Order of Business, it is only when we visit foreign countries on trade missions promoting our country and its produce that we realise the massive contribution our missionaries have made. The title "island of saints and scholars" is not a one-liner in a poem or song; it was a hard-earned over hundreds of years by men and women who went all over the world giving of themselves as missionaries. The ultimate sacrifice is to give one's life for the cause of humanity.

I congratulate everyone concerned in the release of Fr. Michael Sinnott, including the Minister for Foreign Affairs, Deputy Micheál Martin. Everyone in his Department has been exemplary once again. Ms Sharon Commins and her family had nothing but praise for them on her release.

The National Asset Management Agency Bill, which was passed in the House, was debated over the past three days. There were more than 40 hours of debate and the contributions of colleagues on all sides of the House were outstanding. I was delighted with these great contributions and the tone of the debate. Senators made an incredible contribution with regard to the amendments tabled and accepted. I have been informed there may be an additional amendment on NAMA coming from the Dáil and I may need to make an amendment to the Order of Business that the House be recalled at approximately 4 p.m. to deal with this matter. I will

know in approximately one hour how the Seanad amendments are progressing in the Dáil. I have only just received notice from the Government Whip in this regard.

On Members' inquiries yesterday and on other occasions in regard to pre-budget statements, I propose this item be taken in the House on Tuesday, 1 December 2009. Provision is being made for an all day debate to allow Members to make contributions that may assist the Minister and Government in respect of the serious challenge they face.

Senators Fitzgerald, Daly and others called for a debate on competitiveness and job creation and stated we must do all we can to ensure existing jobs are supported. This issue is dealt with by Senator Daly in his report on job creation. Second Stage of the Foreshore Bill will be taken in the House next Wednesday. This matter is being treated with the urgency requested by Senator Daly this morning.

Senator O'Toole correctly pointed out that the proceedings of the House can be accessed on www.oireachtas.ie and by telephone on 6184001. I support his comments in regard to the BBC's coverage of the UK Parliaments. This is an issue the Joint Administration Committee is anxious to address. The proceedings of this House during the past three days are an absolute credit to every elected Member of this House and, in particular, the Minister for Finance, Deputy Brian Lenihan, and his ministerial colleagues who assisted him in allowing Members of this House to tease out their concerns in regard to the NAMA Bill, section by section and line by line.

Senators O'Toole, Boyle, Buttimer and Ellis called for a debate on lobbyists. I have no difficulty in allowing time for such a debate. Senators Bacik, Boyle, Mullen, Keaveney and McDonald called for a debate on climate change prior to the budget. I ask Members to debate the proposals being mooted in regard to special taxes in this area during pre-budget statements. There are only five weeks remaining to the Christmas recess and we have quite a lot of legislation to deal with. Members will be aware legislation takes precedence and this House will deal with legislation every day it meets with the exception of Tuesday, 1 December, which has been set aside for pre-budget statements.

Senators McDonald and Bacik called for a debate on mental health. I have already given a commitment to allow time for such a debate. The Senators also called for a debate on the conduct of debate in the Oireachtas. I have no difficulty in allowing time for such a debate at the earliest possible opportunity. Senator Buttimer expressed his strong views in regard to the elections. I understand there are conventions starting around the country tonight and I wish everyone well. Democracy is the essence of freedom of speech and allowing everyone to take part.

Senator Jerry Buttimer: I asked about the Seanad by-elections.

Senator David Norris: In the Seanad by-elections there will be 226 voters.

Senator Donie Cassidy: The majority of Members of this House are elected by 99.7% of our elected——

Senator David Norris: Some 99.7% of 226 is a very small number.

Senator Donie Cassidy: Anyone elected by 25% of their electorate has something to look at. Let us call a spade a spade.

Senator David Norris: I got about 6,000 first preference votes.

Senator Donie Cassidy: As one who could not get elected with 7,555 votes and for whom there was no seat, I can speak from a position of strength.

Senator Mullen called for a debate on the issue of asylum seekers and brought to the attention of the House a report dealing with the dignity of the human being. I agree with the Senator and have no difficulty allowing time for a debate on the matter. Senator Leyden rose to make a correction to the record of the House. I am pleased he did so because I know he did not utter the comments credited to him in the media this morning. The journalist, whom is of high repute, has clarified the matter.

Senators Daly, Norris and Walsh asked about the proposed celebrations in regard to the 100th anniversary of the 1916 Rising and the proposal to move the Abbey Theatre to the GPO, now provided for in the programme for Government. I believe this is one of the most appropriate ways of celebrating the 100th anniversary of the 1916 Rising and I look forward to it. I support the call from Senators Norris, Daly and Walsh for a discussion on appropriate ways of honouring the men and women who gave us the freedom of speech which allows us to participate in the national interest.

Senator Joe O'Toole: Does the Leader expect Fianna Fáil to be still in Government at that time?

Senator Donie Cassidy: It is Senator Norris's idea.

Senator Frances Fitzgerald: Good luck.

(Interruptions).

Senator Donie Cassidy: Senator Healy Eames again raised matters of serious concern to her. Senator Ellis has called on Senator Buttimer to assist Senator Healy Eames in regard to the serious experiences outlined by her this morning. Perhaps Senator Buttimer will update the House on this matter next Tuesday.

Senator Fidelma Healy Eames: What about the Student Support Bill? I asked when it will come before the House.

Senator John Ellis: On a point of order, Senator Healy Eames raised her concern in regard to students who are unable to obtain accommodation and are sleeping in cars. I want Senator Buttimer to report back——

Senator Fidelma Healy Eames: That is because there is a problem with funding.

Senator John Ellis: ——on Tuesday if this is factual.

(Interruptions).

Senator Fidelma Healy Eames: On a point of order——

An Cathaoirleach: The Senator cannot raise a point of order unless it relates to procedure as the Leader is replying to the Order of Business.

Senator Fidelma Healy Eames: I am asking and have asked a number of times when the Student Support Bill will come before this House. That is the fundamental question.

An Cathaoirleach: That is not a procedural matter.

Senator Fidelma Healy Eames: All of the crises in students' lives are as a result of the non-payment of grants.

An Cathaoirleach: I must ask the Senator to resume her seat. I call on the Leader to resume his reply to the Order of Business.

Senator Donie Cassidy: It is completely inappropriate to interrupt the Leader when responding to questions.

Senator Fidelma Healy Eames: It is also inappropriate that Members' questions are never answered.

(Interruptions).

An Cathaoirleach: I call on the Leader to reply to the Order of Business.

Senator Fidelma Healy Eames: All I am looking for is an answer to the question.

An Cathaoirleach: I ask Senator Healy Eames to cease interrupting the Leader. I want no interruption from Members when the Leader is replying to the Order of Business.

Senator Fidelma Healy Eames: I ask the Leader to answer the question.

Senator Donie Cassidy: We all support the independence of the Cathaoirleach.

Senator Fidelma Healy Eames: What is the answer to my question?

Senator Donie Cassidy: This never happened in the past——

Senator Fidelma Healy Eames: Answer the question.

Senator Donie Cassidy: This is a new practice——

Senator Frances Fitzgerald: The Leader has to answer questions these days.

Senator Donie Cassidy: ——that should not be allowed——

Senator Fidelma Healy Eames: We are living in a new Ireland now.

Senator Donie Cassidy: ——by either male or female Members of this House.

I will update the House next Tuesday on when it is proposed to take the Student Support Bill.

Senator Fidelma Healy Eames: That is the question.

An Cathaoirleach: I ask Senator Healy Eames to stop interrupting the Leader.

Senator Donie Cassidy: Senator Keaveney spoke of the serious concerns being expressed by many captains of industry who are vital major employers such as in Intel in regard to science graduates. A debate on this issue would provide us with an opportunity to discuss skills needs into the future. This is a debate which should take place as soon as possible.

Senator Norris asked when it is proposed to take item 1 on the Order Paper. I have no difficulty, if the House is sitting later, in providing time for statements on that matter. If no amendments from the Dáil come before the House later I propose that statements on item 1 be taken for one hour following completion of the legislation before the House, perhaps, from

[Senator Donie Cassidy.]

3 p.m. to 4 p.m. I am awaiting from the Minister for Health and Children the information which Senator Prendergast requested of me yesterday.

Senator Mary White, in particular, and Senators Callely and Hannigan referred to the importance of exports and export credit insurance. I will pass on her strong views to the Minister.

Senator Quinn spoke about the high cost of Visa and MasterCard and suggested that we bring legislation before the House so that can be debated. I will convey his views to the Minister for Finance.

Senator Walsh called for a debate on freedom of speech. I have already committed to a debate on that matter in the near future. Senator Hanafin sought a debate on the proposed new nuclear plants in the United Kingdom. I have no difficulty in setting aside time for such a debate to take place.

Senator MacDonald called for a debate on domestic violence. Where time is available I have no problem in that debate taking place. I have also agreed to have a debate on women in politics, which we all fully support. I have no difficulty in setting time aside for that debate.

Senator Frances Fitzgerald: There is not much evidence of that.

Senator Jerry Buttimer: Deputy Mary O'Rourke is very happy with Senator Cassidy.

Senator Donie Cassidy: My constituency had four women candidates out of seven in the general election in 2002. We showed the way in Westmeath in that regard anyway.

(Interruptions).

Senator Donie Cassidy: I have noted Senator Regan's concerns, which I will pass on to the Minister. Senator Callely called for a debate on fostering and adoption. I have no difficulty in setting time aside for that also.

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

Senator David Norris: Could I seek clarification from the Leader? He gave a rather interesting indication that he might take No. 1 at a particular stage. Would it be possible to make a definite commitment to take statements for 45 minutes or an hour at the conclusion of the Bill?

Senator Donie Cassidy: I am mindful that colleagues are in the House for such a long time this week and that many of them have to travel 150 miles and 200 miles to go home later this evening. I can have the discussion on some other day but I wish to move No. 1 today. I guarantee that we will have an hour of statements on the matter in the next week, if not this afternoon from 3 p.m. to 4 p.m.

An Cathaoirleach: Is the amendment being pressed?

Senator David Norris: As the Leader is being helpful I will withdraw the amendment.

An Cathaoirleach: Is the Order of Business agreed to?

Senator Fidelma Healy Eames: I wish to ask you a question, a Chathaoirligh, on a point of order. I did not get a reply to two questions I asked.

An Cathaoirleach: That is not a point of order. If a Senator raises a matter with the Leader I have no control over his replies.

Senator Fidelma Healy Eames: I will take up the matter with the Leader.

An Cathaoirleach: We have to follow procedure.

Order of Business agreed to.

Issue of Writ: Motion.

Senator Donie Cassidy: I move that:

That the Clerk of Seanad Éireann do send to the Minister for the Environment, Heritage and Local Government notice of a vacancy in the membership of Seanad Éireann occasioned by the death of Senator Peter Callanan, a member elected from the Nominating Bodies Sub-Panel of the Agricultural Panel at the General Election for Seanad Éireann, July, 2007.

Question put and declared carried.

Courts and Court Officers Bill 2009: Committee Stage.

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy Curran.

Sections 1 to 4, inclusive, agreed to.

SECTION 5.

An Leas-Chathaoirleach: Amendments Nos. 1,2 and 5 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 1:

In page 4, to delete lines 14 to 17 and substitute the following:

““holding area officer” means—

(a) a governor, or a member of the Garda Síochána, in whose temporary custody a person is placed under *section 6*,

(b) a person who assumes the duties of a holding area officer under *section 11(6)*,

(c) a member in charge who assumes the powers and functions of a holding area officer under *paragraph (a) of section 11(7)*, or

(d) a member of the Garda Síochána to whom the powers and functions referred to in *paragraph (c)* are transferred under *paragraph (b) of section 11(7)*.”

Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran): Amendments Nos. 1 and 2 refer to the existing section 5 and amendment No. 5 proposes an insertion into the existing section 11. All the amendments are linked.

The first amendment proposes to expand the definition of a holding area officer to include a member in charge in a Garda station, with the second amendment providing a definition for member in charge. The subsequent amendment to the section dealing with the functions of the holding area officer is to allow for all members in charge to assume those powers and functions where a prisoner is transferred to temporary custody.

[Deputy John Curran.]

These changes are included to take account of the fact that, from time to time, prisoners may be brought to a local Garda station and held in custody there pending their court appearance. This tends to happen in particular in rural locations where no holding cells may be available in a small courthouse. This circumstance is given a legal basis in section 1 of the Prisons Act 1956. Once the prisoner is in the Garda station, as Senators will be aware, there is a designated member in charge in every Garda station. Under the 1987 Garda custody regulations, the member in charge has certain obligations and responsibilities for any person in custody in the station.

To distinguish between the existing role of a member in charge and that of a holding area officer I have proposed an amendment to section 11. When a prisoner, for the purposes outlined in section 7, that is, for temporary custody purposes facilitating attendance at court, is placed in a Garda station, the amendment confers on the designated member in charge the powers and functions of a holding area officer. The effect of this change ensures that within a Garda station, the member in charge will always have the duties and responsibilities of a holding area officer. It is important to say that this refers to within a station only, not outside of a station. When a member in charge is handing over his duties to another member in charge, for example, at the end of a shift, all his or her duties and responsibilities transfer automatically to the new member in charge. The amendment provides that his or her holding area officer responsibilities also transfer automatically. That will facilitate the day-to-day management of custody within Garda stations.

The amendment proposed will also allow a member in charge to delegate or transfer holding area officer duties and responsibilities to another garda. The reason this amendment is being proposed is twofold. In the first place, the member in charge, while having all the duties and responsibilities of a holding area officer, may not be the garda physically looking after the detention area. That would be the case, for example, in stations where a number of gardaí are on duty. In such circumstances it is important that the garda in the custody area be authorised to be a holding area officer.

Allowing the transfer of holding area officer powers from the member in charge to another garda is important for the management and smooth operation of the provisions of the Bill within a Garda station. A good example of that is where the member in charge is a male garda and the prisoner in temporary custody is female. In such a circumstance it would be appropriate to transfer holding area officer functions to a female garda for the purposes of a search. It should be noted that transferring holding area officer duties and responsibilities does not relieve the member in charge of those duties and responsibilities. The member in charge will always automatically have those duties and responsibilities when a prisoner is in his or her custody.

Within a station a number of gardaí may have holding area officer duties and responsibilities. Such responsibilities will always apply to the member in charge. They may also apply to the garda who is originally handed the prisoner under section 6, plus any garda to whom the member in charge may transfer or delegate the function. That only applies where the temporary custody provided for under section 7 is taking place within a Garda station.

It is worth stating that where the temporary transfer of custody of a prisoner for the purposes of a court appearance takes place outside of a Garda station, the garda taking temporary custody of a prisoner is the holding area officer. Under the Bill's provisions, that garda cannot transfer his or her holding area officer duties and responsibilities to another garda unless authorised to do so by a superior officer.

I consider this an important provision to retain because it should only be in limited circumstances where a garda will be taking temporary custody of a prisoner outside of a Garda station for the purposes of the Bill. Given that, I consider it appropriate that the transfer of holding area officer functions should only be permissible when authorised by a more senior officer. I believe the House will agree with me in this regard. I propose deleting the current definition of “holding area officer” and replacing it within a new definition which provides for a member in charge assuming the powers and functions of a holding area officer and the delegation or transfer of such powers. I am also defining for the sake of clarity who a member in charge is in the context of the Bill.

Senator Ivana Bacik: I welcome the Bill which facilitates the move to the new criminal courts complex. Most of the provisions deal with the procedures consequent on that move. However, on Second Stage I expressed concerns about Part 2 and the provisions on temporary custody. With regard to the Minister’s amendment to the definition of “holding area officer” in section 5, I take the point that much of this facilitates a transfer of powers. However, given the very extensive powers ascribed to a holding area officer in section 11, I am disappointed that these powers are expressed in very broad terms, for example, to prevent the escape from lawful custody of a person who has been placed in temporary custody, to prevent the commission of an offence and so forth.

Clearly, the holding area officer has extensive powers in practice, yet section 12 does not specify precisely the standards to be employed in the safe keeping of persons. It simply states the Minister may prescribe them. I raised this issue on Second Stage and have tabled an amendment on it. Given what the Minister of State has said and the fact that the holding area officer will, in practice, often be the member in charge, will the Minister of State confirm that the custody regulations which already prescribe a defined role for the member in charge will apply to the person being held in temporary custody, or at least as much of them as is relevant? I am aware that as a large part of the regulations deals with the questioning of persons held in custody pre-charge, that will not arise but other safeguards are provided for such as the provision of food, time to sleep and so forth. Does the Minister of State envisage that these standards will apply to persons held in temporary custody under this legislation, given the very strong link between the holding area officer and the member in charge?

Senator Eugene Regan: Specifying in detail the authority of the holding area officer and the garda in charge is most important; therefore, I understand the Minister’s motivation behind these amendments, with which I have no difficulty in principle. The issues referred to by Senator Bacik are dealt with in her amendment. These amendments do not alter in any way the responsibilities of the Garda Síochána or a holding officer of the Irish Prison Service to treat prisoners in accordance with proper standards.

Deputy John Curran: The purpose is to indicate in a legislative framework what the practice is in rural Ireland from the point of view of small courthouses which do not have the facilities. It would be an omission from the legislation not to deal with the issue at this stage. With regard to the manner in which people are held in temporary custody, whether they are prisoners or in Garda custody, all the normal rules and regulations apply. That is not affected by this section.

Amendment agreed to.

Government amendment No. 2:

In page 4, between lines 17 and 18, to insert the following:

““member in charge” means a member of the Garda Síochána who is in charge of a Garda Síochána station referred to in *section 11(7)*,”.

Amendment agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

SECTION 7.

Senator Ivana Bacik: I move amendment No. 3:

In page 4, line 40, after “person” to insert “who is lawfully in custody”.

This amendment was tabled in the Dáil by Deputy Rabbitte. It seeks to limit the definition of a person who may be placed in temporary custody to a person who is lawfully in custody. I expressed a reservation about the drafting of this section on Second Stage. Section 6 refers to a prisoner who may be placed in the temporary custody of a member of the Garda Síochána. Section 5 gives “prisoner” the same definition as that included in the Prisons Act 2007. Section 2 of that Act defines a prisoner as a person who is ordered by a court to be detained in a prison and includes a person who is in lawful custody outside a prison. Section 6(1) of this Bill refers to a prisoner who may be placed in temporary custody, while section 6(2) refers to a person who is “lawfully in the custody of the Garda Síochána”. However, section 7 clearly goes beyond the definitions in section 6 because it refers not only to a prisoner but also includes the term “or other person” without the proviso in section 6(2) of a person who is lawfully in custody. In other words, it allows any person to be placed in temporary custody for the purpose of facilitating either a court appearance or their participation “as a witness or in another capacity”. I was slightly troubled by the phrase “or in another capacity”. It gives a rather overarching power to deprive somebody of his or her constitutional right to liberty.

On Second Stage I asked the Minister what circumstances were envisaged regarding a person who was not a prisoner and not already in lawful custody. Obviously, it happens all the time that people who are already serving a sentence and in prison or who have been deprived of bail and are remanded in custody and, therefore, are in prison on that basis are brought before a court for appearances as defendants or as witnesses. They are routinely brought in custody. That obviously happens already and it is good that the practice is being placed on a statutory basis in the Bill. I am troubled by the idea that other persons who are not defined as being already in lawful custody might somehow be placed in temporary custody to facilitate a court appearance or participate in another capacity in a court hearing. We have developed laws on bail; therefore, how does this provision tally with the Bail Act 1997 and the constitutional right to liberty? I am trying to see how it can be made workable, which is why I tabled the amendment. The same amendment was tabled by Deputy Rabbitte in the Dáil. I have also suggested in amendment No. 4 deleting the term “or in another capacity”, unless the Minister can explain the reason for it. I sought such an explanation on Second Stage but did not receive a satisfactory one. That is the reason I tabled the amendments.

Senator Eugene Regan: As I have the same question, I will await the Minister of State’s response.

Deputy John Curran: As Senator Bacik said, the amendment is a variation of a similar amendment proposed on Committee Stage in the Dáil. It was considered by the Attorney General’s office but is regarded as unnecessary. “Person” in the context of section 7 of the Bill

could never be interpreted as including persons in general. Under section 7, the reference to placement in temporary custody under section 6 can only refer to a person who is lawfully in the custody of the Garda Síochána, as the word “prisoner” is already defined. Section 6 makes clear the persons who may be held for the purposes of section 7. Section 6(2) refers to a person who is lawfully in the custody of the Garda Síochána. “Person” in this instance only applies to somebody who is lawfully in custody under the existing legislative provisions. It does not and cannot create any new custody. This provision operates within the limitations of existing legislative provisions relating to custody and does not create any new categories of persons in custody. The provisions in the Bill relate only to the temporary custody of a person or prisoner in the context of a transfer of that custody from the Irish Prison Service to the Garda Síochána or *vice versa*. The individuals concerned are already in custody. The Bill does not create custody, it merely allows for a transfer of that custody on a temporary basis.

While I understand what the amendment seeks to achieve, I consider it unnecessary. Such an amendment might unintentionally create an ambiguity as the term “person who is lawfully in custody” could suggest all sorts of persons, for example, a person in military custody, whereas the section is only concerned with persons in Garda custody. I oppose the amendment.

Senator Ivana Bacik: I am glad the Minister of State has confirmed there is no intention in the Bill to create a new power to hold somebody in custody. I do not believe it could do so under the Constitution. The Minister of State referred to existing legislation but it is clear the Constitution overarches that. I do not believe the amendment could create a new category. I was concerned it might, by implication, do so or that the interpretation might extend to that.

I am glad the Minister of State pointed out that in the context of the legislation a person means someone who is lawfully in Garda custody. The Labour Party’s amendment on Committee Stage in the Dáil referred to “a person who is lawfully in the custody of the Garda Síochána”, which is the same definition as that used in section 6(2). However, the Minister still did not accept the amendment. I do not understand how amendment No. 3 would create an ambiguity, particularly if it was framed in the same way as the amendment introduced in the Dáil. I also do not understand why it cannot be included, given the Minister of State has indicated that is what it means in any event.

I accept the Minister of State’s contention that the Attorney General believes the amendment to be unnecessary. I do not wish to labour the point but, as stated on Second Stage, this relates to deprivation of liberty and we are discussing a penal statute. In such circumstances, we must be careful and ensure the wording will not create some unforeseen consequences in the context of increasing the categories of persons who can be in custody.

Senator Eugene Regan: In light of the Minister of State’s explanation and reading section 7 in conjunction with section 6(2), it appears the person will be a person who is lawfully in the custody of the Garda Síochána. I am satisfied, therefore, that the intention behind the legislation is clear.

Deputy John Curran: I re-emphasise that we are not seeking to create new categories of custody. The advice of the Attorney General is clear, namely, that the amendment is unnecessary. In that context, I cannot accept the amendment.

An Leas-Chathaoirleach: Is the amendment being pressed?

Senator Ivana Bacik: Not at this stage. I reserve my right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 4:

In page 5, paragraph (b), line 1, to delete “or in another capacity”.

This amendment relates to section 7(b), which currently states that a person may be placed in temporary custody to facilitate not only a court appearance by them but also their participation as a witness or in another capacity at a court hearing. As on Second Stage, I wish to inquire as to the sort of capacity which might be covered in this regard. If the Minister of State cannot envisage another capacity, then these words should be deleted because, to echo the words of the Attorney General, they are unnecessary.

Deputy John Curran: If I can envisage such another capacity, will the Senator withdraw her amendment?

Senator Ivana Bacik: I reserve my position in that regard.

Deputy John Curran: Again, I must reject this proposed amendment. If I were to accept the amendment, it would have a limiting effect on the purpose of temporary custody under the Bill. It would limit that purpose to a person’s participation in a hearing as a witness only. The intention of the Bill is to ensure flexibility to allow for other reasons for that person’s presence in court, such as to observe proceedings, instruct his or her lawyers or even to represent himself or herself in proceedings.

As previously stated, the custody arrangements provided for in the Bill are very limited. They only arise in respect of individuals already in custody, whether that be in the custody of AGS or the Prison Service. Furthermore, they only arise in respect of the purposes detailed in section 7. In other words, temporary custody only arises where a person, who is already in lawful custody, is involved in a court appearance. There is no issue here in relation to infringements of any person’s rights or liberty and given that fact, I hope the House will agree it would be unwise to limit the section as proposed in the amendment.

Senator Ivana Bacik: The Minister of State referred to circumstances where a person might represent himself or herself. That instance may be covered under paragraph (a), which relates to court appearances. However, I suppose it could also be for the purpose of appearing in a civil proceeding and a doubt might arise with regard to whether “court appearance” would be the appropriate phrase, particularly if a person was appearing as plaintiff in his or her own right. I accept that other situations might arise. I thank the Minister of State for providing a reassurance that this section is not deliberately drafted in a very broad way in order to facilitate all sorts of deprivations of liberty.

Other than being an observer at or a participant in civil proceedings, I do not see how any other capacity might arise. I am still of the opinion that the section could have been drafted in a much tighter fashion. The Minister of State provided the example of a person who wants to instruct his or her lawyers. Generally, this is done in the prison or as part of a court appearance. It would be extremely rare that a person would be brought to court in order to see his or her lawyer, without their being present also constituting a court appearance.

Unfortunately, the phrase “or in another capacity” is too broad. However, I take the point that using the term “witness” on its own might be too specific. In such circumstances, I will withdraw the amendment.

Amendment, by leave, withdrawn.

Section 7 agreed to.

Sections 8 to 10, inclusive, agreed to.

SECTION 11.

Government amendment No. 5:

In page 6, after line 42, to insert the following subsections:

“(7) Where *section 6(1)* applies, and the prisoner placed in temporary custody is or has been placed in a Garda Síochána station, then notwithstanding that any other member of the Garda Síochána is also a holding area officer under this Part, the member in charge of that Garda Síochána station—

(a) shall assume the powers and functions of a holding area officer under this Part, and

(b) where he or she considers it necessary for the performance of any of his or her functions, and for such period or periods as he or she considers necessary, may authorise the transfer of any or all of the powers and functions assumed under *paragraph (a)* to another member of the Garda Síochána.

(8) Where *subsection (7)(b)* applies, the transfer of the powers and functions concerned to a member of the Garda Síochána shall be construed as reserving to the member in charge the right to exercise those powers and to perform those functions concurrently with that member.”.

Amendment agreed to.

Section 11, as amended, agreed to.

SECTION 12.

Senator Ivana Bacik: I move amendment No. 6:

In page 7, line 1, after “prescribe” to insert the following:

“, in accordance with the standards already provided for in respect of persons held lawfully in Garda custody or under the Prison Rules 2007 (S.I. No. 252 of 2007)”.

The intent behind this amendment is clear and I indicated on Second Stage that I would be introducing it. The amendment relates to the standards to be prescribed by the Minister for the safekeeping of persons who are held in temporary custody. On Second Stage, I inquired as to the type of regulations it is envisaged will apply. Given that standards are already provided in both the prison rules and the custody regulations, would it be possible that we might have some indication that these will be the standards to which the Minister for Justice, Equality and Law Reform will have reference when prescribing what will, I presume, be a new set of regulations in respect of those in temporary custody?

In order to assist the Minister in developing the regulations to provide for standards in respect of persons held in temporary custody, it is suggested in the amendment that the phrase “in accordance with the standards already provided for” be used. This would mean there would be no diminution of the standards provided for in respect of persons held lawfully in Garda custody already. As stated earlier, however, it is clear there will be large sections of both sets of regulations which will not be relevant in respect of someone held in temporary custody. However, reference should still be made to the criteria to which the Minister for Justice, Equality and Law Reform will refer in setting these new standards.

[Senator Ivana Bacik.]

Perhaps the Minister of State is in a position to indicate whether new regulations will be prescribed under section 12. If they are to be prescribed, I do not understand why the amendment could not be accepted, particularly as it merely sets out that such regulations would have to be developed in accordance with existing standards.

Senator Eugene Regan: I support the amendment. If one reads section 12 as it stands, it appears that it might suggest that different standards may apply in respect of those held in temporary custody. The amendment put forward by Senator Bacik is, therefore, well founded and would improve the Bill.

Deputy John Curran: I understand both the impetus behind the amendment and what the Senator is seeking to achieve. We have given the amendment some careful consideration. The Bill provides for temporary custody in the very limited circumstances outlined in section 7. This temporary custody is *sui generis* and limited in scope. The most important aspects of a person's treatment, that is, being kept safe and secure and subjected to defined search powers, are provided for in section 11. Section 12 allows for the Minister to expand on these and add other matters, such as procedures and record keeping, if required.

If I were to accept this amendment, it would have the effect of limiting any future regulations to the existing Garda custody regulations and the prison rules. Such a move might be unwise. While I accept the intention is to operate to those current rules and regulations, I think there is a case to be made to allow the Minister make regulations which may, if required, differ from those rules and regulations. It may be appropriate, given that a person is temporarily transferring custody from one body to another, that very specific records may need to be kept. Such records may differ to those kept under the current custody and prison regimes. The current provisions of the Bill allow flexibility to introduce new regulations if required. For these reasons, I cannot accept the amendment.

Senator Ivana Bacik: I thank Senator Regan for expressing support for the amendment. As he stated, the amendment would improve section 12. The amendment does not require the Minister to apply exactly the same regulations because, as already stated, I am conscious that some of these would not be relevant. It simply allows for a certain minimum standard to be observed in developing any new regulations for persons held in temporary custody. I am also conscious that the need for keeping very detailed custody records would not apply in respect of people in temporary custody.

I am concerned that if the amendment is not accepted, there will be no reference to the criteria the Minister will use when prescribing these standards. I am conscious the Minister of State has already accepted the same principle, in a sense, in section 11(2) where the holding area officer's power of search is specified as being in accordance with the prison rules. That is very important because the power of search has been open to abuse in some cases and has always had to be carefully circumscribed by law in any jurisdiction. It is important, therefore, that in section 11(2) the power of search is specified as being necessarily in accordance with the prison rules.

As I said in the context of an earlier section, section 11(1) gives other extensive powers to holding area officers, including power to prevent escape from lawful custody, ensure a prisoner behaves in an orderly and disciplined fashion and so on. Clearly, there is potential there for physical intervention with the person in custody. There must, therefore, be some safeguards or criteria that apply where holding area officers are exercising their powers under section 11(1). The Minister of State may come back and say there are already such safeguards. Certainly, there are the constitutional provisions, constitutional case law and existing regulations.

However, I have a concern unless the existing regulations are specified, especially considering the provision in section 11(2). The more I look at it, I find it interesting that section 11(1) does not state that any powers there must be exercised in accordance with any rules or standards. The section 11(1) powers as set out are very broad powers which could lead to some very serious physical intervention on the body of the prisoner. Section 12 seems to be the only section that makes any attempt to offer any oversight of the powers the holding area officer may exercise.

I do not want to labour the point, but it is important we are told what standards will be employed. The amendment seeks to insert some reference to sets of existing standards below which those in temporary custody will not be subjected to. This is in keeping with the Minister of State's approach in section 11(2) which is to circumscribe the power of search so that it must be carried out only in accordance with the prison rules.

Senator Eugene Regan: In a sense, we have delegated legislation to the Minister and what Senator Bacik is saying is that we in this House are supposed to set out the principles upon which the Minister draws up regulations. I do not find the principles in the Bill. It is all procedural and there is nothing substantive in it. What is suggested in the amendment is that we should define the principles and the standards and the Minister can then act accordingly. Section 11(5) states: "Nothing in this section shall be construed as limiting the powers under the Prison Rules of a holding area officer who is a prison officer". That is all very well, but there is no setting of standards relating to the regulations which the Minister can draw up under section 12. It is incumbent on us to set those standards. The amendment is simple enough and could be accommodated by the Minister of State, especially since we have all been so constructive in this debate.

Senator Lisa McDonald: Looking at the issue simply, there is a definition in section 6 of the people who are to be held in temporary custody. These fall into two categories. The prison rules govern the prisoners and those in lawful custody of the Garda are governed by the custody regulations. Therefore, these are the standards set, but the overriding standard is the Constitution. I do not see the need for the standards to be set out further. If we get into doing that, we may be overcooking the legislation. As the Minister of State said, there may be a need in the future to amend the rules or to enhance them and all relevant legislation will be subject to that. The standards are set out already in our laws, our systems and the Bill.

Deputy John Curran: The only persons this Bill affects are people who are already in custody. They are either a prisoner or a person who is already lawfully in custody of the Garda. The Bill, as I already stated, does not create some new form of custody. If the person concerned is a prisoner, then he or she remains subject to and under the protection of the existing prison rules and regulations. If the person concerned is in the custody of the Garda, then he or she is subject to the Garda custody rules and regulations, notwithstanding the fact that he or she is deemed to be in the custody of another body. Also, as mentioned previously, the Minister may make regulations which may differ from those rules and regulations, if required. Given the fact that custody is being transferred temporarily from one body to another, it may be appropriate that specific records in that regard may be required. However, that does not create new custody. The person is either a prisoner or a person in lawful custody of the Garda and the rules and regulations to which I referred previously would be binding in that regard.

Senator Ivana Bacik: I am grateful to the Minister of State and Senator McDonald for the points they made that the prisoner is in custody and regulations already apply. I would have assumed that. However, section 12 suggests something different. If those rules are already applicable, as they are, to persons who are already lawfully in custody, why is the Minister of

[Senator Ivana Bacik.]

State giving himself the power to prescribe additional standards? That is clearly because, as the Minister of State acknowledged, there may well be other regulations provided for.

As Senator Regan said, we as legislators must have regard to the way in which the Minister of State will prescribe such regulations. We are not trying to do the Minister of State's job for him and put in what the regulations would say. We are simply saying that as legislators, we have a duty to ensure the Minister of State is given some direction or criteria by which the regulations would be made. We know there are existing regulations. What I specifically said in the amendment was that any new standards or regulations to be developed would be in accordance with existing standards. The amendment is not trying to be too prescriptive, but trying to provide an overarching policy by which a Minister of State will exercise his delegated power to make the regulations.

Deputy John Curran: Senator Bacik recognises the various regulations that already exist. This provision for the Minister may be appropriate because of the temporary nature of the custody involved in transferring it from one group to another. As a result of that, I oppose the amendment.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Sections 13 to 26, inclusive, agreed to.

Title agreed to.

Bill reported with amendments.

An Leas-Chathaoirleach: When is it proposed to take Report Stage?

Senator Lisa McDonald: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed. I wish to draw the attention of Senators to printing errors in the Bill. On page 5, lines 13 and 25 should be further indented. Similarly, on page 7, line 14 should be further indented. Accordingly, as provided for in Standing Order No. 1, I will instruct the Clerk of the House to make the formal corrections to further indent these lines in the Bill. Is that agreed? Agreed.

Courts and Court Officers Bill 2009: Report and Final Stages.

An Leas-Chathaoirleach: We are now on Report Stage.

Senator Eugene Regan: I believe Senator Bacik wishes to table one amendment that she had moved and subsequently withdrawn on Committee Stage.

Senator Ivana Bacik: I move amendment No. 1:

In page 7, line 1, after "prescribe", to insert the following:

“, in accordance with the standards already provided for in respect of persons held lawfully in Garda custody or under the Prison Rules 2007 (S.I. No. 252 of 2007)”.

There is a slight Alice in Wonderland sense about this Report Stage. I do not propose to table two amendments that I had withdrawn on Committee Stage, intending to move them again on Report Stage. However, I do want to press amendment No. 1 for the reasons we have already

outlined. I am grateful to Senator Regan for expressing his support for this. It strengthens section 12 and enables the Minister to have regard to certain standards already in place. I should now like to press that amendment.

Minister of State at the Department of Education and Science (Deputy John Curran): We have already had the debate on this. I have outlined our reasons for opposing it, although I understand it. I have given consideration to the amendment having looked at it before, but I have not changed my position following the debate here, so I will be opposing it.

Amendment lapsed.

Bill be received for final consideration and passed.

Business of Seanad.

Senator Lisa McDonald: I propose that the sitting be suspended until 5 p.m.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Sitting suspended at 12.35 p.m. and resumed at 5 p.m.

Message from Dáil.

An Cathaoirleach: Dáil Éireann has agreed, on this 12th day of November 2009, to amendments Nos. 1 to 10, inclusive, and amendments Nos. 14 to 37, inclusive, made by Seanad Éireann to the *National Asset Management Agency Bill 2009*. Dáil Éireann has agreed to amendment No. 11 with the following amendments: In line 2, subsection (1), after “NAMA” to insert “or a director or employee of a NAMA group entity”. In line 8, paragraph (c), after “NAMA” to insert “or a NAMA group entity”. In lines 12 and 13, subsection (2), to delete “institution or an officer of NAMA” and substitute the following: “institution, an officer of NAMA or a director or employee of a NAMA group entity”.

Dáil Éireann has agreed to amendment No. 12 with the following amendments:

In subsection (1), to delete lines 2 to 4 and substitute the following:

“‘employee’ means—

- (a) an employee of a participating institution,
- (b) an officer of NAMA, or
- (c) an employee of a NAMA group entity;”.

In subsection (1), to delete lines 5 to 7 and substitute the following:

“‘employer’ means—

- (a) a participating institution,
- (b) in relation to an officer of NAMA, both NAMA and the NTMA, or
- (c) a NAMA group entity;”.

Dáil Éireann has agreed to amendment No. 13 with the following amendment:

In line 7, paragraph (c), after “NAMA” to insert “or a NAMA group entity”.

National Asset Management Agency Bill 2009: Motions.

An Cathaoirleach: Yesterday, 11 November 2009, the Seanad returned the National Asset Management Agency Bill 2009 to the Dáil with 37 amendments to which the agreement of the Dáil was sought. The Dáil considered these amendments and agreed Nos. 1 to 10, inclusive, and Nos. 14 to 37, inclusive, without change. However, it made changes to amendment Nos. 11 to 13, inclusive, to which agreement is sought.

The Seanad must now decide whether it agrees with each of the amendments made by the Dáil to amendments Nos. 11, 12 and 13. As the subject matter of these Dáil amendments is related, with the agreement of the House, Members can discuss the six amendments made by the Dáil together and the House can then decide on each individual amendment. I call on the Leader to move the first motion suggesting the action to be taken by the Seanad and will then call on the Minister of State to explain the decision taken by the Dáil. I remind Members that each Senator may only speak once on the motion.

Senator Donie Cassidy: I move:

That Seanad Éireann agrees to the first amendment made by the Dáil to Seanad amendment No. 11.

Minister of State at the Department of Finance (Deputy Martin Mansergh): These amendments extend the whistleblower protection provisions to employees of NAMA group entities. This amendment was proposed by Fine Gael in the Dáil earlier today and the Minister accepted it, as it is necessary that any employee of a NAMA group entity is fully protected by these provisions. I thank Fine Gael for its contribution.

Senator Frances Fitzgerald: In respect of the motions on the amendments which have returned from the Dáil, I regret that the Government has not accepted more Fine Gael amendments during the debate on NAMA, as they would have strengthened the protection for the taxpayer. Without rehashing the entire debate on the Bill, I note that never before has so much money been handed over to so few people on behalf of so many, namely, taxpayers, for such an uncertain return. As I stated yesterday, while one must hope it succeeds for the sake of the country, it is a gamble. Fine Gael's central worry pertains to the damage this legislation could do to the country, as well as the debt burden that will be placed on every family in the country.

The Fine Gael amendment tabled by Deputy O'Donnell which has been accepted by the Minister in the Dáil ensures the whistleblower legislation protection also applies to employees in the other group entities related to NAMA, about which Members do not know much just yet, that is, the SPVs. Its acceptance is good because it ensures an equality of protection for all employees connected with any entity of NAMA and is a step towards transparency. That is important because it is a step towards transparency in what Fine Gael believes is otherwise a fairly secret work-out process for the banks and those who have been associated with the toxic debts that have arisen. I thank the Minister for accepting these Fine Gael amendments and welcome their return to the Seanad today in this final stage of the NAMA legislation.

Senator Ivana Bacik: I echo what Senator Fitzgerald said by expressing regret that the Minister did not accept more amendments from the Labour Party, Fine Gael and the Opposition in general. The Labour Party had and continues to have serious concerns about NAMA as an institution. I do not wish to rehash them but the main concern pertains to the level of risk taken on by the taxpayer. However, the Labour Party also expressed concerns during the debates in the Seanad and Dáil on the secretive culture, the lack of transparency and so on. It tabled amendments aimed at giving protection to whistleblowers in a similar style to this

amendment. I welcome the amendment to the amendment, given that it will extend whistleblower protection to employees of NAMA group entities, as well as to those of NAMA itself. However, the Labour Party retains serious concerns about the running of NAMA. They pertain to both its basic premise and the lack of transparency regarding various aspects of NAMA such as the valuation panels, in particular. However, in so far as the amendment gives protection to whistleblowers, it is to be welcomed.

Senator Dan Boyle: I also welcome the acceptance of this amendment. Members find themselves using an unusual procedure to amend an amendment to a Bill that went passed all Stages in both Houses. However, it is a sign of the seriousness the Government attaches to ensuring the Bill is as complete and acceptable as it can be. I hear what the Opposition Senators say about the number of amendments accepted.

Several dozen Government amendments incorporate ideas expressed by the Opposition in the ongoing debate since NAMA was first mooted and the publication of the draft consultation Bill in July. The completed Bill is very different from that draft. I have concerns, as does everyone, about whether this will work but I have more confidence than some that it can work. We need to get away from some of the trite phrases about whether the taxpayer is being unnecessarily exposed. These resources depend on the country's working and we all have an interest in ensuring that happens.

Senator Eugene Regan: We welcome the fact that the Government has accepted this Fine Gael amendment. A Bill which puts €54 billion of taxpayers' money at risk should not be guillotined and that this type of amendment can emerge in a short debate before the guillotine in the Lower House today shows the pitfalls of rushing legislation and not allowing a full debate on each and every provision. The conflicts of interest and whistleblower provisions in the Bill are very important. This is the type of issue that got us into trouble in the first instance.

The entire project, however, depends on EU approval. The European Commission will pick up any Opposition amendments that the Government has not accepted when it puts its slide rule over the project.

Senator David Norris: I am surprised that we are back here. It may indicate that careful scrutiny of this legislation is important. I have only just seen the amendments but I understand they are intended to extend the protection of the whistleblower section to personnel under the NAMA umbrella who were not previously covered. That is very important.

I had not realised that this was a Fine Gael suggestion. It indicates that the Government can work well when it does so in a co-operative fashion. I hope there will be more of that.

I reiterate that I wish the impact of this Bill to be positive. I have certain doubts and reservations and for that reason voted against it last night. It is important that it does succeed. I am worried because I have just received a communication from a senior adviser whom I have mentioned before, Mr. Matthews, who has conducted a rigorous critique. He is concerned and I hope that on this occasion his conclusions are not fully accurate.

In the same way that the Government has listened to the advice of Fine Gael on this amendment and taken it on board, I hope it will be amenable to ideas in the form of a ruthlessly intellectually-based critique. I do not mean something destructively critical. We discussed the uses, beauties and inelegancies of language last night and I know the Minister of State here present is sensitive to nuance and knows that when I say critical I mean it in the sense of a critique that will be valuable. I hope the views of people like Peter Mathews will be taken into account. I have no difficulty in supporting this amendments.

[Senator David Norris.]

I am rather glad to have been allowed to speak on it because the Minister of State will recall occasions when we dealt with some very antique and obscure Bills. There was a kind of antiquarian delight in that. I have been in this House for 22 years and have never experienced this particular manoeuvre before. It is like a boomerang effect. The Bill bounces from one House to the other, like a shuttlecock, to mix the sporting metaphors. I am glad to have been able to add to my parliamentary repertoire or CV this rather peculiar but interesting precedent.

Senator Larry Butler: I want to correct Senator Regan who said that the Bill was guillotined.

Senator Eugene Regan: The Senator can never resist doing this.

Senator Larry Butler: It was not guillotined in this House.

Senator Eugene Regan: I never said it was.

Senator Frances Fitzgerald: It was in the Dáil.

Senator Larry Butler: We had a proper and high quality debate.

Senator Eugene Regan: On a point of order, I was speaking about the Lower House.

Senator Larry Butler: That is not a point of order.

An Cathaoirleach: It is a point of order.

Senator Eugene Regan: It is for the Cathaoirleach to decide what is a point of order.

An Cathaoirleach: As I heard Senator Regan he mentioned the other House.

Senator Larry Butler: I just wanted to correct the Senator.

Senator Frances Fitzgerald: That is not a correction.

Senator Larry Butler: We had a high quality debate, thanks to all the parties who contributed amendments. I support the amendment to the Bill because it strengthens it. It proves that the Government will accept a good proposal from the other side of the House.

Senator Diarmuid Wilson: That is rare enough.

Senator Eugene Regan: It is a correction. Let us be fair.

Senator Larry Butler: It is important we work as closely as possible together to get the best decision when a major Bill such as this goes through the House.

I disagree with the Fine Gael Leader when she says this is a risky Bill. There is a certain amount of risk in everything. We will take a risk when we walk out tomorrow morning and so forth.

An Cathaoirleach: The Senator should speak to the amendments, not to the total Bill.

Senator Larry Butler: This is a business approach to getting our economy back. I do not want to move too far away from——

An Cathaoirleach: We are on amendments and must stick to those before us.

Senator Larry Butler: The leader of the Fine Gael group broadened the scope of what she was saying so there is correction needed there.

An Cathaoirleach: No. As I read it here——

Senator Eugene Regan: She made good points.

Senator Larry Butler: We accept this as a good amendment to the Bill and it protects the people who work within NAMA and ensures there is proper accountability there.

Senator Donie Cassidy: I am glad the point was clarified about there being no guillotine in the Seanad. I join Senator Norris in expressing the view that I hope the Department considered Peter Mathews' advice. I would like to think we as parliamentarians appreciate it when people with professional expertise give advice voluntarily. I hope the Minister of State can assure us the Department took into account and teased out all the views it received. Mr. Mathews rang me five minutes before we came back into the House this evening. That was the first time I heard the views he strongly expressed and I hope the Minister and the Department have researched what he has said.

Deputy Martin Mansergh: I thank Senators for their co-operation in agreeing these amendments. Senator Norris has an extensive parliamentary repertoire of his own but there is nothing wrong, in the interests of good legislation, in using whatever procedure the rules and the Constitution allow, even if this procedure is very rare.

Senator David Norris: I absolutely agree.

Deputy Martin Mansergh: I endorse what Senator Butler said about the Bill not being guillotined in this House. I also agree there was a high standard of debate in the Seanad. This was reinforced for me this morning when I was listening to the Order of Business in the other House. The danger of open-ended debate is that it encourages Members, Ministers included I hasten to add, to divert from the main subject. It does, however, impose a certain degree of self-discipline and this was observed in this House.

I do not wish to name individuals outside of the House but a certain name was mentioned here. I did meet the said gentleman in my office some time in the past couple of weeks. He put his points to me. In the end we cannot have what the former Taoiseach, Albert Reynolds, once called the paralysis of analysis. One can have endless intellectual debate about this, that and the other but none of us can tie down the future beyond a certain point. Both the Executive and Legislature have to take decisions without being able to guarantee fully everything that is going to happen as a result of that legislation for all future time. Risks do have to be taken but they should be well-considered and well-calculated. I appreciate there are differences of opinion as to the degree to which this legislation meets that criterion.

Apart from the President signing the Bill into law, as far as the Houses of the Oireachtas are concerned these motions bring this legislation to a conclusion. I thank the House for the part it has played in the legislation and of which it can be proud.

Question put and agreed to.

Senator Donie Cassidy: I move:

That Seanad Éireann agrees to the second amendment made by the Dáil to Seanad amendment No. 11.

Question put and agreed to.

Senator Donie Cassidy: I move:

That Seanad Éireann agrees to the third amendment made by the Dáil to Seanad amendment No. 11.

Question put and agreed to.

Senator Donie Cassidy: I move:

That Seanad Éireann agrees to the first amendment made by the Dáil to Seanad amendment No. 12.

Question put and agreed to.

Senator Donie Cassidy: I move:

That Seanad Éireann agrees to the second amendment made by the Dáil to Seanad amendment No. 12.

Question put and agreed to.

Senator Donie Cassidy: I move:

That Seanad Éireann agrees to the amendment made by the Dáil to Seanad amendment No. 13.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Donie Cassidy: At 2.30 p.m. next Tuesday.

Adjournment Matter.

Proposed Legislation.

Senator Cecilia Keaveney: I thank the Cathaoirleach for accepting this Adjournment matter. I apologise in advance to the Minister of State, Deputy Mansergh, because sometimes I know exactly what answer I want and what point to make. Unfortunately, today I will not be as straightforward in what I want to say or hear.

I am vice-president of the directorate of youth and sport in the Council of Europe which recently engaged with some of the youth of Europe. They said they are looking for a convention on youth rights. I asked them why would they need such a convention when the UN Convention on Human Rights and the Convention on the Rights of the Child, which we will celebrate the 20th anniversary of on 20 November, are in place. They claimed they seem to be falling between the gaps when it comes to definitions of a “youth”, a “minor” and an “adult” and to whom legal responsibility applies.

I raised this Adjournment matter to get a sense from the Department of Justice, Equality and Law Reform as to whether Ireland needs a convention on youth rights. Has any effort

been made to get a definition of a “child” and an “adult”? Is it possible to have a black and white definition?

All Members recently received a leaflet from the Citizens Information Board which states there is no definition of a “child” or “young person”. The age of majority is 18 years; in general one ceases to be a child on one’s 18th birthday. One is legally a minor up to 18 and legally an adult after that. A child with a disability has the same rights and obligations as other children.

However, there are various age limits for different activities. One can vote at 18 years of age but must be 21 to stand for election to the national Parliament and the European Parliament and 35 to be a candidate in a presidential election. One can get a provisional driving licence at 17 years of age, go to work at 14 but there is a different category for those who are 16 years of age.

In regard to social welfare payments, one is an adult in one’s own right at 16. However, under social welfare legislation, if a parent receives the lone parent payment, the recipient may continue to receive it until the child is 22 years of age if in full-time education. Under the grant scheme for higher education, one’s parent’s income can be means-tested until one reaches 23 years of age or 22 years of age, depending on whether one’s parent receives the lone parent payment. I could pick out further examples from that one document we received.

The other aspect I want to draw attention to, as it comes under the ambit of the Department of Justice, Equality and Law Reform, is the degree of culpability in law for those under the age of seven, 12, 14, 16 and 18. I am interested to hear the response from the Department. When I first tabled this Adjournment matter the Department was anxious to have more concrete ideas in terms of where I was coming from and I hope it has been able to interpret my request to give me an answer. I thank the Minister of State, Deputy Mansergh, for remaining in the House to give me that answer.

Minister of State at the Department of Finance (Deputy Martin Mansergh): The Minister for Justice, Equality and Law Reform welcomes the opportunity presented by the Senator’s initiative to debate this matter. It is clear that age limits or qualifications in many areas of modern day living can be very varied and perhaps we have not up to now given sufficient consideration to the rationale behind this. While these limits cover a wide range of issues across the economic, social and legal spectrum, the Minister is nevertheless of the view that the limits relate to the issues at hand rather than any specific labelling of a person as an adult or a child and are therefore well beyond the remit of any one Department. The Minister is further of the view that from this perspective, therefore, it is not clear that deciding on a uniform age limit that differentiates between children and adults would help improve the way the State regulates the range of issues that are subject to such age qualifications.

Section 2 of the Age of Majority Act 1985 reduced the age of majority from 21 to 18 and provides that a person under that age will reach majority on marriage. The “age of majority” means the age at which a person normally becomes an adult in law and represents the age at which a person acquires the capacity to exercise all the rights of an adult. Thus, it is incorrect to say there is no “single definition” as to when “a child is a child and an adult, an adult”.

The 1985 Act gave effect to many of the recommendations in the Law Reform Commission Report of April 1983 relating to the age of majority, the age for marriage and some connected subjects.

All systems of law operate, as they must, on the basis of working definitions. The Statute Book contains many statutory provisions relating to the treatment of persons under 18. In particular, the Child Care Acts 1991 and 2001 provide a comprehensive statutory framework for the care and protection of children — minors. The imposition of limitations on the legal

[Deputy Martin Mansergh.]

capacity of a minor is intended to protect the minor against his or her own inexperience and improvidence. Normally, a person who ceases to be a minor has full legal capacity and may act independently of a parent, a guardian or the court. However, while the age of majority is settled in law, other statutes make exceptional provision whereby persons under 18 can also act or be treated independently. For example: section 23 of the Non-Fatal Offences Against the Person Act — a minor over 16 can give consent to surgical, medical and dental treatment; section 31 of the Family Law Act 1995 — persons aged under 18 years must obtain the permission of the Circuit Family Court of the High Court to get married; section 11 of the Guardianship of Infants Act 1964, as amended, provides that a reference to a child can include a person who is under 18 but also a person up to the age of 23 if he or she is in full-time education; under the Hague Convention on international child abduction, which provides for recovery of children in “tug of love” cases, children are classified as those under 16 years; Article 1 of the UN Convention on the Rights of the Child, 1989, states that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. Ireland ratified the convention in 1992; and on 16 October 2006, under the Children Act 2001, the age of criminal responsibility was effectively raised from seven to 12 years. Under the new provisions, no child under the age of 12 years can be charged with an offence. An exception is made for ten and 11 year-olds charged with very serious offences such as unlawful killing, a rape offence or aggravated sexual assault. In addition, the Director of Public Prosecutions must give consent for any child under the age of 14 years to be charged.

The age of consent for sexual intercourse was established as 17 years in the Criminal Law Amendment Act 1937 and re-enacted in the Criminal Law (Sexual Offences) Act 2006. In the Second Interim Report of the Joint Committee on the Constitutional Amendment on Children, the majority of members were in favour of a reduction in that age to 16 years. The Minister expects to seek Government approval shortly to prepare legislation to give effect to the criminal law measures addressed in the report.

Life in the first decade of the 21st century is in so many ways a vastly different experience from earlier decades and the many life choices with which people are faced means that careful consideration has to be given to the age limits in which young people can participate in a wide range of activities. Regardless of this, the Minister is anxious to point out that any further consideration of the issues discussed today must take cognisance of the central role the State plays and will continue to play in the protection and interests of children and young people.

Senator Cecilia Keaveney: I thank the Minister for his response. I intend asking the line Minister to come back to the House to answer the first part of the matter, namely, whether he believes a convention for youth is needed. I appreciate the detailed answer but given the role I am in and all that is mentioned in the reply, I would like to hear the Minister’s own views on whether a specific convention on youth is required.

The House adjourned at 5.40 p.m. until 2.30 p.m. on Tuesday, 17 November 2009.