Vol. 201
No. 8

Wednesday,
10 March 2010

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Wednesday, 10 *March* 2010.

SEANAD ÉIREANN

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Dé Céadaoin, 10 *Márta* 2010.
Wednesday, 10 *March* 2010.

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

———

Paidir.

Prayer.

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Business of Seanad.

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

> The need for the Minister for Health and Children to support thalidomide survivors in their demands for acknowledgement, an apology, disclosure of documents and a health care package that will properly address their unique health care needs now and in the future.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

> The need for the Minister for Health and Children to ensure the charges being introduced on SITT rural transport services to day centres in County Donegal are reversed in line with services being operated in other parts of the country.

I have also received notice from Senator Maria Corrigan of the following matter:

> The need for the Minister for Education and Science to report on the provision of a gaelcholaiste in south Dublin at Syndeham Road, given the growing unmet second level needs of pupils completing their primary education in a number of local gaelscoileanna.

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

> Noting the announcement by the Taoiseach of the new free rail travel scheme for EU citizens over 66 years and given the fact that Donegal is one of the few counties that does not have rail services, the need for the Minister for Transport to ensure the scheme will extend to bus services in counties with no rail facilities in order that they will gain from the increased number of tourists availing of the scheme.

I regard the matters raised by Senators White, Ó Domhnaill and Corrigan as suitable for discussion on the Adjournment and they will be taken at the conclusion of business. I regret that I have had to rule out of order the matter raised by Senator Doherty, as the Minister has no official responsibility in the matter.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, statements on the Irish language, to be taken at the conclusion of the Order of Business and conclude not later than 1 p.m., on

[Senator Donie Cassidy.]

which the contributions of spokespersons shall not exceed ten minutes and those of all other Senators shall not to exceed five minutes and Senators may share time, with the Minister to be called ten minutes from the conclusion of the debate for closing comments and to take questions from leaders and spokespersons; and No. 2, Multi-Unit Development Bill 2009 — Committee Stage, to be taken at 2 p.m. and adjourn at 5 p.m., if not previously concluded. Private Members' business will be No. 37, motion No. 16 regarding the compulsory retirement from the Army of Lieutenant Dónal de Róiste, to be taken at 5 p.m. and conclude not later than 7 p.m. There will be a sos between 1 p.m. and 2 p.m.

Senator Liam Twomey: The Minister for Health and Children needs to come to the House for an urgent debate on the newspaper headlines about the failure to read 58,000 X-rays in time for the patients affected. This means that either no one gives a damn about the results of the X-rays or the X-rays were irrelevant in the first place. The Government's response has been pathetic. There is almost a malaise and apathy affecting certain Ministers regarding concerns about their Departments. We need an urgent debate on the matter. It is too serious to ignore the fact that 58,000 X-rays were not read properly and that there are still delays in reading X-rays carried out in excess of six months ago, with some taken up to four years ago.

I also seek an urgent debate on the public sector strike action. The phoney war is over but this is a serious issue. Any strike will reduce productivity in the economy. If productivity is reduced, our competitiveness will be reduced and if that happens, more people will lose their jobs in the coming months. The Government deficit is already massive and we are heading towards bankruptcy. I ask the Leader to facilitate a debate on the issue as a matter of urgency. Public sector workers have taken a disproportionate hit in the last two budgets, which is acceptable, but the Government part of the economy is the part that is in the greatest mess. We need to have an urgent debate on the likely outcome of the strike and how it will impact on citizens. Therefore, I propose an amendment to the Order of Business that we discuss the effects of the strike and how it will affect all citizens, both now and in the future. I ask that the debate be held as a matter of urgency.

Senator Joe O'Toole: We should not waste the time of the Minister for Health and Children by requesting her to come to the House to deal with the matter raised. It does not reflect malaise or apathy on her part that there were problems among medical staff, including clinicians, physicians, radiographers and others. It is time we had a debate on the difference between accountability, responsibility and related matters and on the role of a Minister.

Senator Jerry Buttimer: Hear, hear.

Senator Joe O'Toole: The role of the Minister is not to read X-rays or run hospitals but to ensure they are run as well as a Minister can so ensure and that if problems arise, they are dealt with. Blame cannot attach to the Minister in this matter. That is a disinterested independent view. What has happened is absolutely appalling. I understand what the Opposition parties have to do and do not blame them for so doing because Members on the other side of the House would do the same. Some Members have been here long enough to know that I defended the former Ministers for Agriculture, Mr. Ray MacSharry and Mr. Ivan Yates, a few months later, on the same issue. We do not do ourselves justice in carrying on like this. While we need answers, we also need to recognise and understand what it is a Minister is supposed to do. If anybody believes having a different Minister in the Department of Health and Children would change matters at hospital level, that is not the way it happens. We should consider this point.

I propose an amendment to the Order of Business to debate an issue I raised yesterday. I hope the Leader of the House will accept the amendment because I know it is completely in tune with his own thinking. I also know Members on the other side of the House, certainly of the main Government party, agree with me. My proposal relates to the non-Government motion No. 17, "That the Broadcasting Act 2009 ... Levy Order ... be and is hereby annulled". The levy — there is a huge increase in the charge — imposes an unacceptable and unfair burden on local radio stations, in particular, at a time when their advertising and other income has dropped by perhaps 50% or more and they have had to cut jobs and reduce their activities and services. It seems to be a daft time to do this. I accept that money needs to be raised and it can be done. However, it should be left to the Joint Committee on Communications, Energy and Natural Resources to go through the accounts in order that we will have cogent reasons, proper arguments and a clear understanding of why this needs to be done now, what the new costs are and how the equation to implement these decisions was arrived at. I ask the Leader for his support on this matter and to follow his heart on it. I ask that he accept my amendment that motion No. 17 be taken as the first item on the Order of Business.

Senator Alex White: Will the Leader indicate what is proposed about the reports in the newspapers today that thousands of marriages conducted at embassies in Dublin have apparently been declared invalid? Will he indicate whether the Minister for Justice, Equality and Law Reform, or the relevant Minister, will respond to this extraordinary state of affairs, whereby hundreds of people who have lived in this country, many of whom have worked here, and got married in embassies in Dublin have been told that their marriages are, in fact, invalid? If the shoe was on the other foot and this was occurring to so many Irish people living abroad, one can imagine the level of justified indignation and high dudgeon there would be both here and elsewhere. Will the Leader indicate what is proposed to rectify this extraordinary state of affairs, whereby people are finding, in some cases three, four or five years after they were married in Dublin, that their marriages are invalid? This will have very serious implications for them in terms of the recognition of their marriages in their home countries.

While on the subject of people living abroad, I ask the Leader to respond to the call made by Senator Hannigan on a number of occasions in the House, to which I understood he had agreed, for a debate on the Irish Diaspora. This seems to be an appropriate time to have such a debate which has been called for on a number of occasions but not facilitated.

As we all know, the debate on the Finance Bill is about to finish in the other House. Presumably, the Bill will be taken in this House the week after next. I know the Leader is often not anxious to indicate when matters will be discussed until it is necessary or perhaps in his mind it is appropriate to do so, but given the importance of the Bill and in view of the fact that he has told many Members on both sides of the House that they can raise economic issues in the debate, will he indicate the timescale in mind for the debate on Second, Committee and Report Stages?

Senator Terry Leyden: On Senator O'Toole point on non-Government motion No. 17 on the Broadcasting Act, the issue is not the charging of the levy but the amount involved. The matter needs to be fully reviewed. The Minister is doing this, as our parliamentary party was advised last night. It is important that the issue is dealt with because if it is not addressed, the increase will result in the closure of local radio stations, of which there is no doubt. The levy proposed is far too excessive. RTE receives approximately €200 million a year from the licence fee; local radio stations receive no such income. What is being proposed is not fair, especially in these difficult times. Therefore, the matter should be debated. I hope the Leader will arrange such a debate shortly and that the Minister will attend the House to discuss the matter.

[Senator Terry Leyden.]

The taxi drivers' strike has caused difficulty and great inconvenience. I recommend that Senators Norris and O'Toole move non-Government motion No. 2 on the Order Paper on taxi regulations in Private Members' time to enable us to discuss the issue.

Senator Jerry Buttimer: The Senator should ask his Leader about that matter.

Senator Terry Leyden: The taxi regulator is demanding that taxi owners replace their vehicles once they are nine years old, even if they are in good condition. Many cannot raise the money to replace their cars which are in excellent condition and undergo the national car test. I, therefore, ask for a moratorium on the proposal. If Members opposite will not table the motion on the matter, I ask the Leader to arrange a debate on the issue and for the Minister to be in attendance. This would be the ideal forum in which to resolve this difficult issue.

Senator Paudie Coffey: I support Senator O'Toole's amendment to the Order of Business to discuss the broadcasting levy. It is an unfair levy on independent broadcasters. The level of service local radio stations provide for communities is immeasurable; their services extend into every house and community. It is important, therefore, that the issue be debated at a meeting of Joint Committee on Communications, Energy and Natural Resources in order that its aspects can be properly teased out before a ministerial order is made.

I request the Leader to arrange a debate on restoring our competitiveness. This is an important aspect in restoring growth in the economy. Chambers Ireland has just produced its yearbook which is entitled, Restoring Competitiveness — Ireland's Priorities for 2010 and beyond. In such a debate we should engage with the unions on all sides in order that we can reflect on the need to restore competitiveness in the economy. Existing structures in State agencies and even Departments were created many decades ago for a different time. They need to be restructured to respond to modern needs to ensure the economy can grow again. We need to protect and create jobs — they should be the key priorities. Restoring our competitiveness is key in that respect. I, therefore, ask the Leader to make provision for a debate on the matter. It would benefit not only this House but the economy in general to engage in a national debate on the need to restore competitiveness.

An Cathaoirleach: Did the Senator say he was seconding Senator O'Toole's amendment?

Senator Paudie Coffey: Yes. I second Senator O'Toole's amendment to the Order of Business.

Senator Diarmuid Wilson: It is welcome that the debate on head shops will resume tomorrow afternoon. In that regard, I call on the Leader to convene a meeting of interested Members of the House so we could put together a working group to drive this issue forward in order that we could successfully pursue the issue of these head shops and, I hope, get them closed down eventually.

I propose that the Leader convene a meeting of all interested Senators and that a working group be established using the expertise available in the House, whether legal or otherwise. Perhaps this working group could be chaired by an Independent Senator such as Senator O'Toole who, more than 20 years ago, submitted a policy paper on drugs and a drugs strategy.

When we have the debate on the banks, we should look at the issue of sponsored programmes on radio and television, in particular on our national broadcaster, RTE. We should ask how appropriate it is for business programmes to be sponsored by financial institutions which are acting in an illegal manner, repossessing vehicles from clients who have fallen into

arrears through no fault of their own. Perhaps we could address that when we have the debate on banking.

Senator Shane Ross: I see why Members on this side of the House want an urgent debate on what happened in Tallaght Hospital. That is important and it would be very useful if we had one. However, what Senator O'Toole said is correct that the knee-jerk reaction of some politicians when something happens in a vast Department like the Department of Health and Children of calling for the resignation of the Minister for Health and Children is absurd. It would be sensible for her to come to the House when she returns from New Zealand to explain what happened because a very tragic situation has arisen in Tallaght Hospital.

Undoubtedly, there should be accountability but I deplore the fact that politicians — we are all guilty of it — constantly lose sight of the fact the people who matter are the patients. It is not really time for bloodlust and to call for the resignation of the Minister simply because something happened in her Department for which she is not directly responsible. It is not reasonable to expect her to police every corridor, every X-ray machine or every hospital every day. It is reasonable to expect her to come to the House to tell us what happened, why it happened and what will be done to ensure it does not happen again.

Some time ago a similarly absurd reaction came from the Opposition when the Taoiseach was found to have held €400 worth of shares in Conroy Petroleum. There were screams for his resignation because he had some vague and indirect involvement in mining in the Ministry he held at the time. We must be very careful when something happens that we do not blame a Minister for something for which he or she is quite obviously not directly responsible. We should demand that the Minister for Health and Children comes into the House if we need an explanation but it is a pity to constantly demand resignations because it devalues calls made in reasonable and justifiable circumstances.

Senator Jim Walsh: I support the expressions of concern in regard to the situation in Tallaght Hospital. I agree with what Senator Ross said. The political thing to do is to accuse the Minister of being in some way responsible. However, that undermines the whole system, in particular the accountability factor. Last night and this morning I heard people talk about another systems failure. This was not a systems failure but a case of an individual or individuals who failed to do their job properly in the public service. The time has come when those people must be held to account in the same way as those in the private sector who err grievously in the carrying out of their duties are held to account. Unless we do that, we will not have accountability in the public service.

I noted that the Committee of Public Accounts recently focused on the hospital consultants' contracts. Alarmingly, they discovered that 226 hospital consultants have failed to comply with the terms of their contracts in regard to the 80% public to 20% private work. Those in management in the HSE must ensure that aspect of the contract is enforced. This resonates with what happened in the past when contracts requiring 70% public to 30% private work ended up being 60% public to 40% private work. In some instances I suspect it was almost 50% public to 50% private work. It is scandalous, given the huge increases in salaries awarded as part of them, if these contracts are not policed in a way that patients and taxpayers get the benefit of those contracts. I have already criticised the fact those salaries are far too high. They are 50% in excess of what is paid to consultants' counterparts in England, for example. They are unsustainable.

I support the arguments put forward in regard to the Broadcasting Authority of Ireland. The Oireachtas Joint Committee on Communications, Energy and Natural Resources unanimously recommended that the levy be annulled. Another arm of Government, with a budget of €7.6

[Senator Jim Walsh.]

million, which is 46% or 47% up on last year, wants to levy the private sector. That is unsustainable. I will vote with the Government on the Order of Business but I put on record my dissatisfaction with any solution that does not tell the Broadcasting Authority of Ireland that the maximum budget it should be allowed is €5 million and that asks it to come back with an organisation chart and programme to achieve that.

Senator Phil Prendergast: I wish to appraise the Leader of the fact there is a waiting list for palliative care in County Kildare and that the providing facility is short seven staff. St. John's in Sligo has had to close beds owing to staff shortages. The moratorium is affecting the elderly, the intellectually disabled, and step-down and rehabilitation facilities, to mention a few. The Labour Court has recorded that it is concerned about the standards of care.

An internal HSE report which completed last April by a former director of nursing at St. James's Hospital shows critical shortages of staff in 53 continuing care facilities. She graded the lack of staff as immediate, urgent and necessary. The HSE and the Department of Health and Children did not provide funding for public health nurse training for 120 nurses in September, thereby cutting off the very supply needed to administer care in primary care settings.

The Minister goes on about primary and yet the moratorium is killing front-line services and is having a grave effect. I call on the Minister to come to the House to discuss this report which was commissioned on foot of an independent inquiry showing a staff deficit in all these continuing care facilities. This inaction is a further indictment of a Minister who seems totally out of touch.

Senator Nicky McFadden: I call on the Minister for Communications, Energy and Natural Resources to annul the broadcasting levy. I speak with great experience of local radio. Politicians would not be able to get their message across to many people were it not for the dedicated service of local radio stations, which in my case are Midlands 103 and Shannonside. I fear for the jobs, the advertising revenue, etc. which will be lost if there is a threat to these radio stations.

I refer to the debacle in Tallaght Hospital. I disagree with my learned colleague, Senator O'Toole. Responsibility lies fairly and squarely with the Minister. She said on "Morning Ireland" today that she does not like to meddle but surely she is meddling by putting a moratorium in place and by causing staff reductions which will destroy our health service. There will be more fatalities and more people will suffer as a result. That is the reason Tallaght Hospital employed a consultant radiologist in January. Why did it not employ a consultant radiologist when the problem existed four years ago? We would not have had this debacle.

11 o'clock

Confidence and assurance are absent. The Minister used these two words when she spoke publicly this morning and assured people the problem would be resolved. Why did she allow the problem to occur in the first instance? Why did she impose an embargo on staff recruitment? The problem is not the fault of staff in Tallaght Hospital. The blame lays squarely at the feet of the Minister.

Senator Labhrás Ó Murchú: The House has had a number of debates on how best to sustain and create employment. Over the years, the decision of major industries to close or relocate has had a devastating impact on the affected areas, frequently leaving hundreds of workers unemployed. In times of recession small industries often have the best chance of surviving because they have a loyalty base in the local community and tend to keep overheads low. As Senators are aware, these types of businesses are under serious threat. While the issue of

cashflow from banks will have to be attended to, we must lay down a marker that not every company or group which applies for a loan should be accommodated because the issue of viability also arises.

Another area we must address relates to the Revenue Commissioners. It would be helpful if an assessment were carried out of the taxes small businesses must pay on demand. Payment of tax is often the deciding factor in whether a company continues or closes down. If a company closes, the Exchequer will not receive any revenue from PAYE payments and so forth. If the assessment I propose is done, we should seriously consider introducing a moratorium of perhaps two years to give companies an opportunity to achieve stability in parallel with the stabilisation of the economy. Such a measure would keep employees in small businesses in a job and enable the Exchequer to continue to benefit from the revenue provided by these companies. To turn a blind eye to the problem and allow companies to close on the basis that they must pay their tax would lead us into a cul-de-sac. While I do not propose the introduction of a tax amnesty, I urge the Leader to discuss with the appropriate Minister the possibility of a introducing a moratorium to apply in the circumstances I have described.

Senator Ivana Bacik: Will the Leader indicate when the Immigration, Residence and Protection Bill is likely to come before the House? I am aware the legislation is still before a select committee and I understand an unprecedented number of amendments, some 700 in total, have been listed for the Bill. It is a matter of particular interest to learn when the legislation will come before the House as it is likely that we will need considerable time to deal with it.

I also ask for an urgent debate on failures in the criminal justice system in response to the revelations in the Murphy report and, in particular, in response to a disturbing report broadcast on the BBC "Newsnight" programme last night about convicted serial sex abuser, Bill Carney. Mr. Carney was described in the Murphy report as one of the most serious, serial sexual abusers investigated by the commission. He was convicted in 1983 of indecent assault and despite being defrocked in 1992, received a pay-out of £30,000 from the Catholic Church. The Murphy report indicated that his whereabouts are unknown but he is believed to be in Scotland. I understand a BBC team used Google to track him down to an address at 4 Murray Park, St. Andrews, Scotland, where for ten years——

An Cathaoirleach: The Senator should not identify persons by name in the House. Is she referring to a case in another jurisdiction?

Senator Ivana Bacik: No, it relates to crimes that are alleged to have taken place in this jurisdiction.

An Cathaoirleach: The Senator should not refer to individuals by name as court cases may well arise.

Senator Ivana Bacik: The issue was discussed on television last night and the individual in question was convicted in 1983 in this jurisdiction. The Murphy commission indicates that 32 individuals made complaints or allegations against this man. A number of these complaints were made to the Garda. Questions need to be answered as to the reason this man was allowed to run a family friendly guesthouse in Scotland for ten years. He is now in the Canary Islands where the BBC team tracked him down. He can be in contact with children and families at all times and is not subject to monitoring. It also appears that no European arrest warrant has been issued for him. Questions must be asked in general about our criminal justice system and how this issue has been allowed to arise.

[Senator Ivana Bacik.]

The Murphy report also refers to past collusion by Bishop James Kavanagh with senior gardaí which prevented this man being brought to justice and allowed many people to be abused, one of whom subsequently committed suicide.

Senator Ivor Callely: I ask the Leader to arrange, at an appropriate time, a debate on the Health Service Executive to enable the House to review the work of the organisation. While I have stated publicly that the jury is out on the HSE, having had scandal after scandal it strikes me that we have created a monster and are allowing it to roll down the tracks. The position seems to be one of keeping the monster and changing the CEO.

Senator Jerry Buttimer: The Government created the monster.

An Cathaoirleach: Please allow Senator Callely to continue without interruption.

Senator Ivor Callely: The Senator should examine the record.

Senator Jerry Buttimer: We may have voted in favour of it but the Government created the HSE.

Senator Ivor Callely: The health boards were working well and we established a regional health authority which was also working well. Senator McFadden was not correct to blame the Minister, as she knows, because the HSE is the responsible authority for the delivery of service. The HSE has failed.

Senator Liam Twomey: The HSE is not accountable to the House. As a former junior Minister, the Senator knows it was established by the Government.

Senator Ivor Callely: I am simply asking the Leader to arrange a wide-ranging debate on the HSE. I also ask him to arrange a debate on the taxi industry at a convenient time. Taxi drivers are protesting because the relevant authorities refuse to enter talks. Is it not sad that we will not talk to the taxi industry on issues that impact on the daily lives of taxi drivers and their families? I would be pleased to provide briefing documents to the Leader and anyone else who wishes to have them.

Senator Paul Coghlan: I second the amendment to the Order of Business proposed by Senator Twomey on the position of public service workers.

There is no doubt the Health Service Executive has much to answer for. As Senator Twomey and others correctly noted, Senators cannot bring the HSE before the House and must rely on statements from the Minister. Surely the Minister has overall responsibility and accountability to the Oireachtas. This is the reason the call has been directed at the Minister.

The HSE has much to explain. As Senators will be aware, a large Sacred Heart statue, a landmark in Killarney which stood for more than 70 years over the front entrance of our district hospital, has been forcibly removed. Apparently, this was done without any consultation with patients or staff. I am not aware of any other issue in recent times which caused such upset in the local community as the removal of the statue without consultation. That people who fight turf wars in their little cocoons believe they can decide what is best for the rest of the community is disgraceful and the HSE must be made accountable for this matter.

On a wider issue, the events which have occurred in Tallaght Hospital are a disgrace. The House must rely on the Minister for information but the HSE has much to explain. I would like to hear the Leader's views on the matter.

Senator David Norris: I had agreed to second Senator O'Toole's motion but I have been positively anticipated by Senator Coffey. Notwithstanding that, I will make a few points on the issue. The decision in committee was taken unanimously and on a cross-party basis. This is one of the few instances in which the House can have an impact. The Seanad, acting alone, can effect the withdrawal of the proposal. By voting it down, the Government side is helping to create what has been described as a dysfunctional democracy. I ask the Leader, as a matter of grave urgency, to take up with the Data Protection Commissioner the fact the United States has introduced a new digital millennium copyright Act. Under this YouTube offers an automated system whereby a third party can post a notice requesting another party's site to be removed. In order to negate this, the targeted person must supply his or her personal details to the third party, who will often use a fake name. This facility has been used already to stalk young women. In the United Kingdom it has been used to target a man, libel him criminally, label him a paedophile and subject him to attack. It is only a matter of time before a tragedy occurs and the issue must be examined.

Last week Senator Hannigan paid a generous tribute to Michael Foot, the great leader of the British Labour Party. However, one aspect of the man that has not really been put forward to the degree it should is his remarkable connection with Ireland. In 1980, Victor Griffin, then Dean of St. Patrick's Cathedral, invited him to deliver the first Swift lecture. Michael Foot was a great authority on Swift and he spoke unscripted — I was there. He gave the most electrifying and marvellous address on Swift, the challenge the writer posed to church, state and politicians, his horror of war and cruelty and conquests and crimes committed in the name of Christ or patriotism. He spoke of how Swift prophesied that if the new money class — the bankers — should rule the community, there would be a danger of unrestricted capitalism, especially to the poor——

An Cathaoirleach: Senator, please.

Senator David Norris: Today that is more relevant than ever. I wish to emphasise this remarkable connection of the great Michael Foot with the even greater spirit of Jonathan Swift.

Senator Jerry Buttimer: Given that the Joint Committee on Communications, Energy and Natural Resources unanimously approved a motion on the broadcasting levy, I ask the Leader, in the interest of jobs and communications policy, to accept Senator O'Toole's motion allowing it to be passed rather than divide the House, as Senator Norris rightly remarked. That would give power to all of us in this House.

Some 54,000 X-rays were not read. It is not the Minister's duty to read all those X-rays. The story of Tallaght Hospital is about patients who are people, as Senator Ross rightly noted. It is about what happens when there is no accountability and responsibility. There is a fault line in Irish life today, created in the main by the Fianna Fáil Party. There is neither accountability nor responsibility. When will we see the Government accepting responsibility? It is sickening to listen to people talking about the HSE. The HSE was created and is fed by Government. It was created as a buffer zone, with bureaucrats taking the blame instead of having political responsibility. When will this stop?

We are talking about people. If one listens to Rebecca O'Malley or reads her comments in the newspapers this morning, one will see that the core of what she is saying is that certain people are looking after others. There is a bonus culture in this country, again created by Fianna Fáil, which has allowed for the passing of the buck. When will we see an end to the Fianna Fáil operation of allowing for no responsibility or accountability? When will we see change?

When will we have a debate——

An Cathaoirleach: The Senator's time is up.

Senator Jerry Buttimer: We need to have a debate on accountability and responsibility in this House.

Senator Dominic Hannigan: I welcome the publication, tomorrow, of the Government's innovation taskforce report and have seen reports of what it will contain. One recommendation is that we improve our broadband capacity which still lags behind international averages. The report also discusses mathematics and how we can encourage more people to study the subject. One suggested proposal is that we increase the number of CAO points students get for mathematics. I would welcome that. It fits in with the report published by Engineers Ireland last month on mathematics and science. One of that report's conclusions was that currently twice as many people study geography as study mathematics but it is through mathematics and science we will dig our way out of this recession.

The Engineers Ireland report suggested 18 different proposals for increasing the number of people studying mathematics. It looked at items such as tax breaks for teachers and better training. One interesting proposal was to ban calculators at primary school level in order to increase numeracy. If we are to get our way out of this recession it will be by encouraging people to study mathematics and science and, therefore, I would welcome a debate on this matter and encourage the Leader to arrange one in conjunction with a debate on the innovation taskforce report.

Senator Geraldine Feeney: I can understand the anger in the Chamber this morning concerning the HSE and what has happened at Tallaght Hospital. The HSE is under the microscope today; yesterday it was the banks or some other party, and it was somebody else last week. I listened to Professor Conlon on "Morning Ireland"——

An Cathaoirleach: There must be a question to the Leader on the Order of Business.

Senator Geraldine Feeney: I have a question for the Leader. I listened to Professor Conlon and was very impressed by him. I believe we have a great man heading up Tallaght Hospital, which is a great hospital. He discovered the problem within a couple of days of taking up his appointment. He was medical director prior to taking up his post as chief executive officer and he put the ball in motion. The guidelines that were brought in after what happened in Portlaoise Hospital were put in place immediately in Tallaght. Some 3,000 to 4,000 X-rays are being looked at every week in Tallaght Hospital and the process will be finished by May, only two months away. This morning the Health Information and Quality Authority, HIQA, accepted that the process which is in place now is perfectly acceptable. However, I ask the Leader for a debate on the good things that are happening in the Department of Health and Children and the HSE, such as the introduction of primary care and specialist centres, the setting up of HIQA and the fair deal policy. We have had individual debates on all those matters.

Senator Buttimer said that no X-rays were read. X-rays were read. They might not have been read by a radiologist but were read by very experienced consultants who were dealing with the individual patients.

Senator Maurice Cummins: That is not the same thing.

Senator Nicky McFadden: That is what happened in Portlaoise.

Senator Geraldine Feeney: The Opposition comes into the Chamber with half-baked ideas.

Senator Maurice Cummins: Is that the standard to which we are aspiring?

Senator Geraldine Feeney: They come in with half-baked ideas. I listened to this last night with regard to the Dog Breeding Establishments Bill.

An Cathaoirleach: Time now, Senator.

Senator Maurice Cummins: That is not good enough.

Senator Geraldine Feeney: The Senators opposite will burn themselves out if they keep jumping up and down like clowns. Do they know what will happen to them?

An Cathaoirleach: Senator, please. I call Senator Healy Eames.

Senator Maurice Cummins: That is not good enough.

Senator Geraldine Feeney: The big prize will be snatched from under their noses.

An Cathaoirleach: Senator, please.

Senator Geraldine Feeney: In two years' time they will not be able for it.

Senator Maurice Cummins: That is defending the indefensible. Again.

Senator Fidelma Healy Eames: Defending that field of action for that reason.

Senator Liam Twomey: It is nice to see a Senator on the other side coming alive.

Senator Maurice Cummins: It is defending the indefensible.

An Cathaoirleach: No interruptions, please.

Senator Fidelma Healy Eames: The X-ray scandal in Tallaght Hospital shows how prevalent medical error is in this country. We have seen this before, in Ennis General Hospital in autumn 2008 and in Drogheda and Navan hospitals.

An Cathaoirleach: A question to the Leader.

Senator Fidelma Healy Eames: I am coming to a question. I refer to Navan hospital in November 2008, to the Midland Regional Hospital in November 2007.

An Cathaoirleach: Senator, there must be a question to the Leader.

Senator Fidelma Healy Eames: With respect, I am coming to my question.

An Cathaoirleach: Senator, I ask you to resume your seat and respect the Chair.

Senator Fidelma Healy Eames: My question to the Leader——

An Cathaoirleach: It is time for questions to the Leader.

Senator Fidelma Healy Eames: With respect, I am just on my feet. My question to the Leader is as follows——

An Cathaoirleach: Senator, you will not run this debate. I am in the Chair while I am here and I ask you to respect the Chair, whoever may sit in it.

Senator Fidelma Healy Eames: I respect the Cathaoirleach, totally. My question is as follows.

An Cathaoirleach: Questions to the Leader, now.

Senator Fidelma Healy Eames: Only the Minister for Health and Children is responsible to this House, not the HSE. Only the Minister is accountable to the people. Will the Leader ask the Minister to reassure patients and the people that measures are in place to prevent this happening again? We thought we had this reassurance before. Now we see this incredible medical error. It took a person's death for the error to be spotted. It is just not right.

Equally, I want to ask the Taoiseach and the Minister for Education and Science to engage quickly with the teachers' unions which are now threatening half day and full day closures. Our children cannot learn in a stop-go system. Equally, teachers should not be made pay for all the economic woes of this country. I implore the Minister for Education and Science to engage in order to prevent the unions from creating such deadlock and bringing the entire system to a halt. The same thing is happening with regard to the hospital strikes——

Senator Geraldine Feeney: The poor children.

Senator Fidelma Healy Eames: ——and the SIPTU action next week. There is a responsibility on the Taoiseach——

Senator Geraldine Feeney: And on the teachers.

Senator Fidelma Healy Eames: Teachers were ready to deal——

Senator Geraldine Feeney: Think of their students.

An Cathaoirleach: No interruptions.

Senator Rónán Mullen: I listened with great interest to Senator Feeney and I must say I share some of her concerns about the way in which debates take place. It would be great if we could get away from the polarised debate where people are either speaking out against serious problems, for example, that arise in the HSE, without also talking about the good things that are happening. The same onus is on the Government side not to be constantly in the defensive mode but to recognise there are problems and that they need to be addressed. I was thinking in a similar vein in the context of the church when reading the report in today's *The Irish Times* on the excellent work being done by the National Board for Safeguarding Children and its head Ian Elliott. It would be nice if, while being justly critical of all the wrong that has taken place and all the failures that continue to happen, people would also recognise the excellent progress that has been made in regard to safeguarding children. There is a culture of excellence on board given the work of Mr. Elliott and the National Board for Safeguarding Children. It would be good if these debates were not reduced to polarised experiences between people who have different agendas and who are using the issues of the day to pursue those agendas.

I wish to raise a matter that I raised briefly yesterday. In light of the interesting and critical comments made by the Ombudsman, Emily O'Reilly, about the political system, is it not time we had a debate in the House about how the political system is working? A few months ago we had a very intense debate about proposals to abolish the Seanad. What have we done since then to prove our utility to the people? We should have serious debates about the future of this country and about how the political process is working. That is the kind of reflective debate that would do this House a great credit. I ask the Leader to name a date for such a debate on the operation of our political system and, indeed, about the direction which our Republic is taking.

An Cathaoirleach: I call Senator Hanafin.

Senator Rónán Mullen: I would welcome an early date for that debate. Around St. Patrick's Day is normally a time of the year when we take a reflective approach.

An Cathaoirleach: The point is made.

Senator John Hanafin: I ask the Leader for a debate on the HSE and, in particular, to focus on the possibility of reintroducing the health boards. At present the people feel they are dealing with a monolithic organisation and perhaps it is time to look again at the real value of the health boards with which the people felt a real connection. I am conscious that at that time councillors from all political parties served on these boards for utility. As a person who has qualifications in finance, marketing, humanities and law I realise how little I know in many different areas but the value of the person on the group who can reassure people about their local or regional hospital cannot be overstated. I ask the Leader to recommend strongly that the Minister come into the House with a view to speaking about health boards and having local representatives back on those health boards with the HSE having an over-arching control.

Senator Frances Fitzgerald: If accountability was working properly, a Minister from the Department of Health and Children would be in here today outlining what has happened in Tallaght Hospital and how 23,000 patients who are awaiting an X-ray will be dealt with because that is the most important issue. The anxiety being experienced by those patients should be dealt with and resources put in place. I ask the Leader to ensure that one of the five Ministers from the Department of Health and Children comes into the House today and gives us an update.

There has to be accountability and questions arise. The CEO said this morning that the Minister was informed in December. She said she really only got the full picture yesterday. We need to hear why there is this discrepancy in the two stories. That is very important. If this democracy is to mean anything, there must be accountability. That is not to say the Minister is responsible for what has happened but she is accountable.

Senators: Hear, hear.

Senator Frances Fitzgerald: Why do we have a Department of Health and Children if the Minister and the Ministers in it are not accountable in this sort of situation. We must have accountability and we should have it in this House today in relation to this issue. I ask the Leader to bring in a Minister from the Department. There are five Ministers in that Department.

Senators: Hear, hear.

Senator Frances Fitzgerald: What are they doing and where is the accountability?

Senator Geraldine Feeney: Bring in——

Senator Frances Fitzgerald: Senator Buttimer is quite right. This is about accountability and responsibility. Let us make this House work. Let us have people in here when they are needed on the day they are needed.

Senators: Hear, hear.

Senator Frances Fitzgerald: We also obviously need an investigation——

Senator Geraldine Feeney: Fine Gael——

Senator Frances Fitzgerald: ——into why this has happened.

An Cathaoirleach: No interruptions.

Senator Nicky McFadden: It is a very important issue.

Senator Geraldine Feeney: I have acknowledged that.

Senator Frances Fitzgerald: May I just say——

An Cathaoirleach: The Senator has made the point.

Senator Frances Fitzgerald: If this can happen in one of our most modern hospitals——

Senator Geraldine Feeney: A political football.

Senator Frances Fitzgerald: ——we need an investigation into why.

Senator Michael McCarthy: Given the Joint Committee on Communications, Energy and Natural Resources unanimously agreed last week that the Minister should annul the statutory instrument that will result in the imposition of a levy on independent radio stations that will inevitably cost jobs, particularly in rural Ireland, will the Leader agree to a Labour Party proposal to request the Minister to annul the statutory instrument and will he allow his members in this House, some of whom spoke in favour of Senator O'Toole's motion, a free hand in the vote that is imminent? If this House is to mean anything and if there is any element of democracy, particularly from the ruling party, surely he will allow that free hand so this House can express its faith in independent radio stations.

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

Senator Donie Cassidy: Senators Twomey, O'Toole, Alex White, Ross, Jim Walsh, McFadden, Callely, Coghlan, Feeney, Buttimer, Healy-Eames, Mullen, Hanafin and Fitzgerald all expressed their strong views in regard to the HSE and the unfortunate people who attended Tallaght Hospital. There were 54,000 X-rays as mentioned by colleagues. It is an unacceptable and appalling situation that once again human failure has brought this about and whoever is responsible should be made accountable. As has been mentioned by colleagues a serious and urgent debate is also needed on the broader picture of the working of the HSE. When the HSE was set up, perhaps it was correct that politicians took a step back. As Senator Hanafin has said, and as Senator Fitzgerald pointed out very strongly in regard to accountability, public representatives do not feel the HSE is not accountable to the political process. This is a huge failing. When we want information and want to be in the decision-making process this is a complete snub on behalf of the HSE towards every individual politician no matter what political party they represent in both Houses. We have a duty to the taxpayer and to patients, who are the most important, to see whether the HSE should continue in its present form. Certainly the public representatives of the Dáil and Seanad are of the view that the HSE is a law unto itself. It makes the decisions and whether those decisions are good for constituents we are not being consulted. Given the annual cost of €15 billion or €16 billion, which is treble the allocation in 1997, we have a duty to review the entire HSE in general. I will allow an entire day's debate on this issue and, if need be, a second full day on the operation of the HSE. We heard the Minister speak on radio this morning and we all know she is out of the country on her way to New Zealand. The Minister, Deputy Mary Harney, is fully supportive of the Seanad and any time I have requested her to attend she has always been forthcoming in respect of her attendance and has given the most minute detail and information. I agree with colleagues that patients

are of the utmost importance in Tallaght Hospital. It is a very good hospital which is employing 3,600 people to administer a service. Human error has caused this difficulty and it is unacceptable. I agree with colleagues on all sides of the House in this regard.

Senator Nicky McFadden: It is a lack of staff.

Senator Donie Cassidy: On the Minister's return, I will arrange for a debate as long as colleagues wish, with the Minister present, on the up-to-date situation with regard to Tallaght Hospital.

An urgent debate on the Government's up-to-date policy on the public sector was called for. I have no difficulty in having time left aside for this, but I hope the Taoiseach and the social partners get around the table in the next few weeks and start negotiating where we are going to meet the challenge faced by Ireland at present. I know the very many decent people in the trade union movement want to play a part, but they do not know the direction and they need to be reassured. As colleagues said in the House yesterday, we would like to see the Taoiseach sitting down with the social partners and getting back to negotiations. To give everyone time to breathe, all parties should step back from any strike or industrial action for one month to allow for further negotiations. Ultimately, everything will need to be negotiated. In the interests of our country and everyone concerned, whether they are patients in hospital or students in schools, everything that can be done must be done. Ultimately, with the Taoiseach and Government representatives and the social partners around the table, an agreement can be found.

In 1987 things were just as bad, if not worse, because we had four and a half to five years of the same situation as that in which we find ourselves at present. We have two years behind us now. We have a large amount of experience. Let us build on Ireland's success story over the past 20 years and look forward to working out an arrangement together on all sides in the national interest.

Senator Fidelma Healy Eames: Good.

Senator Donie Cassidy: Senators O'Toole, Leyden, Coffey, Walsh, McFadden, Norris, Buttimer and McCarthy expressed their serious concerns about the broadcasting levy order and moved an amendment to the Order of Business. As a result of the collapse in advertising, revenues to radio stations, and probably also to the national broadcaster, are down by 30%. This is the difficulty that is now being experienced and that must be addressed. As you know, a Chathaoirligh, the Minister is acutely aware of this problem and is actively working to find a solution, not just in the short term but also in the form of sustainable funding for the independent broadcasting sector into the future. We all welcome the fact that the Minister is giving this serious consideration.

Senator Joe O'Toole: Serious?

Senator Donie Cassidy: The next step is that the Broadcasting Authority of Ireland must reduce its budget; the chief executive officer is to appear before the Oireachtas Joint Committee on Communications, Energy and Natural Resources before the end of this month with his proposed budget. The Minister is working on the issue of sustainable funding and will come back to the joint committee with answers before the end of March.

I spoke to the Minister about this last Monday and I am fully supportive of the thrust of what colleagues are saying in the House. We support local radio to the hilt.

Senator David Norris: The Leader should support the amendment, then.

Senator Jerry Buttimer: Show us the proof; support the amendment.

Senator Donie Cassidy: It was one of the planks——

An Cathaoirleach: Members, please.

Senator Donie Cassidy: I remind colleagues that this is the Upper House.

An Cathaoirleach: The Leader to reply without interruption.

Senator Maurice Cummins: The Government Senators know the colour of their money.

Senator Donie Cassidy: This is the Upper House; it is not a council chamber.

Senator Paudie Coffey: This is an opportunity.

Senator Jerry Buttimer: A great opportunity.

Senator Donie Cassidy: I remind colleagues to refrain from interrupting. I am explaining and giving the details of what the Minister is contemplating.

Senator Jerry Buttimer: It is only waffling.

Senator Donie Cassidy: I was one of those who stood to enter public life and be a Member of the Oireachtas on the basis of legalising local radio. The success of local radio is represented in the strength of our communities, and we are all in favour of it.

Senator Paudie Coffey: This is a great opportunity.

Senator Nicky McFadden: The Leader should support the amendment.

Senator Jerry Buttimer: Because of the Leader's position and influence, he should show leadership.

Senator Donie Cassidy: I draw the attention of the House——

An Cathaoirleach: Members, please.

Senator Paudie Coffey: This is an opportunity to work together to help local radio.

Senator Donie Cassidy: ——to the fact that the order itself sets out how to calculate the levy which is applied to the BAI budget for the relevant year and applied on a *pro rata* basis to each broadcaster's net turnover. Anyone considering it realistically and from a business point of view can see that the downturn is taken into account.

Senator Joe O'Toole: It is neither fair nor reasonable.

Senator Donie Cassidy: Senator Alex White mentioned the fact that hundreds of marriages conducted at embassies in Dublin have been found to be invalid. I will pass on his serious concerns to the Minister immediately after the Order of Business. These couples find themselves in difficult circumstances.

Senator Rónán Mullen: An inadvertent breach of the sixth commandment.

Senator Donie Cassidy: With regard to the Irish diaspora, I have already given a commitment to the House to have a debate on this as soon as possible.

Senator Alex White also mentioned the Finance Bill, for which we will have Second Stage on Wednesday, 24 March. On Thursday, 25 March we will have Committee Stage, and any remaining Stages can be taken on the Friday if that is what the party leaders request of me. I propose that spokespersons will speak for 20 minutes and all other colleagues will have 15 minutes to make their contributions. If this is not enough, we will discuss it at the leaders' meeting next Tuesday. I am flexible in this regard.

Senators Leyden and Callely called for a full debate on taxis. I have no difficulty in having time left aside for this. Senator Coffey also asked for a lengthy debate on competitiveness.

I have already said this should be taken when the Minister for Finance is present for the Finance Bill and I hope this can be done. Almost all of our business up to the Easter recess consists of legislation.

Senator Wilson made a proposal about head shops which I will discuss with the leaders at our meeting next Tuesday. The proposal is an innovative one and I have no difficulty in agreeing to it in principle. I also have no objection to the proposal that the working group be chaired by Senator O'Toole.

Senator Wilson also mentioned the sponsorship of programmes on the national broadcaster, RTE, by banking organisations which are out repossessing property and other items. This is something that can be considered, perhaps by the Joint Committee on Communications, Energy and Natural Resources.

Senator Walsh mentioned the fact that 226 consultants have been found not to be working to the terms of their contracts. This is a serious problem. I hope the Committee on Public Accounts, which has been doing extremely good work for many years and during many Administrations, will investigate this and ensure these consultants comply fully with the terms of their contracts.

Senator Prendergast spoke about many issues in the area of health. These can be discussed with the Minister in the House before the Easter recess.

Senator Ó Murchú asked how we could assist in creating employment and mentioned cash flow from the banks and the part that can be played by the Revenue Commissioners, including the introduction of a moratorium on taxes for small businesses. He spoke of bringing stability to employment and not going down a cul-de-sac, and mentioned the various taxes, including PAYE, income tax and VAT, which the Revenue Commissioners are obliged to collect. This is something we should discuss, and I hope we can have a lengthy debate after the Easter recess. Colleagues can also bring this issue to the Minister's attention when we are discussing the Finance Bill.

Senator Norris spoke about abuse of copyright. In Ireland we pride ourselves on the intellectual property rights Bill we introduced. It was one of the best in the world when approved by both Houses.

I will pass on the views of the Senator on the abuses he outlined to the House. He also outlined the remarkable connection between Michael Foot and Jonathan Swift. It is extraordinary how close they were in the context of what is happening.

Senator Bacik mentioned the Immigration, Residence and Protection Bill. If there are 700 amendments to be considered in the Dáil, it will be a considerable period before it comes to this House. However, I will make inquiries about the matter.

[Senator Donie Cassidy.]

The Senator also asked for a debate on the criminal justice system and mentioned an individual named in the Murphy report. I will pass on her views to the Minister and we can have a debate on the matter. There are many justice Bills being discussed in the House and the Minister will be present. He has always been forthcoming in that regard when Bills from his Department are before us for consideration.

Senator Hannigan spoke about the innovation task force which we can certainly debate in the House. I take the points made on the teaching of maths and science as being of the utmost importance.

Senator Mullen asked how our political system was working and said it should be reviewed. I have no difficulty in having such a debate at any time and will try to schedule it for before the summer recess.

An Cathaoirleach: Some Members are trying to be very smart in watching the time in the House. Whoever is in the Chair will watch the time; there is no need for anyone else to do so.

Senator Twomey proposed an amendment to the Order of Business: "That statements on the effects of the public sector strike be taken today." Is the amendment being pressed?

Senator Liam Twomey: Yes.

Amendment put.

The Seanad divided: Tá, 25; Níl, 29.

Tá

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.
Healy Eames, Fidelma.
McCarthy, Michael.
McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Reilly, Joe.
O'Toole, Joe.
Prendergast, Phil.
Quinn, Feargal.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Níl

Boyle, Dan.
Brady, Martin.
Callely, Ivor.
Carroll, James.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Dearey, Mark.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Leyden, Terry.
MacSharry, Marc.
McDonald, Lisa.
Mooney, Paschal.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ó Brolcháin, Niall.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
Ormonde, Ann.
Phelan, Kieran.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Tellers: Tá, Paudie Coffey and Maurice Cummins; Níl, NiallÓ and Diarmuid Wilson

Amendment declared lost.

An Cathaoirleach: Senator O'Toole also proposed an amendment to the Order of Business: "That No. 37, motion No. 17, be taken today." Is the amendment being pressed?

Senator Joe O'Toole: Yes. If the three courageous Members on the Government benches change sides, we will be able to have the debate.

Senators: Hear, hear.

(Interruptions).

Senator Rónán Mullen: Perhaps Senator O'Malley will join us. She is normally very fair-minded.

Amendment put.

The Seanad divided: Tá, 25; Níl, 29.

Tá

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.
Healy Eames, Fidelma.
McCarthy, Michael.
McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O'Reilly, Joe.
O'Toole, Joe.
Prendergast, Phil.
Quinn, Feargal.
Regan, Eugene.
Ross, Shane.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Níl

Boyle, Dan.
Brady, Martin.
Callely, Ivor.
Carroll, James.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Dearey, Mark.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Leyden, Terry.
MacSharry, Marc.
McDonald, Lisa.
Mooney, Paschal.
Ó Brolcháin, Niall.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ormonde, Ann.
Phelan, Kieran.
Walsh, Jim.
White, Mary M.
Wilson, Diarmuid.

Tellers: Tá, Senators Paudie Coffey and Joe O'Toole; Níl, Senators Niall Ó Brolcháin and Diarmuid Wilson.

Amendment declared lost.

Question, "That the Order of Business be agreed to", put and declared carried.

Irish Language: Statements

Minister for Community, Rural and Gaeltacht Affairs (Deputy Éamon Ó Cuív): Gabhaim buíochas as ucht an deis seo chun labhairt ar pholasaí an Rialtais i leith na Gaeilge le linn Seachtain na Gaeilge.

Creideann an Rialtas go bhfuil tábhacht ar leith ag baint leis an nGaeilge do phobal, do shochaí, do chultúr agus do gheilleagar na hÉireann. Dá réir sin, foilsíodh ráiteas an Rialtais i leith na Gaeilge ag deireadh 2006 inar gealladh go gcuirfí Straitéis 20 Bliain don Ghaeilge i dtoll a chéile, bunaithe ar thrí chuspóir déag ar leith a chlúdaíonn nithe ar nós an Acht Teanga, cúrsaí oideachais, tacaíocht speisialta do thuismitheoirí agus don Ghaeltacht agus mar sin de. Tríd an ráiteas seo dearbhaíonn an Rialtas a tacaíocht d'fhorbairt agus do chaomhnú na Gaeilge agus na Gaeltachta.

Tá an dréacht straitéis 20 bliain don Ghaeilge fréamhaithe i ráiteas an Rialtais i leith na Gaeilge. Is éard a fheiceann muid sa dréacht straitéis ná plean gníomhartha nó "léarscáil bóthair" don Ghaeilge don fiche bliain atá romhainn. Beifear ag díriú ar an bpleanáil fad-téarmach don Ghaeilge a dteastaíonn ag an leibhéal náisiúnta le cinntiú go mbainfear amach an ollsprioc, is é sin, go mbeidh Gaeilge á labhairt go laethúil ag 250,000 duine faoi cheann fíche bliain. Chun an deis is fearr a bheith ann an ollsprioc seo a bhaint amach, ní mór díriú ar an phríomh aidhm atá ag an straitéis, sé sin, go seachadófar an Ghaeilge ó ghlúin go glúin agus go mbeadh sé seo á dhéanamh go nádúrtha sa teaghlach. Tá súil, tríd na hidirghabhálacha a bheidh sa straitéis, go dtabharfar spreagadh agus tacaíocht do thuismitheoirí a gcuid leanaí a thógáil le Gaeilge, ní amháin sa Ghaeltacht ach go mbeadh an cinneadh seo á ghlacadh níos forleithne taobh arnuigh den Ghaeltacht freisin. Ní tharlóidh gach rud thar oíche, ach caithfimid a chinntiú go ndéanfar dul chun cinn chéimiúil lá i ndiaidh lae. Tógfaidh sé obair dhian dhiongbbáilte thar thréimhse ama fada chun an fhís a fhíorú.

12 o'clock

I ndiaidh an Bhunreachta féin — a bhronnann tús áite ar an nGaeilge mar theanga náisiúnta agus mar an chéad teanga oifígiúil — is é achtú Acht na dTeangacha Oifigiúla 2003 an gníomh reachtaíochta is tábhachtaí a tharla don Ghaeilge. Is léir go bhfuil go leor rudaí tábhachtacha bainte amach i dtaobh na Gaeilge le blianta beaga anuas. Ina measc tá bunú Oifig an Choimisinéara Teanga; an t-aitheantas a tugadh don Ghaeilge mar theanga oifigiúil oibre den Aontas Eorpaigh; dul chun cinn ghluaiseacht na nGaelscoileanna ar fud na tíre; bunú agus bláthú TG4; bunaíodh Foras na Gaeilge mar chuid den Fhoras Teanga i gComhaontú Aoine an Chéasta chun an Ghaeilge a fhorbairt ar bhunús Thuaidh-Theas; bunú go leor scéimeanna beaga sa Ghaeltacht, ar nós scéim na gcampaí samhraidh agus scéim na gcúntóirí teanga; forbairt agus fás ar na coláistí Gaeilge; agus bunú Anocht FM agus Raidió Rí-Rá.

Tá sé tráthúil ag an am seo den bhliain, nuair a thugann pobail an domhain níos mó aird ar an oileán beag seo, tacaíocht an Rialtais do theagasc na Gaeilge sna hinstitúidí tríú leibhéal thar sáile a lua freisin. D'fhógair mé le gairid go bhfuil maoiniú ceadaithe agam chun cuidiú leis an Beijing Foreign Studies Universitysa Sín chun ranganna Gaeilge a chur ar fáil in lonad Léinn Éireannaigh na hollscoile sin. Tá an fhorbairt seo uile ag leathnú lorg na Gaeilge ar fud an domhain. Tá sí ag cruthú buntáistí fostaíochta freisin do phobail Ghaeltachta anseo sa mbaile mar go meallann sé daoine ón iasacht le dul ann chun Gaeilge a fhoghlaim. Tá an straitéis 20 bliain don Ghaeilge ag tógáil ar an mbunchloch seo ar fad le cur chuige cuimsitheach.

Tá mé airdeallach ag an am céanna go bhféadfadh Gaeltachtaí láidre sleamhnú uainn go hanscioptha muna dtugann muid faoi chreimeadh na Gaeilge sa Ghaeltacht a stopadh ar bhealach cuimsitheach. Tá roinnt imní léirithe ag roinnt tráchtairí gur polasaí gníomhach don chomhtheangachas atá beartaithe againn don Ghaeltacht. Ba mhaith liom an deis seo a thapú le rá nach é sin atá i gceist ar chor ar bith. Ba mhaith linn ar lámh amháin go mbeadh pobal uile

na Gaeltachta dátheangach ach go mbeadh an Ghaeilge mar phríomh theanga i dteaghlaigh, i gcóras oideachais agus i saol gnó agus sóisialta na Gaeltachta.

Ba mhaith liom é a chur ar an dtaifead arís freisin go bhfuil córas creidiúnaithe d'aistritheoirí curtha ar bun againn le tamall le cinntiú go bhfuil caighdeán inaitheanta ann ó thaobh aistritheoirí de. Bíonn daoine ag gearán ó thráth go céile faoi chostas aistriúcháin cháipéisí. Ba mhaith liom aird an Tí seo a tharraingt freisin ar na deiseanna atá ann chun úsáid a bhaint as an teicneolaíocht nua chun an Ghaeilge a fhorbairt. Tá an Rialtas ag tacú le acmhainní ar-líne, cosúil le *www.focal.ie*, *www,logainm.ie* agus *www.freagra.net* a chuidíonn le foghlaimeoirí Gaeilge agus iad siúd atá ag obair leis an nGaeilge gach lá araon. Tá go leor dul chun cinn déanta le teicneolaíocht nua mar seo freisin chun aistriúchán a dhéanamh níos saoire agus níos tapúla. Tá cuimhní aistriúcháin leictreonacha á thabhairt suas chun dáta an t-am ar fad agus cabhraíonn sé sin chun obair aistriúcháin a dhéanamh níos saoire. Oibríonn siad seo ar bhealach an-chosúil leis an gcaoi go n-oibríonn an téacs thuarthach ar ghuthán póca. Is samplaí maithe iad seo den gheilleagar cliste ag feidhmiú sa ghnáthshaoil. Ar ndóigh, osclaíonn na forbairtí seo deiseanna don tír seo amach anseo chun seirbhísí teicneolaíochta mar seo a dhíol le tíortha eile.

Ní amháin go bhfuil deiseanna nua foghlamtha agus oibre cruthaithe ag an teicneolaíocht nua don Ghaeilge, ach tá "Gaeilge nua" cruthaithe aici freisin. Tá go leor focail nua tagtha isteach sa Ghaeilge de bharr forbairtí sa teicneolaíocht nua, rud a tharraingíonn ár aird ar chaighdeán oifígiúil na Gaeilge. Is cúis mhóir áthais dom í a fhógairt don Teach inniu, le linn seachtain na Gaeilge, go mbeidh an t-athbhreithniú ar an gcaighdeán oifígiúil, bunaithe ar chinneadh Rialtais, á thosú an mhí seo chugainn. Tá sé thar am go ndéanfaí an t-athbhreithniú seo. Tá an teanga ag forbairt agus ag fás níos sciopta ná ariamh, ach is é an leagan céanna den chaighdeán, nach mór, atá i bhfeidhm inniu is a bhí nuair a céadfhoilsíodh é i 1958. Tá sé tar éis freastal ar riachtanais na teanga le os cionn 50 bliain anuas, ach aithnítear go forleathan gur cheart dúinn tabhairt faoin athbhreithniú seo i gcomhthéacs na bhforbairtí suntasacha sa tír agus ag leibhéal na hEorpa le cúpla bliain anuas. Tá mé ag caint ach go háirithe ar stádas na Gaeilge mar theanga oibre san Aontas Eorpach, Acht na dTeangacha Oifigiúla agus ar thionscadal an fhoclóra nua Béarla-Gaeilge atá á stiúrú ag Foras na Gaeilge. Tá an dá chéim seo ag cur go mór lena bhfuil á éileamh ag pobal an lae inniu ar an teanga, go háirithe agus iad ag plé leis an Stát, agus cuirfídh siad leis go leanúnach amach anseo.

Beidh boird stiúrtha ann a dhéanfaidh an t-athbhreithniú a stiúrú. Tiocfaidh ballraíocht an choiste ó réimsí éagsúla den saol — foclóireacht, oideachas, dlí, aistriúchán, téarmaíocht, meáin agus léann agus, ar ndóigh, cainteoirí dúchasacha. Is ceart dúinn smaoineamh go speisialta ar an ról stairiúil lárnach atá curtha díobh acu ag foireann rannóg an aistriúcháin i dTithe an Oireachtais maidir leis an gcaighdeán. Is féidir liom a dheimhniú go mbeidh mé ag tabhairt cuireadh speisialta, tríd an Ceann Comhairle, le go mbeidh ionadaíocht ag an rannóg ar an gcoiste seo. Is fíú smaoineamh chomh maith ar an obair mhór atá déanta ag Foras na Gaeilge, ag an Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, agus ag an Roinn Oideachais agus Eolaíochta maidir leis an teanga scríofa, agus gheobhaidh siadsan cuireadh chomh maith a bheith ar an gcoiste stiúrtha.

Pléifídh an coiste seo moltaí agus ansin eiseoidh sé a chuid moltaí chuig an bpobal a mbeidh deis acu tuairimí a nochtadh ina dtaobh. Eiseofar na moltaí chuig an gComhchoiste Oireachtais um Ghnóthaí Ealaíon, Spóirt, Turasóireachta, Pobail, Tuaithe agus Gaeltachta agus gheobhaidh baill an chomhchoiste sin tuairiscí rialta ar dhul chun cinn na hoibre. Déanfaidh an coiste stiúrtha moladh deireanach don Aire ansin, tar éis na tréimhse comhairliúcháin. Mar sin, is léir gur próiseas céimnithe tomhaiste a bheidh i gceist anseo.

Ní hamháin go mbeidh tionchar torthúil láithreach ag an bpróiseas seo ar an teanga, ach tá mise mar Aire ag iarraidh a chinntiú go mbláthfaidh an síol seo arís is arís eile thar na blianta

[Deputy Éamon Ó Cuív.]

atá romhainn. Ginfidh an t-athbhreithniú seo múnla gur féidir a úsáid le hathbhreithnithe a dhéanamh gach cúig bliana nó mar sin. Tá mé cinnte go mbeidh Seanadóirí sásta a chloisteáil go bhfuil sé i gceist agam mar Aire go mbeidh gach deis ag an bpobal a bheith rannpháirteach sa phróiseas stairiúil seo, bunaithe ar an teicneolaíocht nua-aimseartha. Fógrófar ar-líne ag tús an phróisis gur féidir le haon duine clárú do na tréimhsí comhairliúcháin a bheidh mar chuid lárnach den phróiseas athbhreithnithe. Ar an gcaoi seo, cuirfear ar an eolas iad go huathoibríoch nuair atá moltaí eisithe ag an gcoiste stiúrtha le haghaidh comhairliúcháin. Chomh maith leis sin, fógrófar na moltaí seo go poiblí de réir mar a thiocfaidh siad chun cinn. Tá sé i gceist agam go dtosóidh obair an choiste stiúrtha an mhí seo chugainn agus go dtabharfaí obair an choiste féin chun críche faoi cheann Meitheamh na bliana seo chugainn. Tá súil agam go mbeidh leagan athbhreithnithe de chaighdeán oifígiúil ar fáil le foilsiú don phobal faoi cheann Mheitheamh 2011.

Ar an gcaoi seo, tá sé mar sprioc agam go mbeidh an caighdeán leasaithe sách cruinn agus sách láidir le cothromaíocht tomhaiste a bhaint amach idir stádas na teanga a chaomhnú agus beocht na teanga a chothú. Tugaim cuireadh do na Seanadóiri agus don phobal an deis stairiúil seo a thapú i gcomhpháirt le chéile le go bhfágfaimid seoid eile don teanga agus do lucht a húsáidte thar na glúinte a thiocfaidh inár ndiaidh. Tá mé buíoch arís go Bhaill an Tí as ucht an deis a thabhairt dom an fógra seo a dhéanamh inniu sa Seanad agus go mórmhór an deis sin a thabhairt dom le linn seachtain na Gaeilge. Go raibh míle maith agaibh.

Senator Jerry Buttimer: Cuirim fáilte roimh an díospóireacht tráthúil seo agus sinn i lár seachtain na Gaeilge. Is bua mór é an deis atá againn Éire agus a cultúr a chur i láthair. Is bua fé leith í an Ghaeilge a chaithfimid a chothú. Is tábhachtach an beart é mar sin ár ndíogras i leith na Gaeilge a athnuachán. Ní foláir dúinn é seo a dhéanamh, ní hamháin toisc go n-ainmnítear í sa Bhunreacht mar chéad teanga na tíre ach toisc gur siombail láidir na hÉireannachais í leis. Is gnéithe tábhachtacha den Éireannachais iad ár gcultúr, ár n-oidhreacht agus ár dteanga. Is ag eascairt as an mbród atá againn dár dtír, a fhaigheann muid leis an mbainne cíche, a thagann chugainn caomhnú teanga ársa na Gaeilge. I very much welcome the Minister's cradle to the grave approach. It is important for young people to be immersed in Irish from an early age.

Cé gur maítear in áiteanna gur ag meath atá an Ghaeilge agus lucht a labhartha, léiríonn na figiúirí daonáirimh is déanaí gur i méad atá lucht labhartha na Gaeilge ag dul. Is féidir linn a bheith buíoch leis do ghluaiseacht na gaelscoilíochta as cuid mhaith den athbheochan seo. Tá sé tábhachtach go n-aithnítear dea-obair ár múinteoirí, a saothraíonn go dian ar son an óige agus ar son na teanga, agus tá sé tábhachtach leis go dtréaslaímid lena gcuid iarrachtaí. Caithfimid leanúint leis an tacaíocht a thugtar do mhúinteoirí sna scoileanna. Ón uair go foilsíodh curaclam 1999, tá béim an-láidir á chur ar chumarsáid le Gaeilge sna seomraí ranga. Tá tacaíocht churaclaim nach beag á thabhairt ag an tSeirbhís um Fhorbairt Ghairmiúil do Bhunscoileanna nó an Primary Professional Development Service. Ní foláir do bheathú na teanga go gcloífear leis an dea-obair seo a bhfuil difríocht an mhór á dhéanamh aici ar dhul chun cinn na Gaeilge inár scoileanna.

I am concerned that the Minister's namesake, the Minister for Education and Science, Deputy Batt O'Keeffe, through his imposition of an embargo on professional development in schools, would do a disservice to the work the Minister present has been doing in promoting the Irish language. There is a cross-party consensus on the need to improve the use of Irish but I am concerned the approach of the Minister for Education and Science is regressive in terms of primary development services, which has become a great instrument of the Irish language in bunscoileanna.

Cé go raibh an Ghaeilge in íseal bhrí tráth, tá borradh agus fás nua ag teacht uirthi. Sé sin le rá go bhfuil sé ag éirí níos faiseanta anois an Ghaeilge a labhairt, a bhuíochas san do leithéid Des Bishop agus do chláracha de chuid TG4 ar nós "Faisean Paisean". The Minister referred to the new Irish radio stations and to TG4. It is important to pay tribute to the role of TG4 and to Dublin city's Irish language radio station, both of which help to promote the Irish language. Tá sé de dhualgas ar Rialtas na hÉireann áit lárnach laethúii a chruthú don Ghaeilge, i ghnáth saol an duine.

The Minister referred to the Joint Committee on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs, of which Senator Ó Murchú and I are members. I visited the Gaeltacht recently, and will meet today with Údarás na Gaeltachta which plays an important role in the development of policy for the Irish language. In the modern world, it is incumbent to bring change to the manner in which the Irish language is used. As I stated previously, I studied Irish at honours leaving certificate level but subsequently lost some of my command of the language, which I am trying to reclaim at present. As such a person, I consider it important to bring Irish to the level of the people. While I do not wish to give an advertising plug to Meteor, it has launched a new innovative Irish voicemail service. It was launched with the gaeilgeoir, Síle Seoige, and the new messaging service allows Meteor customers to use the cúpla focal gach lá. This is to be praised and welcomed and there should be more such developments. Perhaps this can be used in schools, where many students have mobile telephones, as a way to help promulgate the use of Irish in a simple and practical way. Such a simple methodology allows people to become more comfortable with the use of Irish.

Maidir le Fine Gael, léirigh Enda Kenny, sa bhliain 2006, an fís atá aige don Ghaeilge sa fíche haonú aois agus faoi conas a mhúintear an Ghaeilge. Is furasta fís Fhine Gael a mhíniú. Ba cheart dúinn ár muintir, agus ár leanaí ach go háirithe, a mhúineadh conas cumarsáid a dhéanamh i nGaeilge. Caithfimid cur chuige na Gaeilge a athrú ó na fréamhacha aníos, sa chóras oideachais agus i measc an phobail araon. Tá dúshláin ar leith curtha os comhair comhlachtaí Gaeltachta agus tá roinnt pobail Ghaeltachta ag strácáil leo ar a ndícheall chun teacht amach as an ngéárcheim eacnamaíochta. Tá gear ghá ann go gcruthóidh an Rialtas postanna sna ceantair sin. Tá cuid mhór de mhuintir na Gaeltachta faoi bhrú. The Minister's speech referred to the importance of the Gaeltacht communities in the creation of employment. Ireland is privileged to have Gaeltacht regions which stand as proud symbols of Irishness and we must never allow the Gaeltacht to die. It is important to create and bring industry to Gaeltacht areas and I am concerned about the future role for Údarás na Gaeltachta. It is important to listen to the Gaeltacht communities which have a genuine concern regarding the development of their localities. It is important to have a vibrant and proud Gaeltacht community. That said, were the Minister to accept a cross-party approach to this view, he would secure support from this side of the House.

Is iad seo a leanas mo chuid tuairimí faoi conas forbairt a dhéanamh ar úsáid na Gaeilge; béim a chur ar an teanga labhartha ó aois an-óg; naíonraí a mhaoiniú agus a fhorbairt i gceart; agus cúrsaí i labhairt na Gaeilge a bhunú do thuismitheoirí. The development of the naíonra and the support for the Irish language among parents through the model of immersion, tumoideachais, is very important. I know from my involvement in Cumann Lúthchleas Gael, whereby my club at Baile an Easpaig has hosted a naíonra for a long time, from seeing the growth of the Gaelscoil movement and of having a sister who teaches trí Gaeilge in Gaelcholáiste Choilm, Corcaigh, that it is important to bring parents and children with us.

Maidir le aithint a thabhairt d'ionaid Ghaeilge inár mbailte agus ár gcathracha, the recognition of new Irish language centres in our towns and cities should be considered. In the city of Cork, the docklands could be an area in which such a centre could be located. It could act as a centre of excellence or a centre of usage. The Minister also made reference to the Internet.

[Senator Jerry Buttimer.]

Caithfear níos mó béime a chur ar an Ghaeilge sna meáin cumarsáide agus sna hilmheáin. Ba mhaith liom dá mbeadh an teanga a úsáid lasmuigh den churaclam féin, mar shampla, cócáireacht, spórt, corpoideachas agus na hamharcealaíona ins na bunscoileanna. For example, my nieces, Sinead and Éabha, attend Gaelscoil, at which they use arts and crafts and play sports through Irish. They even have the ability to correct my grammar when I speak as Gaeilge to them in my broken, bad Irish. Moreover, I encountered in the corridor today a group from a school in Dublin, who were enthused to learn that Members were having a debate today as Gaeilge. Even though they were in sixth class, they were disappointed that they could not be here for the debate.

Ba mhaith liom dá ndéanfaí forleathnú leanúnach ar sheirbhísí TG4 agus Radio na Gaeltachta. Ba mhaith liom freisin dá n-úsáidfaí an Ghaeilge láimh leis an bhfiontraíocht don turasóireacht. Mar fhocal scoir, mar a dúirt an tAire ina oráid, is léir go bhfuil go leor rudaí tábhachta bainte amach i dtaobh na Gaeilge le blianta beaga anuas. Mar sin féin, tá fadhbanna ann. Tá fadhbanna ag muintir na Gaeltachta maidir le dífhostáiocht de bharr cúrsaí eacnamaíochta agus maidir le Gaeilge a labhairt sna Gaeltachtaí.

In conclusion, I would have liked to have unable to speak go léir trí Gaeilge ar an díospóireacht seo. As Senator Ó Murchú knows well, I am an example of where the Irish language has a willing advocate. Tá an Seanadóir O'Reilly in aice liom agus tá an Ghaeilge go flúirseach aige freisin. It is important to use the Irish language as a means to communicate our pride in being Irish. The language constitutes a great symbol of what it means to be Irish and we should never lose that. Mar a dúirt mé, tá an díospóireacht seo tráthúil agus cuirim fáilte roimpi. Ba chóir dúinn an Ghaeilge a úsáid ní amháin le linn na díospóireachta seo i Seachtain na Gaeilge, ach le linn na bliana. Molaim an díospóireacht agus gabhaim buíochas leis an Aire as ucht a oráid.

Senator Labhrás Ó Murchú: Cuirim fáilte roimh an Aire agus oifigeach na Roinne freisin. Tá áthas orm go bhfuil an chaoi seo againn chun ráiteas a dheanamh i dtaobh na Gaeilge, go mórmhór ós rud é go bhfuil seachtain na Gaeilge ar súil i láthair na huaire. Molaim na daoine atá i mbun an fheachtais sin mar tá ag eirí go h-ana mhaith le Seachtain na Gaeilge, beagnach coícís na Gaeilge, anois. Tugaim faoi deara gur daoine óga is mó atá i mbun na oibre. Tugann sé sin dóchas dúinn.

Nuair a bunaíodh coiste an Rialtais i leith na Gaeilge agus nuair a chuaigh an Taoiseach mar chathaoirleach ar an gcoiste sin, bhí sé soiléir go raibh stádas faoi leith á thabhairt ag an Rialtas don Ghaeilge agus go raibh an Rialtas dáiríre faoi aon rud a bheadh ag teastáil nó a bheadh le déanamh maidir le cur chun chinn na Gaeilge agus aitheantas a thabhairt don Ghaeilge freisin. Mar sin, is feidir linn bheith an-dóchasach i láthair na huaire maidir le stádas na Gaeilge. Ní raibh an scéal amhlaidh dar ndóigh sna 1960í agus sna 1970í. Bhí an-chuid rudaí diúltacha le clos ag an am sin. Go minic bhí naimhdeas ann i leith na Gaeilge, rud a chuir an-díomá orainn go léir. Tá athrú iomlán ann anois maidir leis an t-atmaisféar i dtaobh na Gaeilge. Tá sin an-shoiléir sa Teach seo. Tá an-dea thoil don Ghaeilge, tacaíocht don Ghaeilge agus comhoibriú maidir leis an Ghaeilge sa Seanad. Níor chuala mé riamh focal cáinte i leith na Gaeilge sa Teach seo; a mhalairt ar fad atá ann ó ghach taobh.

Is cuimhin liom nuair a bhíomar ag lorg stádais oibre oifigiúil a bhaint amach don Ghaeilge san Aontas Eorpach gur sa Teach seo a thosnaigh cuid den obair sin, le rún comhpháirtithe a ritheadh d'aonghuth. Ghlac an Dáil leis an dea-shampla a thugamar agus tharla díreach an rud céanna sa Dáil. Bhí gach páirtí ar thaobh an rúin. Ní dóigh liom go dtarlaíonn sin ró-mhinic. Chruthaigh sé go raibh ré nua ann don Ghaeilge agus nár bhain sí le polaitíocht pháirtí ná aon rud mar sin ach gur ghlacamar gur ár dteanga féin a bhí inti. Bhí sin níos soiléire fós nuair a

ritheadh an Bille agus nuair a raibh an Acht nua againn, Acht na dTeangacha Oifigiúla. Arís, is cuimhin liomsa go raibh sin á plé ag daoine. Ní dóigh liom gur chreid mórán ag an am go dtarlódh a leithéid, ach tá sé ann anois agus tá sé á chur i bhfeidhm. Tá breis agus 600 comhlachtaí poiblí luaite ann a bheidh in ann seirbhís dhátheangach a chur ar fáil. Go dtí seo, de réir mar a thuigim, tá 100 scéimeanna curtha i bhfeidhm agus 30 á ullmhú i láthair na huaire. Tá sé soiléir go bhfuil dul chun cinn an-tapaidh déanta maidir le sin. Tá sin tábhachtach. Rud amháin é an Ghaeilge a mhúineadh sna scoileanna agus cumas Gaeilge a bheith ag daoine, ach muna mbeidh an timpeallacht féin á Ghaelú agus muna mbeidh seirbhísí ar fáil, beidh sé an-deacair an Ghaeilge a chothú agus a chaomhnú. Anois beidh daoine in ann dul isteach chuig oifig an phoist, nó an comhairle contae agus gníomhaireachtaí eile agus seirbhís a fháil trí Ghaeilge. Bhí roinnt mhaith cainte maidir le aistriúchán ar cháipéisí, ach ní raibh aon bhunús le cuid de na ráitis maidir le sin. Thug an tAire sampla den chostas a bhaineann le haistriúchán. Costas fíor-bheag atá ann dáiríre i gcomparáid le cuid de na figiúirí a bhí á fhoilsiú ag an am.

Tá cúis dóchais le feiceáil sna figiúirí ón daonáireamh deireannach freisin. Léirigh 42% de dhaoine go bhfuil cumas Gaeilge áirithe acu. Sin méid an-mhór — breis agus 1.5 milliún duine a bhfuil cumas sa Ghaeilge acu. Tá an dréacht straitéis atá againn an-chuimsitheach go deo. An sprioc atá leagtha amach inti ná go mbeidh 250,000 duine taobh istigh de 20 bliain ag úsáid na Gaeilge go rialta. Sin trí oiread níos mó ná mar a bhí léirithe ag an am sa daonáireamh deireannach. Is sprioc an-mhór í sin agus ní féidir í a bhaint amach gan plean cuimsitheach. Sin díreach atá sa straitéis. D'úsáid an tAire an téarma "léarscáil bóthair", agus sin mar ba chóir é a bheith. Ní obair shimplí í seo. Caithfimid a bheith cúramach gan an iomarca stró a chur ar dhaoine teacht isteach ar na pleananna atá sa straitéis. Caithfimid iad a mhealladh chomh maith le gach rud eile. Má tá muid chun líonras 250,000 a bhaint amach, is cinnte go gcaithfidh an plean a bheith céimnithe agus go mbeidh muid in ann é a bhaint amach céim ar chéim.

An rud is mó a chuaigh i bhfeidhm ormsa maidir leis an dréacht straitéis ná go bhfuair na grúpaí ar fad atá ag saothrú na Gaeilge agus an chultúir Ghaelaigh seans a dtuairimí a nochtadh. Mar shampla, tháinig seacht grúpaí os comhair an chomhchoiste Oireachtais lá amháin. Beimid ag leanúint ar aghaidh le sin inniu agus beidh Údarás na Gaeltachta ina measc. Chuaigh an comhchoiste go Conamara freisin agus tháinig 30 grúpaí isteach lena dtuairimí a nochtadh. Bhí beagnach gach grúpa a tháinig isteach báúil leis an straitéis agus dearfach ina taobh. Tá sin tábhachach mar muna mbíonn comhoibriú le feiscint ó ghach phairtnéir a bhaineann leis an Ghaeilge, ní bheidh an neart ann gur féidir linn a bheith againn. Tá áthas orm gur ar an mbunchloch sin atá an straitéis á thógáil.

Maidir le hÚdarás na Gaeltachta, an moladh atá sa straitéis ná gur Údarás na Gaeilge a bheidh ann amach anseo. De réir mar a thuigim, ní hionann é sin agus a rá go mbeidh aon athrú bunúsach ar an obair a bhí á dhéanamh ag an t-údarás go dtí seo ach go mbeidh dualgaisí eile air freisin. Ós rud é go bhfuil roinnt oibre le déanamh i leith sin, tuigim nach mbeidh an toghchán don t-údarás ag tarlú díreach anois. Seans go dteastaíonn ón Aire níos mó ama a thabhairt i dtreo agus go mbeidh dul chun cinn ann maidir leis an údarás idir an dá linn.

Bhí an-áthas orm an méid a bhí le rá ag an Aire maidir leis an caighdeán oifigiúil agus an coiste atá á bhunú a chlos. Tá áthas orm go mbeidh rannóg an aistriúcháin lárnach san obair seo. Ba mhaith liom an rannóg a mholadh as an obair atá déanta aici go dtí seo. Gan rannóg den tsaghas sin agus téarmaíocht ag athrú chuile lá agus téarmaíocht nua-aimseartha ag leathnú, ní bheadh ar ár gcumas gnó a dhéanamh trí Ghaeilge go proifisiúnta. Nuair a bheidh an coiste ina shuí, tá súil agam go mbeidh an obair atá déanta ag an rannóg go dtí seo, agus atá le déanamh sa todhchaí, mar chuid lárnach den obair a bheidh ar siúl ag an gcoiste.

[Senator Labhrás Ó Murchú.]

Ní bheadh sé ceart críoch a chur le ráitis ar an ábhar seo gan an cheist faoin reshuffle a lua. Tá súil mhór agam go mbeidh Aire sinsearach ann don Ghaeilge. Tá súil agam freisin go mbeidh Roinn faoi leith ann don Ghaeilge, ach ní hamháin don Ghaeilge. Molaim an Roinn iontach atá againn i láthair na huaire, ach tá cúrsaí pobail agus tuaithe i gceist chomh maith. Tá súil agam go mbeidh an Teachta Éamon Ó Cuív fós againn mar Aire, mar níl aon amhras faoi ach go bhfuil ard-mheas air ó Thuaidh agus ó Dheas, sa Ghaeltacht agus lasmuigh di. Ós rud é go bhfuil sé léirithe ag an Taoiseach agus an Rialtas go bhfuil siad go mór taobh thiar den Ghaeilge, beidh eolas acu ar an obair lárnach atá déanta ag an Aire, ach más rud é go mbeidh nithe eile á chur leis an Roinn, sin mar is fearr é.

Tá súil agam go mbeidh seans eile againn go luath leanúint ar aghaidh le ráitis mar seo mar tá an-chuid rudaí gur cóir dúinn a phlé agus staidéar a dhéanamh orthu. Nuair a bheimid ag caint leis an gCeannaire amach anseo, tá súil agam go mbeidh seans aige leanúint ar aghaidh ar an dul céanna ag tabhairt seans dúinne ráitis eile a dhéanamh.

Senator Rónán Mullen: Cuirim fáilte roimh an Aire Stáit agus tacaím go huile agus go hiomlán leis an méid atá ráite ag an Seanadóir Labhrás Ó Murchú, go háirithe lena ndúirt sé maidir le tábhacht Aire sinsireach a bheith ann don Ghaeilge agus gach rud a bhaineann leis agus le tábhacht an róil atá á imirt at an Teachta Éamon Ó Cuív, ach go háirithe. Is siombail é siúd agus is pearsantacht é a sheasann do an-chuid rudaí atá go maith agus tábhachtach laistigh de Phairtí Fhianna Fáil agus i saol poiblí na tíre.

Bhí beirt Aire i láthair ag an díospóireacht seo agus Gaeilge mhaith ag duine amháin acu ar a laghad. Tá sé rí-thábhachtach go mbeadh daoine le Gaeilge imeasc cheannairí na tíre. Más rud é go bhfaigheann an Teachta dddd céim in airde bheadh sin tuilte go mór aige. Tá a fhios agam go mbeadh sé in ann a chuid dualgais a chomhlíonadh ar bhealach chuimsitheach agus comh fada agus bhaineann sé leis an teanga nach mbeadh aon chall ansin ach an oiread

Fáiltím go mór roimh fhógra an Aire maidir leis an ath-bhreithniú i gcás an Chaighdeáin Oifigiúla. Tá géar-ghá leis seo, go háirithe i gcomhthéacs na hathraithe a luaigh an t-Aire féin. Tá sé tábhachtach freisin a rá, go bhful fadhbanna beaga sa Chaighdeán Oifigiúil mar atá sé faoi láthair. Tá rudaí in easnamh ón gCaighdeán agus rudaí go bhfuil sé amhrasach fúthu. Tá rudaí nár éirigh leis teacht ar réiteach na fadhba ariamh maidir leo. Mar shampla nuair a thagann dhá ainmfhocal le chéile agus an chéad cheann baininscneach an ndeirtear "cúis mórtais" nó "cúis mhórtais"? Tá amhras sa Chaighdeán faoi rudaí mar sin agus tá liosta mór eisceachtaí ann. I gcónaí, bíonn gá le obair leanúnach maidir le teanga agus faoi mar a athraíonn sé imeasc an phobaill. Tá na fadhbanna ársa sheanchaite sa Chaighdeán mar atá sé faoi láthair agus beidh gá le hobair ansin. Guím gach rath orthu siúd a bhéas i mbun na hoibre sin.

Dúirt an Piarsach uair amháin, "The Irish people would do anything for the Irish language except learn or speak it." Tá súil agam nach bhfuil sin fíor sa lá atá inniu ann. Tuigimid uilig go bhfuil dea-mhéin imeasc an chuid is mó de phoball na tíre maidir leis an teanga Ghaeilge ach ní hionann sin agus cur chuige a bheith ann. Tá sé fíor thábhacht go mbeadh ceannaireacht leanúnach chuimsitheach chiallmhar ar fáil ón Stát maidir leis sin.

Sa chomhthéacs sin, luafainn an straitéis 20 blian. Is íontach ann é agus an 13 mholadh atá ann. D'fhéadfaí a rá go bhfuil dhá rud in easnamh ann. Níl struchtúr ceart sa straitéis le cén chaoi a gcuirfear i bhfeidhm í. Ar leibhéal an Rialtais, mar shampla, an é Roinn an Taoisigh a bhéas i gceannas ar chur chun cinn na straitéise? Tá fíor-ghá le pleanáil agus tá sin in easnamh faoi láthair.

Tá an straitéis easnamhach chomh maith sa mhéid is nach bhfuil aon rud ráite innti faoi earcadh fóirne. Tá sé ceart go leor a rá go mbeidh seo siúd agus eile déanta maidir leis an

nGaeilge, mar shampla i gcúrsaí oideachais i gcomhthéacs choláistí samhradh agus mar sin de ach caithfimid díriú arís ar an Stát Seirbhís. Ó fuarthas réidh leis an riail go raibh Gaeilge riachtanach sa Stát Seirbhís i 1974, níl amhras ach go bhfuil teip agus meith maidir le húsáid na Gaeilge san earnáil phoiblí ó shin. Ní cóir nach mbeadh daoine in ann foirmeacha a fháil i nGaeilge nó seirbhís a fháil i nGaeilge más mian leo é. Tá an-chuid cainte faoi choirithe agus tá sin in-tuigthe, ach nuair a bhí an Ghaeilge riachtanach don earnáil phoiblí bhí daoine sa chóras a bhí in ann rudaí a dhéanamh tré Ghaeilge, foirmeacha a dhréachta agus a leagan amhach tré Ghaeilge agus mar sin de.

Nuair atá post á fhógairt san earnáil phoiblí, i mBord Soláthar Leictreachais, RTE nó sa Stát Seirbhís féin, ba cheart socrú a dhéanamh an é go mbeadh an Ghaeilge úsáideach don phost, an buntáiste a bheadh sa Ghaeilge nó an é go mbeadh an Ghaeilge riachtanach. Tá ról anseo ag an Choimisiún um Cheapachan Poiblí go gcaithfear "Gaeilge proofing" a dhéanamh. Nuair atá postanna á fhógairt san earnáil phoiblí ba cheart go mbeifear ag cur na ceiste seo. "An mbeidh an Ghaeilge riachtanach chun an job seo a dhéanamh i gceart, go háirid má tá aon idir-bheartaíocht leis an bpoball i gceist." Má tá aon duine ag deighleáil leis an bpoball ba chóir go mbeadh an Ghaeilge riachtanach dá phost. Caithfimid ful sa treo sin arís. Níl aon leisce orainn a éileamh go mbeadh an t-ard teistiméireacht nó céim sa Ghaeilge ag daoine. Bíonn riachtanais éagsúla ag baint le gach post. Cad chuige nach mbeadh an Ghaeilge lárnach imeasc na riachtanas sin.

Ba mhaith liom ceist Ollscoil Náisúnta na hÉireann, NUI, a lua. D'fhógair an tAire Oideachais agus Eolaíochta le déanaí go mbeifear ag fáil réidh leis an NUI, ach céard faoin ról atá ag an NUI i gcosaint na Gaeilge, go háirithe maidir leis an riail go mbeadh gá le Gaeilge chun freastal ar ollscoil de chuid NUI. Is é an NUI a chuir an riail sin i bhfeidhm i gcónaí, agus tá a fhios agam go bhfuil eisceachtaí ann. An bhfuil aon phlean chun an riail sin a chosaint agus a chur i bhfeidhm sa chás nach mbeadh an NUI ann. Níor chualamar aon rud ón Rialtas maidir leis sin.

Fáiltím leis an méid a léigh mé i *The Irish Times* inniu. Dúirt an t-úrlabhraí caoi, an Teachta Ring, go mbeadh aireacht iomlán don Ghaeilge dá mbeadh Fine Gael i gcumhacht, ach céard faoin méid atá ráite ag Fine Gael maidir leis an nGaeilge mar ábhar árd teistiméireachta? Má táimid dáiríre go mbeadh an Ghaeilge lárnach agus feiceálach sa tír agus go mbeadh dea-thoil ina leith caithfimid cinntiú go bhfuil an Ghaeilge riachtanach don ard teistiméireacht. Bheinn ag súil go mbeidh cúlú ag Fine Gael maidir leis an moladh polasaithe sin. Measaim go ndéanfadh sé an-damáiste don Ghaeilge dá mbeadh fáil réidh ann maidir leis an Ghaeilge a bheith riachtanach mar ábhar ard teistiméireachta.

Cuirim fáilte mhór leis an méid atá ráite ag an Aire. Cuirim fáilte chomh maith leis na háiseanna nua atá le fáil. Mar shampla, úsáidim féin *www.focal.ie* nuair a bhím ag scríobh altanna i nGaeilge. Caithfimid díriú isteach ar cheist scríbhneoireacht sa Ghaeilge. Bheadh sé an-tábhachtach go mbeadh bog earra ríomhaireachta ar fáil le go mbeadh sé éasca síní fada a aimsiú, mar shampla. Chuala mé le déanaí go bhfaigheann daoine litreacha ón Roinn Shoisialach, dddd nach mbíonn aon síne fada iontu. Sa chás go bhfuil ainm Ghaeilge ag duine úsáidtear an litir O agus apostrophe in ionad Ó le síne fada. Ní chóir go mbeadh sé amhlaidh in aon Roinn nó in aon áit san earnáil phoiblí. Tá súil agam nach bhfuil sin fíor ach sin a chuala mé.

Beimid ag iarraidh go mbeidh an Rialtas ag tabhairt cheannaireachta chaoi agus go mbeidh sé ag iarraidh go mbeadh an Ghaeilge feiceálach agus go mbeadh polasaithe leanúnacha cuimsitheacha aige le sin a chur i gcrích. An rud is tábhachtaí ná go mbeadh an Ghaeilge feiceálach ar chomharthaí bóithre agus mar sin de agus ar ard-chaighdeán.

Acting Chairman (Senator Jim Walsh): Tá deacracht againn anois. Níl ach nóiméad amháin fágtha agus tá triúr Sheanadóir ag iarraidh labhairt. An mbeadh na Seanadóirí sin sásta an t-am a roinnt agus labhairt ar feadh dhá ní trí nóiméad an duine. An bhfuil sin aontaithe? Aontaithe.

Senator Paschal Mooney: Ba mhaith liom fáilte a chur roimh an Aire Stáit. Mar is eol do mo chomhleacaithe, tá seachtain na Gaeilge ar siúl anois agus caithfidh mé cupla abairt a rá faoin bhféile. Tá féile sheachtain na Gaeilge ar siúl le blianta beaga anuas. Is í an chéiliúradh is mó d'ár dteanga agus d'ár gcultúr dúchais a ritear in Éireann gach bliain. Cuireann eagraíochtaí, comhairlí áitiúla, scoileanna, leabharlanna agus eagrais ceoil, spóirt agus cultúrtha imeachtaí ar fáil ar fud na tíre le linn seachtain na Gaeilge. The Seachtain na Gaeilge festival has built up incredible momentum in recent years, becoming the largest celebration of native language and culture held in Ireland each year. It is appropriate to congratulate all involved in organising events throughout the country.

I refer to an aspect of the debate that is often neglected, which is the status of the language in Northern Ireland. The 2001 census in the North showed that 10.4% of the people had some knowledge of Irish. The language received a degree of formal recognition in Northern Ireland from the UK Government under the Good Friday Agreement and in 2001 through its ratification in respect of the language of the European Charter for Regional or Minority Languages. The British Government has promised to create legislation encouraging the use of the language as part of the 2006 St. Andrews Agreement. As part of the new political landscape in Northern Ireland, the Irish language could become a truly cross-community and cross-Border means of bringing people together. I encourage the Minister of State to seek further ways to develop cross-Border projects where the language is prioritised and to put pressure on the UK Government to increase funding for Irish language education in the school system in the North to honour commitments given.

We are accustomed to a great deal of doom and gloom regarding the future of the language. However, there are a few causes for optimism. TG4 has offered Irish-speaking young people a forum for youth culture as Gaeilge through rock and pop and country music shows, travel shows, dating games and even an award winning soap opera. In this respect, the station has been a great success. The Government can be justifiably proud of its record in promoting the use of the official language.

I draw attention to an article in yesterday's edition of *The Irish Times* in which an Coimisinéir Teanga, Seán Ó Cuirreáin, welcomed the publication of a book reviewing case law entitled *Súil ar an Dlí (An Eye on the Law)*The book will be a resource for those who want to practise law through Irish. He also went to say:

> [I]f you leave the language out of any domain, it reduces the chances of survival. It has to be facilitated in all areas of life, and the courts are very important in that respect.

As a broadcaster, I have always tried to use cúpla focal as Gaeilge ar na cláracha a bhí mé presenting. All of us have come through the education system and I plead with broadcasters generally to use cúpla focal Gaeilge in their broadcasts. It would not be an imposition on them mentally or otherwise. They have it within them. If we could do that, it would make it more comfortable for the general population to perhaps use cúpla focal Gaeilge every day. Ultimately, we are looking at a bilingual population in the short to medium term.

Senator Alex White: Ar dtús, aontaím leis an méid a bhí le rá ag Seanadóir Mooney. Caithfimid go léir níos mó iarracht a dhéanamh chun an Ghaeilge a úsáid sa Seanad agus lasmuigh den Oireachtas. Déanann an Seanadóir Walsh, atá sa Chathaoir faoi láthair, an-iarracht a Ghaeilge líofa a úsáid. Ba chóir dúinn go léir níos mó obair den chineál sin a dhéanamh. Cuirim fáilte roimh an fógra a dhein an tAire, an Teachta Ó Cuív, le linn an méid a bhí le rá aige, maidir leis an athbhreathnú atá le déanamh ar an chaighdeán oifigiúil. Tá súil agam go n-éireóidh leis na hoifigigh an obair sin a dhéanamh. Ní saineolaí mé ar an chaighdeán ar chor

ar bith. Ar nós na Seanadóirí eile, chuaigh mé ar scoil sna 1960í agus na 1970í. Tá suim mór agam san obair atá á dhéanamh sa phróiseas seo. Tá súil agam go n-éireoidh leis.

Léigh mé an straitéis 20 bliain a luaigh an Seanadóir Mooney agus cainteoirí eile. Measaim go bhfuil go leor nithe suimiúla sa straitéis. Tá athbheochan na Gaeilge á phlé againn le blianta anuas. Luaigh an Aire na rudaí atá á dhéanamh ag an Rialtas nó atá déanta le blianta anuas. Caithfimid níos mó idéalachas a bheith againn ó thaobh athbheochan na Gaeilge de. Labhair an Aire mar gheall ar an obair agus an fhorbairt atá á dhéanamh sa Ghaeltacht.

Tá suim sa Ghaeilge ag a lán daoine nach bhfuil ina gcónaí sa Ghaeltacht. Tá sé an-tábhachtach go mbíonn daoine i mBaile Átha Cliath agus cathracha agus bailte eile ar fud na tíre ag foghlaim agus ag cleachtadh na teanga. Tá an basic work atá á dhéanamh ag na gaelscoileanna an-tábhachtach i gcomhthéacs an oideachais. Tá deis againn na gaelscoileanna agus na gaelcholáistí a fhorbairt. Ba mhaith liom tacaíocht a thabhairt don bhfeachtas atá ar siúl i ndeisceart Átha Cliath chun gaelcholáiste nua a bhunú. Tá súil agam go dtabharfaidh an Aire roinnt cabhair don bhfeachtas. B'fhéidir gur chóir do na scoileanna sin bheith mar lárionaid Ghaeilge don chomhphobal go léir, ní hamháin do na páistí ach do na tuismitheoirí agus an phobal go ginearálta freisin.

Mar a dúirt mé, caithfimid níos mó idéalachas a bheith againn sa gcomhthéacs seo. Tá a lán obair le déanamh againn. Ceapaim go bhfuil an dréacht-straitéis an-tábhachtach. Caithfimid tacaíocht a thabhairt don obair atá á dhéanamh. Tá i bhfad níos mó le déanamh.

Senator Joe O'Reilly: Tá mé buíoch go bhfuil seans ag gach éinne páirt a ghlacadh sa díospóireacht seo. Cuirim fáilte roimh an Aire. Guím ádh mór air sna seachtainí atá le teacht. Tá mé sásta páirt a ghlacadh sa díospóireacht tábhachtach seo. Is gnéithe mór d'oidhreacht agus saibhreas na tíre iad an teanga agus an cultúr atá againn sa tír seo. Is fiú í an Ghaeilge a úsáid. Tá saibhreas faoi leith i litríocht, béaloideas, ceol agus amhránaíocht na tíre. Tá dualgas ar an Teach ár dteanga agus ár gcultúr a fhorbairt. Ba chóir dúinn an Ghaeilge a labhairt sa Teach agus ar ócáidí poiblí. Tá na ranganna Gaeilge a bhíonn ar siúl san Oireachtas sár-mhaith. Tá deis ag gach Seanadóir agus Teachta páirt a ghlacadh iontu.

Tá straitéis an Rialtas don Ghaeilge foilsithe anois. Níl Fine Gael sásta béim a chur ar an nGaeilge éigeantach. Caithfimid béim a chur ar an dteanga labhartha agus grá don teanga a spreagadh. Tá sé soiléir gur theip ar na sean-pholasaithe os rud é nár tharla athbheochan forleathan go dtí seo. Tá sé an-tábhachtach tacaíocht a thabhairt do na coláistí samhaidh. Is sna coláistí sin a spreagtar grá don tír, don Ghaeilge agus don chultúr. Caithfimid na deontaisí do na mná tí agus na mic léinn a íoc ionas go mairfidh na coláistí a fheidhmíonn mar cliabhán na teanga.

Tá sé riachtanach freisin tacaíocht praiticiúil a thabhairt do na gaelscoileanna. Sa churaclam, tá gá le béim ar ceol, amhránaíocht, damhsa, an teanga labhartha agus an litríocht. Gabhaim comhghairdeas le lucht TG4. Mar a dúirt an Seanadóir Mooney, tá sár-jab déanta acu. Cabhraíonn TG4 go mór le gluaiseacht na teanga. Má tá Seanadóirí agus muintir na tíre i ndáiríre faoi athbheochan na teanga, tá dualgas orainn an teanga a labhairt sa bhaile, ag ócáidí sóisialta agus aon uair eile a fhaighimid an seans.

Ba mhaith liom focal pearsanta a rá. Is mian liom an fíor-iarracht éifeachtúil a dhéanann an Seanadóir Ó Murchú ar son ár gceol, ár amhránaíocht agus ár damhsa a mholadh. Tá mé an-dáiríre nuair a deirim go ndéanann sé an-jab ar son na Gaeilge. Tá an-mheas agam air mar dhuine agus ar a chuid oibre díograiseach ar son na teanga. Tá mé iontach sásta mo bhuíochas a ghabháil leis as ucht Fleadh Cheoil na hÉireann a thabhairt go dtí baile an Chábháin i mbliana. Táimid ag ullmhú don ócáid sin. Cuirfear an-fáilte roimh lucht na tíre sa Chábháin i mí Lúnasa seo chugainn.

[Senator Joe O'Reilly.]

Mar fhocal scoir, ba mhaith liom a rá cé gur fiú an díospóireacht seo, níl ann ach tús. Caithfimid leanúint ar aghaidh leis an obair seo agus gach iarracht a dhéanamh an Ghaeilge a labhairt anseo agus taobh amuigh den Teach. As seo amach, ba chóir dúinn cuir leis an tús atá déanta againn.

Minister of State at the Department of Agriculture, Fisheries and Food (Deputy Tony Killeen): Gabhaim míle buíochas leis an Seanadóirí go léir a labhair faoin nGaeilge. Ní gá dom cuir leis an méid a dúirt an Aire, an Teachta Ó Cuív, faoin straitéis.

Ní raibh mé anseo nuair a labhair an Seanadóir Buttimer, toisc go raibh vóta sa Dáil. Tréaslaím leis as a bheith sásta thabhairt faoin Ghaeilge a labhairt. Faoi mar is gnáth, tá an Ghaeilge i bhfad níos líofa aige ná mar a chreideann sé. Tá sé thar a bheith coitianta go mbíonn an Ghaeilge i bhfad níos fearr ag daoine ná mar a cheapann siad.

Aontaím go láidir leis an Seanadóir Ó Murchú a dúirt go raibh sé dóchasach go raibh daoine óga sásta an Ghaeilge a labhairt. Is dócha go bhfuil siad bródúil faoin teanga. Luaigh sé toradh an daonáireamh is déanaí, go bhfuil cumas na Gaeilge ag an méid sin daoine. Go minic, cuireann sé ionadh orainn nuair a chloisimid na staitisticí. Rinne an Seanadóir Mooney tagairt don daonáireamh sa Tuaisceart. Dúirt sé go bhfuil an Ghaeilge ag breis is 10% de phobal an Tuaiscirt. Ní chreidfimis é sin muna mbeadh sé curtha os ár gcomhair.

Bhí an-suim agam sa mhéid a bhí le rá ag an Seanadóir Mullen. Aontaím go láidir lena chuid focal faoin Aire, an Teachta Ó Cuív. Dúirt an Seanadóir Ó Murchú an rud ceanainn céanna. Ceapaim go n-aontaímid go léir le sin.

Dúirt chuid mhaith Seanadóirí go bhfuil sé thar a bheith tábhachtach go bhfuil daoine sásta tabhairt faoin Ghaeilge a labhairt. Ba cheart dúinn tacaíocht a thabhairt dóibh agus iad a spreagadh chun é sin a dhéanamh. Caithfidh mé a admháil nach raibh a fhios agam cheana go bhfuil *www.focal.ie* ar fáil. Dá mbeadh an t-eolas sin agam cheana féin, ba mhór an bhuntáiste dom a bheadh ann. Is dócha gur mhór an buntáiste é do dhuine ar bith a bhíonn ag iarraidh focail a aistriú ón mBéarla go dtí an Ghaeilge. Tá sé thar a bheith deacair cáipéisí a aistriú. Má éiríonn le duine na smaointe atá acu a léiriú go díreach sa Ghaeilge, nil sé ró-dheacair. Cuireann na deacrachtaí seo isteach orainn go léir nuair atáimid ag déanamh aistriúcháin. Aontaím leis an méid a dúirt an Seanadóir Mullen faoi bogearraí ríomhaireachta. Bheadh sé go hiontach dá mbeadh a leithéad ar fáil níos mó ná mar atá.

1 o'clock

Luaigh mé cheana an méid a dúirt an Seanadóir Mooney faoin breis is 10% de phobal an Tuaiseceart a bhfuil cumas na Gaeilge acu. Dúirt an tSeanadóir Alex de Faoite gurb é an rud is tábhachtaí ná iarracht a dhéanamh an Ghaeilge a úsáid. Luaigh sé go bhfuil athbheocan na Gaeilge á phlé le fada. Níor úsáid sé na focail "leis na cianta", ach sin a thuig mé uaidh. Tá an ceart aige. Chuir sé ceist faoi an bhfuil deis á fháil ag daoine lasmuigh den Ghaeltacht tabhairt faoin Gaeilge sa chaoi gur mhaith leo sin a dhéanamh. Ceapaim nach mbíonn an deis sin acu uaireanta.

Luaigh an Seanadóir Ó Raghallaigh an saibhreas iontach atá ag baint leis an nGaeilge: an ceol, an traidisiún agus gach rud a bhfuil baint ag an nGaeilge leis. Ní aontaíonn sé leis an Seanadóir Mullen go mba chóir go mbeadh an Ghaeilge éigeantach sna scoileanna. Is ceist anthábhachtach í seo. Dá mba rud é go bhféadfaí daoine a spreagadh agus an tacaíocht ceart a thabhairt dóibh an Ghaeilge a labhairt, bheadh an scéal i bhfad níos fearr. I láthair na huaire, níl sin á dhéanamh nó ní léir go bhféadfaí sin a dhéanamh, ach is ceist thábhachtach í agus is maith an rud é go bhfuil sí á phlé. Uaireanta bíonn deis agam labhairt trí Ghaeilge nuair a bhím ag cruinnithe de Chomhairle na nAirí sa Bhruiséal. Is iontach an rud é cé chomh bródúil agus a mhothaíonn duine as an Ghaeilge nuair a bhíonn siad thar lear. Ní bhíonn ar duine í a

labhairt, ach nuair a bhíonn deis ag an duine í a labhairt agus é ag suí ag bord le Airí ó 27 tír, tapaítear an deis. Gach uair a dhéanaim sin, feicim Airí ag fágáil an tseomra chun an aistriúcháin a fháil. Is maith leo freisin éisteacht le blas na teanga agus is maith leo iarracht a dhéanamh í a thuiscint.

Cuireann daoine ionadh orthu féin freisin nuair a bhíonn siad thar lear ar ghnó nó ar saoire cé chomh minic agus a bhaineann siad úsáid as an nGaeilge. Uaireanta bíonn siad ag caint eatarthu féin agus ag iarraidh a dhéanamh cinnte de nach dtuigfidh daoine a bhfuil Béarla acu iad. An rud is mó a thugann siad faoi deara sa chás sin ná go dtuigeann siad beagnach gach rud a bhíonn le rá eatarthu féin. Uaireanta bíonn sé níos deacra dóibh an méid atá ina n-intinní féin a rá, ach éiríonn leo agus dá mbeifeá ag éisteacht leo, thuigfeá cad go díreach a bhí ina n-intinní acu. Is mór an trua é go bhfuil an cumas sin ann agus nach bhfuilimid ábalta an spreagadh beag a bheadh riachtanach a thabhairt chun teacht ón stádas sin go dtí stádas ina mbeadh daoine sásta labhairt trí Ghaeilge i bhfad níos minicí ná mar a labhrann siad.

Labhraim Gaeilge sa Teach agus timpeall an Tí go minic, go háirithe leis an Aire, an Teachta Ó Cuív, an Seanadóir Ó Murchú agus ar uile. Le daoine áirithe, is annamh a labhraim leo trí Bhéarla. Ar shlí amháin, is í sin an t-aon deis a bhíonn agam mo thaithí ar an nGaeilge a choimeád beo. Ceann de na deacrachtaí a bhaineann le teanga ar bith ná go gcaillfear í muna n-úsáidtear í. Cuireann sin isteach go mór orm.

Tá go leor rudaí eile gur mhaith liom a rá, ach feicim go bhfuilimid imithe thar am. Ba mhaith liom buíochas ó chroí a ghabháil leis na Seanadóirí go léir a labhair as Gaeilge agus trí Ghaeilge. Is iontach an rud é don Aire agus do ghach éinne a bhfuil suim acu sa Ghaeilge a fheiscint go bhfuil daoine sásta tacaíocht a thabhairt don teanga agus go bhfuil siad ag smaoineamh ar na polasaithe is fearr gur féidir a chur chun cinn chun go mbeidh deis ag gach duine a bhfuil suim acu sa Ghaeilge í a labhairt.

Sitting suspended at 1.10 p.m. and resumed at 2 p.m.

Multi-Unit Developments Bill 2009: Committee Stage

An Cathaoirleach: Amendments Nos. 1, 6, 9, 11, 14 and 20 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 1:

In page 3, subsection (1), between lines 15 and 16, to insert the following:

"“childcare facility” means a building or structure which is in use for the purposes of providing—

(*a*) a pre-school service, or

(*b*) a pre-school service and a day care service or other service to cater for children other than pre-school children,

and in this definition “pre-school child” and “pre-school service” have the meanings respectively assigned to them by section 49 of the Child Care Act 1991;

“commercial unit” means a unit in a mixed use multi-unit development which is not a residential unit and is intended for commercial use;”.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): Following discussions in this House on Second Stage and in response to various submissions I received, I am making a provision to extend the Bill’s scope to cover both residential units in mixed

[Deputy Dermot Ahern.]

use multi-unit development, that is, developments containing commercial units and traditional housing estates where property management companies have been put in place.

For this purpose, it is necessary to insert appropriate definitions or amend existing definitions of the following terms "childcare facility", "commercial unit", "mixed use multi-unit development", "multi-unit development", "residential unit" and "unit". This is the principal purpose of this set of amendments. The definition of "childcare facility" is required as it is the intention in the Bill to include as residential only developments those in which a child care unit has been constructed. In other words, a development which contains only residential units and a child care facility will not for the purposes of this Bill be considered mixed use development.

In a similar fashion, a new definition of "commercial unit" is inserted to distinguish such units from residential units. A demand for inclusion of residential units in mixed use developments became clear during our consultation process following publication of the Bill. The scope of the draft Law Reform Commission Bill was confined to apartment developments which did not include any commercial units. The new definition of "mixed use multi-unit development" makes it clear that such a development is one which includes commercial units. However, a development which has residential units and a child care facility will be considered as residential rather than mixed use.

An amendment has been tabled to the definition of "multi-unit development" to broaden the scope of the definition and, therefore, the Bill to cater for situations where a management company committee has been established for developments which consist only of residential houses. On Second Stage, the inclusion of such developments was requested by several speakers and this amendment is a response to their requests.

It is also necessary to define what is meant by a "residential unit in a multi-unit development". In amendment No. 9, a child care facility will be considered as a residential unit as long as it does not share amenities, services and facilities with commercial units in the development. Amendment No. 11 is designed to ensure that where the word "unit" is used in the Bill that it refers to a residential unit while amendment No. 12 is a further refinement of what is considered to be a residential unit in the context of the Bill. It defines what is meant by a unit having self-contained facilities. Amendment No. 20 is a drafting amendment which arises as a consequence of various changes I have mentioned.

Senator Denis O'Donovan: This issue was brought to the Minister's attention and I compliment him on taking the points made on Second Stage on board. The amendments allay the anxieties of those who spoke and I support them.

Amendment agreed to.

Government amendment No. 2:

In page 3, subsection (1), to delete lines 16 to 22 and substitute the following:

"'"common areas" means all those parts of a multi-unit development designated, or which it is intended to designate, as common areas and including where relevant all structural parts of a building and shall include in particular—

(*a*) the external walls, foundations and roofs and internal load bearing walls;

(*b*) the entrance halls, landings, lifts, lift shafts, staircases and passages;

(*c*) the access roads, footpaths, kerbs, paved, planted and landscaped areas, and boundary walls;

(*d*) architectural and water features;

(*e*) such other areas which are from time to time provided for common use and enjoyment by the owners of the units their servants, agents, tenants and licensees;

(*f*) all ducts and conduits, other than such ducts and conduits within and serving only one unit in the development;

(*g*) cisterns, tanks, sewers, drains, pipes, wires, central heating boilers, other than such items within and serving only one unit in the development;".

Deputy Dermot Ahern: This revised text makes it clear that common areas extend to internal and external common areas of a multi-unit development. There were some submissions when the Bill was published in regard to the existing definition of "common areas" that it did not go far enough. We are now making it clear that it extends to internal and external common areas.

Senator Paudie Coffey: We welcome this amendment because it gives clarity. It is essential to give a clear definition in legislation to what is a common area. We are happy to support this amendment because it gives that clarity.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 3 and 42 are related and may be discussed together. Is that agreed? Agreed.

Senator Phil Prendergast: I move amendment No. 3:

In page 3, subsection (1), between lines 22 and 23, to insert the following:

""complete" in relation to a development means complete to the agreed satisfaction of the developer and the owners' management company and the planning authority;".

This amendment was suggested by the apartment owners network.

Deputy Dermot Ahern: I recognise there were significant issues relating to the completion of multi-unit developments. I also acknowledge the very real concern which lies behind the amendment. However, I am not convinced the proposed mechanism in this amendment will resolve these problems. If a satisfactory agreement can be worked out between the parties, there is no obstacle to that.

Experience shows, however, that there is a need for binding remedies and this is the reason I have made specific provision in section 18 for dispute resolution. Section 18 already makes provision for a court-based mechanism to resolve disputes in regard to any rights or obligations arising in regard to the completion of a multi-unit development. In amendment No. 63, I propose that a new paragraph (*j*) to that section that the court may make a order directing a developer to complete the development in accordance with the terms of the contract or the Planning and Development Acts or the Building Control Acts. As I stated to my Department, I am very much in favour of the use of alternative dispute resolution mechanisms wherever possible to avoid costly court proceedings. For this reason, I have proposed in amendment No. 70 that a court may, of its own motion, direct the parties to engage in a mediation conference. I believe the courts will favour this option and the fact that it takes place with court oversight will encourage the parties to reach a satisfactory outcome. As matters stand, the alternative dispute resolution mechanism only kicks in at the instigation of one of the parties. While I am willing to reflect on the proposed new mechanism referred to in the amendment, the provisions in place in the Bill will prove more effective in solving the problems of non-completion raised.

Amendment, by leave, withdrawn.

Government amendment No. 4:

In page 3, subsection (1), lines 23 and 24, to delete "who carries out the development and construction" and substitute the following:

"who carries out or arranges for the development or construction".

Deputy Dermot Ahern: In some developments the developer of the site does not construct the buildings and units and this work is undertaken by another builder. The definition of the word "developer" is, therefore, being extended to make it clear that it includes the person who either carries out the development or arranges for another to develop and construct the buildings.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 5 and 34 are cognate and may be discussed together.

Senator Phil Prendergast: I move amendment No. 5:

In page 3, subsection (1), line 30, to delete "2007" and substitute "2009".

This amendment would update the collective citation in accordance with the latest planning legislation.

Deputy Dermot Ahern: I will accept both amendments because they extend the citation of the Planning and Development Acts.

Amendment agreed to.

Government amendment No. 6:

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

""mixed use multi-unit development" means a multi-unit development of which a commercial unit (other than a childcare facility) forms part of the development;

"multi-unit development" means a development being land on which there stands erected a building or buildings comprising units and that—

(*a*) as respects such units it is intended that amenities, facilities and services are to be shared, and

(*b*) subject to section 2(1), the development contains not less than 5 residential units;".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 7 and 8 are related and may be discussed together.

Senator Phil Prendergast: I move amendment No. 7:

In page 4, subsection (1), to delete lines 10 to 15.

The developer should be required to indicate on the planning application and in all brochures what are intended to be the common areas to ensure there will not be any scope for subsequent changes, for example, to prevent a developer from subsequently building on park viewed by owners as part of common areas.

Deputy Dermot Ahern: Having examined the matter, I cannot accept the amendment because the deletion of the relevant lines would make the Bill less clear and cause difficulty with regard to developments which are normally completed in phases. While we may not want developments to be completed in phases, we cannot change the position and must tailor the law to this circumstance.

Amendment No. 8 addresses the issue of phased developments. Its aim is take into account the construction of phased multi-unit developments. Certain parts of developments are completed before others and it is often the case that some elements of a development are complete and occupied before work begins on the construction of others. In such cases, it would not be appropriate to provide that all common areas in a development be transferred to the management company on completion of one phase. The amendment makes it clear that the relevant parts of the common areas are those which are necessary to enable unit owners in completed phases of the development to enjoy quiet and peaceful occupation of their units.

Amendment, by leave, withdrawn.

Government amendment No. 8:

In page 4, subsection (1), line 11, to delete "development which—" and substitute the following:

"development necessary for the enjoyment of quiet and peaceful occupation of sold units and which—".

Amendment agreed to.

Government amendment No. 9:

In page 4, subsection (1), between lines 15 and 16, to insert the following:

""residential unit" means a unit in a multi-unit development which is—

(*a*) designed for—

(i) use and occupation as a house, apartment, flat or other dwelling, and

(ii) has self-contained facilities;

or

(*b*) designed and used as a childcare facility and such facility is not intended to primarily share amenities, services and facilities with commercial units in the development;".

Amendment agreed to.

Government amendment No. 10:

In page 4, subsection (1), line 17, to delete "any estate or leasehold interest" and substitute "any leasehold estate".

Deputy Dermot Ahern: This amendment makes it clear that a reversion is the residue of ownership which remains after the grant of a lease. The normal conveyancing practice in cases of apartments has been to grant a long lease to the purchaser with a freehold reversion being vested in the owner's management company, of which the purchaser is also a shareholder.

Amendment agreed to.

Government amendment No. 11:

In page 4, subsection (1), to delete lines 19 to 21, and substitute the following:

"“unit” means a residential unit in a multi-unit development;”.

Amendment agreed to.

An Cathaoirleach: Amendment No. 13 is alternative to amendment No. 12 and they may be discussed together.

Government amendment No. 12:

In page 4, subsection (1), line 22, to delete “the developer or”.

Deputy Dermot Ahern: Amendment No. 12 is designed to ensure the developer of unsold units in a development is recognised as the unit owner. In that context, the developer will have the same rights and responsibilities as other owners in the developer. The amendment addresses the objective of amendment No. 13 tabled by the Labour Party.

Amendment agreed to.

Amendment No. 13 not moved.

Government amendment No. 14:

In page 4, lines 26 to 33, to delete subsection (2) and substitute the following:

“(2) In this Act a unit shall not be treated as having self-contained facilities unless the unit has bathroom facilities and cooking facilities within it for the exclusive use of the occupants of the unit concerned.”.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 15, 17, 49 and 73 are related and may be discussed together.

Government amendment No. 15:

In page 4, lines 34 to 37, to delete subsection (3).

Deputy Dermot Ahern: Amendment No. 17 constitutes a major change to the Bill, as published. It inserts a new section which extends the scope of the Bill to residential units in mixed use developments and more traditional housing estate developments. Subsection (1) replaces the provisions of subsection (3) by providing that the sections referred to in Schedule 1 will apply to multi-unit developments which comprise two or more units but not less than five units. Amendment No. 15 deletes section 1(3).

Subsection (2) is designed to deal with multi-unit developments which consist solely of houses, that is, the development resembles a traditional housing estate but has an owners' management company. The provisions of the Bill referred to in Schedule 2 will apply to any common areas of such developments.

Subsections (3), (4) and (5) relate to mixed use multi-unit developments. The object is to extend the scope of the Bill to residential units in such developments. This subsection (3) provides that, subject to subsection (4), the Bill shall apply to residential and commercial units

in a development to the extent that amenities, facilities and services are shared by such commercial and residential units.

Subsection (4) provides that in circumstances where there is more than one management company in a mixed use development, that is, where there is one company for residential units and another for commercial units, the obligations on such companies will be met where the provisions in the Bill with respect to the annual service charges and contributions to the sinking fund are applied in a fair and equitable manner.

With regard to voting rights in mixed use developments, the general rule that there will be one vote per unit is not always practical in such developments, given the different uses and categories of units. The subsection provides, therefore, that the management companies in such developments will be deemed to have complied with the provisions of the legislation where the voting rights of members are apportioned in a manner which is fair and equitable.

Subsection (5) seeks to make it clear that in ensuring such matters are dealt with fairly and equitably, account must be taken of all relevant matters, including the level of use of common areas by the different classes of units. The objective of amendment No. 49 is to ensure that voting rights in a mixed use development operate in a fair and equitable manner.

Amendment No. 73 inserts the new Schedule 2 to the Bill to apply to developments which consist of traditional housing units that have an owners' management company. I propose that developments will be obliged to transfer ownership of any common areas in such developments to the management company which will be obliged to complete the development in line with planning permission and building controls.

Section 13, which concerns the holding of annual meetings of the management company, will also apply to these developments. However, I have excluded three subsections: 13*(c)* which relates to a sinking fund; 13(2)*(g)* which concerns the block insurance; and 13(2)*(h)* which concerns fire safety provisions from Schedule 2 as I do not consider these are applicable to traditional housing estates.

Although section 14 of the Bill, concerning annual service charges, will apply, I do not consider it necessary to apply the provisions concerning the sinking fund, section 15 or section 17 on house rules. It is important, however, that the residents in such developments have recourse, where necessary, to dispute resolution mechanisms and, accordingly, I have provided for that in sections 18 to 22.

Senator Paudie Coffey: This is a significant amendment to the Bill and I believe it is essential. The Minister will agree that speakers on Second Stage outlined the great concern and complications that exist where large multi-unit developments are present. For example, apartment blocks and traditional housing estates might be part of the one development. There is confusion about the entire area. I hope this amendment will bring clarity to the situation because there has been resentment from those in the traditional housing sections of a development or estate who had to pay management fee costs for services they do not use and where there are common areas that do not even apply to the section of the development in which they live.

The Minister might clarify that this amendment will satisfy those people who would have concerns about obligations under the management fees and services rules and that people living in traditional housing sections of an estate who do not share the common areas of an adjacent apartment development will find comfort and protection in it. The Minister mentioned matters being "fair and equitable" on a number of occasions in his last address to the House. In any fair assessment of the situation, people who do not utilise services or common areas should not have to pay service charges or management fees when they do not benefit thereby. The Minister might clarify this for me and for the benefit of the House.

[Senator Paudie Coffey.]

The amendment is a significant one and is detailed and technical to a certain degree because it contains many cross references to later amendments and to the Schedules. The Minister might clarify, in layman's language, that it is the case that this amendment will address the concerns of those people in mixed use estates who do not utilise apartment complexes, services or common areas in adjacent apartments. That is what we would like to hear.

Senator Denis O'Donovan: I welcome this amendment and thank the Minister for introducing it. I shall begin by make some brief comments on the amending of the original Bill to include mixed use developments. As my colleague stated, this situation is not confined to the greater Dublin area. There are examples in many towns throughout the country where a ground floor of a relatively new development might be for retail use with the first floor in office use and the second, third and sometimes the fourth floor would be apartments. I know of two such examples in west Cork; it is typical usage. This amendment extends the legislation in a very subtle way to include such developments.

I understand the situation about voting rights. If there are 60 apartments and four retail units then one vote per unit or per apartment would not be a fair and equitable system.

A second point worth mentioning is where the Minister rightly deals with an issue that exists primarily in the greater Dublin area rather than in Munster towns. For whatever reason, some estates were built to a certain model. In a normal situation when an estate is developed, the intention is that at some stage in the future the local authority will take charge of all services within and leading to the estate, including footpaths, water provision, electricity and cabling, etc. That is normally what happens after perhaps two to four years. However, whether because of a lacuna or an intentional fudge, the development of these estates was done in such a way as to avoid the imposition of blame or culpability or the notion that the local authority would take charge. I may be wrong about this but the amendment is very welcome. As my colleague, Senator Coffey, pointed out, in some of these estates there were many complaints from people who were paying a management company or others involved for services without being sure what services they were getting. There was no accountability or transparency and this matter should be sorted out.

A greater issue is for the Department of the Environment, Heritage and Local Government and the relevant Minister, to ensure that this situation should not and will not happen again. It has created problems. I am glad that the amendment, as set out by the Minister, has clarified significantly a number of issues that affect people living in such estates. Other bodies involved in the development of estates also have raised these issues. This is a very prudent amendment on the part of the Minister and I support it in full.

Deputy Dermot Ahern: I thank the Senators. This amendment was in response, not only to representations we received but also to the Second Stage debate on the matter. There has been a great deal of deliberation about this legislation. I am the sponsoring Minister but there has been significant input from the Departments of Enterprise, Trade and Employment and the Environment, Heritage and Local Government. Before the Bill was published there were many meetings between me, the Tánaiste and the Minister, Deputy Gormley, and interaction with the Attorney General's office to try to pull together the various elements. As Senator O'Donovan remarked, many of these are dealt with in the planning area which is the responsibility of local authorities, the Department of the Environment, Heritage and Local Government and An Bord Pleanála. The Department issued guidelines in February 2008 in regard to the taking in charge of residential developments and the corresponding management arrangements. These were comprehensive. However, we came to the view that to a certain extent the Law Reform

Commission report did not refer to the issue of mixed use developments or deal with it in any great detail. There are significant numbers of such developments around the country, which combine commercial and residential elements and where the residential element may be divided into duplexes, apartments, houses and in some instances even old people's dwellings. We must cater for all those circumstances.

Regarding voting rights, to have a fair voting system we moved away from the norm of one vote per unit because that might give the developer or the developer's interest an opportunity to out vote people. We have left it to the court or the dispute resolution mechanism to decide on what is fair, reasonable and equitable in all circumstances.

Regarding traditional housing estate developments, the practice was that when these were built developers brought in management companies to look after common areas, mar dhea. The owners were then required to pay money. As Senator O'Donovan said, in some cases, they were not particularly sure what they were paying for because they were not getting any service. This is to bring them into the remit of the Bill but to take into account that they are not like the mixed-use developments but normal developments with a different type of residential unit. What we have done here is to comprehensively cover all aspects of our living arrangements. Obviously, if there is anything else that requires to be done over time or issues that arise, we would have to come back to the legislation at a later date.

Senator Paudie Coffey: I thank the Minister for his reply. Perhaps he would clarify one further point. This is a significant amendment that will have an impact on the whole area of management of developments. When it becomes law, will it be retrospective to existing developments or will it apply only to new developments? That is a pertinent question having come through a prominent construction boom but we are now on the other side and the position is quite the opposite. The developments are in place but there is much confusion around existing developments. I will give credit where it is due. The Bill addresses many of the issues and problems identified and, without being too critical, it is probably too little, too late in many cases. If it is retrospective, it might clear up many of the issues and problems that exist. We do not want people living in apartments or traditional houses paying management fees for the commercial sections of these developments. They are already put to the pin of their collar to pay their mortgages and household costs and should not have to pay fees of which they may not have been aware prior to the purchase of their house or apartment to sustain sections of the development in which they had no involvement. In effect, they are being asked to take on payment of part of the risk or the overhead cost of running those developments. Will the Minister clarify whether the legislation can be applied retrospectively to many of these areas?

Deputy Dermot Ahern: Large elements of this Bill can be applied retrospectively because they do not overturn agreements made previously. For example, it is not retrospective in regard to the issue of voting rights because it may already be included in existing documentation pertaining to the development that certain voting rights are available. We cannot retrospectively change that. Issues relating to the holding of an annual general meeting, service charges and so on are dealt with in regard to pre-existing estates. It is not on all-fours with the other issue being debated in the other House on a Private Members' motion, which is about rewriting contracts. This is not about rewriting existing contracts as such but the element of voting rights would be.

Senator Paudie Coffey: I am happy to hear the Minister's response on this issue. I understand that if there are contracts in place, it will be difficult to break them. If there are existing arrangements, by contact or otherwise, such as voting rights, it will be difficult. The main areas are the grey areas that have been in existence up to now. People did not know where to turn.

[Senator Paudie Coffey.]

They were being levied these bills but there was no accountability on who was levying them and what they were paying for. This Bill will clarify many of those grey areas and bring comfort to many. Residents associations and others will be seeking guidelines on its implications. The Bill is technical, as it needs to be. Perhaps the Minister's Department or the Department of the Environment, Heritage and Local Government would provide guidelines on it and outline clearly to residents associations and citizens their rights following the enactment of the Bill. It is important they know where their rights lie. Many have been unfairly taken advantage of by developers or people in authority. If the Bill is to have full effect, it needs to be put into the public domain in an easily digested fashion so that residents and citizens of estates know their rights and the authority they have to challenge many of the levies that have been unfairly imposed on them.

Senator Jerry Buttimer: As Senator Coffey has said, there are grey areas. If the Bill is to be effective, there must be an understanding on the part of the management company and developer of their responsibilities. Given that the Minister is an experienced politician, he knows full well that where there are grey areas, those who up to now have not been helpful to the tenant or those who bought the apartment dwellings need to be responsible and accountable.

In my constituency, a particular management company has been tardy in acceptance of its responsibilities, is hiding from the works it has to carry out and has been less than upfront with those who have bought properties. Where there is a common area, it has been remiss in respect of its engagement in works and in complying with its requirements. I am concerned that if company law is enforced, these management companies will obfuscate their responsibilities. I hope there will be an inspection process and complete regulation by the management companies when the Bill becomes law.

Deputy Dermot Ahern: Senator Coffey's point is a good one. We are reasonably satisfied from the contact we have had with the various interests that fed into this legislation that all the representative groups, representing builders, apartment owners, etc., are well aware of the import of this Bill. I am a solicitor by profession and really the onus should be on the people. One cannot spoonfeed people. They pay substantial legal fees to be fully advised——

Senator Paudie Coffey: Is the Minister trying to create jobs?

Deputy Dermot Ahern: ——by their solicitors so that, having made the biggest purchase of their lives, they are fully aware of their entitlements but more often they are not. While the State can spoonfeed people, as it does when it passes legislation, there would have to be some onus on advisers to give as much information as possible. There is no doubt that in the past 20 years, estates and apartment blocks have been completed, units sold and people have come away with the keys. They go to the ESB, Airtricity, Bord Gáis and so on but they are not told about the obligations in respect of the common areas and their rights and duties. That is a pity. I know the Law Society has endeavoured as much as possible to get its members to relay that information. However, so much of the information is in legalese that even if they were to give their clients the memorandums and articles of association of the management company, people would not read past the second paragraph. The point made by the Senator about the need to provide information is something we will consider, perhaps in terms of a provision obliging legal advisers, or the purchaser to provide some basic information about the entitlements and duties that exist with regard to the management company.

Senator David Norris: May I say a couple of words on this?

An Cathaoirleach: We are on section 1, amendment No. 15, to which Nos. 17, 41 and 73 are related.

Senator David Norris: Yes; I understand that. I lend my support to these amendments, which are important, particularly from the point of view of management committees. I have raised this on numerous occasions in the House and received little response, so I am glad the Government is addressing it. Has the Minister considered — although from a glance through the amendments, I think he has done so — that an unscrupulous developer can retain one unit and thereby control the management committee to the disadvantage of the residents? I hope this is addressed, although it seems it might be. I have come across this on numerous occasions. The tactic is often used, as I have said before, to allow the developer and his family to control the management committee in such a way as to create financial advantage for themselves — for example, by hiring other family members to do cleaning, servicing and so on. This is grossly and utterly wrong.

The other matter to which I draw the Minister's attention is perhaps more for the local authorities than the Government, but there may be a Government angle. A fine job of refurbishment has been done at what was Fatima Mansions but is now Herberton. There is a management company. I know people who have bought flats there, most of them nurses in St. James's Hospital, under the affordable housing scheme.

An Cathaoirleach: On the amendment, Senator.

Senator David Norris: This is directly relevant to the amendment, because it is about management committees — at least, I hope it is.

An Cathaoirleach: Does the Senator think so?

Senator David Norris: This series of amendments deals with such things as apportionment of costs and the units in a development.

For example, some management committees have raised management fees considerably and suddenly. People were given indications of a fee of €1,500 per year but were then asked for a deposit of €1,500 as well as the first year's fee. This is ridiculous. They are paying twice. Then the fee was raised to €2,000, which is outrageous. I hope the Minister will bring this to the attention of his contacts. Affordable housing in this city is not affordable any more. I am happy to support these amendments in as far as they address problems associated with multi-unit developments and the issues with management committees which have caused much concern to citizens.

Deputy Dermot Ahern: Senator Norris referred to sections 3 and 4 which deal with the issue of incompletion and the obligation to transfer ownership on completion, and, to a lesser extent, section 14, which deals with the apportionment of service charges. I empathise with the points he has made. These amendments deal with the extension of the remit of this legislation to mixed-use developments, which contain commercial and residential units within one development, as well as the practice that has been mentioned by Members whereby developers, starting a few years ago, have built traditional housing estates and then imposed, without any justification, management companies and the accompanying charges. There is general acceptance of the amendments.

Senator David Norris: Will the Minister consider the situation for apartment blocks specifically. Some further attention may be required because there are anomalies that are causing much unhappiness.

An Cathaoirleach: We will come to that later.

Amendment agreed to.

Government amendment No. 16:

In page 4, lines 47 to 49, to delete subsection (5) and substitute the following:

"(5) In this Act, save where the context otherwise requires, a reference to a transfer of ownership shall, subject to sections 2(6) and 3(2), be construed as a reference to a lease or a deed of transfer, conveyance or assignment.".

Deputy Dermot Ahern: This is a technical amendment which inserts the word "lease" into the definition of transfer of ownership. Deeds of transfer, conveyance and assignment are already included.

Amendment agreed to.

Section 1, as amended, agreed to.

NEW SECTION.

Government amendment No. 17:

In page 4, before section 2, to insert the following new section:

"2.—(1) Notwithstanding the definition of multi-unit development in section 1, the provisions of this Act specified in *Schedule 1* shall apply to a multi-unit development comprising 2 or more units but less than 5 units.

(2) Where a multi-unit development is comprised only of residential units and those units and the structure or that part of the structure in which those units are situate do not form part and were never intended to form part of the common areas of the development, the provisions of *Schedule 2*# shall apply as respects the common areas of the development.

(3) Subject to subsection (4), in the case of a mixed use multi-unit development, this Act applies to—

(*a*) units in the development, and

(*b*) commercial units in the development, to the extent that amenities, facilities and services are shared by such commercial units and units.

(4) In the case of a mixed use multi-unit development where there is more than one owners' management company the obligations imposed on an owners' management company by this Act shall as respects such a company in which shares are held otherwise than by reason of ownership of a residential unit, be considered as being complied with where—

(*a*) as between different classes of units in such a development *sections 14* to *16* are complied with and a fair and equitable apportionment of the costs and expenses attributable to the different classes of units is applied, and

(*b*) in place of the requirements set out in *section 12(1)* and *(2)*, the voting rights of the members in such an owners' management company are apportioned in a manner which is fair and equitable.

(5) In this section—

(*a*) a reference to fair and equitable apportionment of the costs and expenses of the development shall mean that account is taken of all relevant matters including the respec-

tive level of use of any common areas by the owners of different classes of units and their servants, agents and invitees; and

(*b*) a reference to costs and expenses shall be taken to be a reference to the matters referred to in *sections 14 (3)* and *15 (1)*.".

Amendment agreed to.

SECTION 2.

Senator Paudie Coffey: I move amendment No. 18:

In page 5, subsection (1), line 1, before "person" to insert "developer or any other".

This is an attempt to clarify the conditions relating to the sale of units in multi-unit developments. The Bill as it is currently drafted refers to "[a] person to whom this section applies". What does "a person" mean? Who is this person? We are trying to be more specific when we suggest the insertion of the words "developer or any other". The Minister has already defined the word "developer" in section 1. This is an effort to bring more clarity to the description of the developer or any other person to whom section 2 would apply. What are the Minister's views on this?

Deputy Dermot Ahern: We considered this but we believe section 2(2)(*b*) already caters for this. It is already clear that the section applies to any person who is the owner of common areas in a multi-unit development, which would in most cases mean the developer.

Amendment, by leave, withdrawn.

Senator Phil Prendergast: I move amendment No. 19:

In page 5, subsection (1)(*b*), line 12, after "unit" to insert the following:

"and

(*c*) the purchaser has supplied his or her residential address to the owners' management company and has undertaken to notify the company of any future changes in address".

This is to facilitate enforcement of charges.

Deputy Dermot Ahern: I do not consider it appropriate to make such provision in this section. I can understand the concerns behind the amendment and I will consider whether it would be possible to include a requirement along these lines in another section before Report Stage.

An Cathaoirleach: Is the amendment being pressed?

Senator Phil Prendergast: I am happy with the Minister's reply.

Amendment, by leave, withdrawn.

Government amendment No. 20:

In page 5, subsection (2), lines 14 to 16, to delete paragraph (*a*) and substitute the following:

"(*a*) a unit which has not previously been sold; and".

Amendment agreed to.

Government amendment No. 21:

In page 5, subsection (2)(*b*), line 18, to delete "the entire".

Deputy Dermot Ahern: This is a technical amendment that deletes the word "entire". In some developments, one person or company may not own all of the common areas of a development.

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 22 and 35 are related and may be discussed together. Is that agreed? Agreed.

Senator Phil Prendergast: I move amendment No. 22:

In page 5, between lines 19 and 20, to insert the following subsection:

"(3) On closing of a unit sale prior to completion of the development, the developer shall pay 5 per cent of the purchase prices to the owners' management company which shall hold such sum in trust for the developer until the development is completed.".

This was in the original Law Reform Commission draft Bill, and the RIAI is strongly seeking that it be re-inserted. I ask the Minister to consider it.

Deputy Dermot Ahern: Is this being taken with any other amendment?

An Cathaoirleach: Yes; it is being taken with amendment No. 35.

Senator Phil Prendergast: I thought it was being taken with amendment No. 34.

An Cathaoirleach: We are discussing amendments Nos. 22 and 35.

Deputy Dermot Ahern: This relates to the 5% of the purchase price being withheld. This was considered by an interdepartmental group which was set up to look at the Law Reform Commission recommendations. At the time the group sat — it is some time ago — it came to the conclusion that a developer might react by simply increasing the sales price by 5% and it would prove completely ineffective in securing completion of the development.

My experience over many years as a solicitor and a practising politician is that when we interfere in this way, the price tends to be increased. I remember when housing grants were given over the years and the builder would put the sum of the grant on the price. There was no net gain to the purchaser as a result.

Considering the experience of one-off building, why is it that up to now we have not had a standard that where there is a purchase of property built by a developer, the purchaser does not withhold money at the end? It may happen in certain cases but it does not occur as a standard, particularly from a legislative perspective. Perhaps if we take 5% to ensure the completion of the common areas, we should also mandate in law that another 5% be taken to make sure the unit itself is completed.

I have some sympathy with the issue and I appreciate that the economic matter has moved on a little since the interdepartmental group took the view on the 5%. I would hasten slowly on this because the Legislature should not make an amendment only to find that another 5% would be lumped on the cost for the purchaser. I will look at this between now and Report

Stage and before it comes to the Dáil to see what we can do in this respect without any potential difficulty with the purchase price.

We have looked at some of the models across Europe and our model of the management company etc. is probably the exception rather than the rule. I am open to suggestions, although I am not altogether sure if this is the right amendment as it might raise the price of the dwelling.

Senator Ivana Bacik: I apologise for not being here to move the amendment and I am very grateful to my colleague, Senator Prendergast, who did so. I was attending a committee meeting. I am grateful to the Minister for indicating he has a certain sympathy for this amendment, particularly in light of the changing economic position. With the housing market more or less collapsing, the fear that this would lead to an increase in the purchase price of the property has much less foundation. I am also grateful that the Minister has indicated he will review the issue between now and Report Stage.

The Royal Institute of Architects in Ireland has been actively lobbying the Minister on this issue. It is asking that the provision be inserted and the Law Reform Commission also recommended it. Our amendment and that of Senator O'Toole are very much drawn from the Law Reform Commission's report and suggested wording.

The Minister may refer to amendment No. 63, which would give some come-back where there had not been completion to the satisfaction of the purchasers. We are suggesting that this amendment would be a more effective way of ensuring that completion is carried out satisfactorily as it would pre-empt the need to take court action. There would be a financial incentive to complete the development as well.

The amendment as printed has a typographical error and the first reference to "developer" should read "purchaser". I sent an amended version to the Bills Office but the other version has been printed. I ask the Minister to take this proposed amendment very seriously and take on board the arguments made by the architects' institute and the Law Reform Commission in arguing that this should be done.

This provision would protect the interests of purchasers to secure proper completion and hand-over of common areas in apartment developments, both outdoors and inside. It would protect the legitimate interests of all those involved in the sale and purchase of such developments. I thank the Minister for his contribution and I hope to see some progress between now and Report Stage.

Senator Joe O'Toole: I welcome the Minister and apologise for not being here for his response. He is pushing through the business at a great rate and catching us out. Has Senator Coffey moved amendment No. 35?

An Cathaoirleach: Amendment No. 22 has been moved and is being discussed with amendment No. 35.

Senator Joe O'Toole: I do not have to propose it formally. Having listened to most of the Minister's response, I am glad to hear he is sympathetic to the point we are putting forward. We are trying to achieve consumer protection in a safe and quantifiable way that does not damage any of the interested parties. In many ways it complements what would happen in the public sector. Senator Bacik touched on the idea of local authorities which are about to take over an estate insisting on the development being completely finished. We have seen the chaos created in places around the country where an estate has not been finished properly and the local authority cannot take responsibility where it is unfinished.

[Senator Joe O'Toole.]

A similar position can arise for apartments and the 5% that is withheld could allow some leverage to make essential changes or improvements. I listened to the Minister's comments and accept much of his argument. Does the Minister have any ideas on how to make this work having considered best practice in other countries and jurisdictions? Does he have any ideas on protecting the consumer while giving leverage to a management company and putting pressure on a developer to ensure finality? Does the Minister have a best-case scenario in mind and should we consider issues for Report Stage? Could we do more?

Senator Paudie Coffey: This is similar to Senator O'Toole's amendment and Fine Gael's amendment No. 21, which I will not elaborate on further. The thrust of this and the related amendments is to secure an element of the purchase price to ensure the development or units being built are completed to a satisfactory standard. We are all at one on that issue.

These amendments come highly recommended by the Royal Institute of Architects in Ireland and also by the Association of Consulting Engineers of Ireland. Both of these professional bodies have operated in this arena for many years and have seen at first hand the devastation caused by estates not being finished. As politicians we have also seen this at first hand when our constituents come to us with concerns about unfinished estates and incomplete developments which make their daily lives a misery. The Minister acknowledges the issue.

The amendments look to take issue with an area that has already been addressed in the public sector. If an estate is currently being built, local authorities ensure bonds are collected from a developer that will act as a guarantee to finish the work. In the recent debates on the Planning and Development (Amendment) Bill 2009, contributions in this House highlighted how those bonds do not go far enough as we see the devastation of unfinished estates around the country.

The idea behind introducing bonds was to ensure estates would be finished. Works in this regard could include installing a proper surface on someone's driveway, ensuring all manhole covers are in place and erecting public lighting. However, the amounts collected under such bonds would not come anywhere near covering the cost of completing certain estates on which major items of water and sewerage infrastructure have been left unfinished.

There is a precedent in this regard in the public sector, whereby local authorities collect bonds. The amendments suggest a levy or trust fund amounting to 5% of the purchase price be collected. The Minister indicated his concern to the effect that the cost would be passed on to the purchaser. Any purchaser would rather pay the full cost and ensure his or her estate was completed rather than purchasing a house or apartment at a lower cost and discovering years later that there was no mechanism in place to ensure said estate was properly completed. This is happening to a major extent in the public sector.

There is an argument in favour of collecting 5% of the purchase price and investing the money in trust funds in order to ensure estates will be finished. As stated, many people have already been let down. I accept that the Minister does not wish to become involved in the property market, particularly in the context of increasing the costs faced by prospective buyers. However, the planning legislation introduced in 2009 has already given rise to additional costs for developers. It is obvious that these costs will be passed on to purchasers. The Minister for the Environment, Heritage and Local Government has taken action in this regard but the Minister for Justice, Equality and Law Reform is hesitant to follow his lead. As Senator O'Toole rightly pointed out, the issue that arises in the context of the Bill relates to consumer protection There is an argument that the matter would be better dealt with in this legislation because existing residents or prospective buyers could rest assured that trust funds which would facilitate the completion of housing developments, apartment

3 o'clock

blocks, etc., would be put in place. A protection of this nature is not provided. In addition, there is a lack of regulation of this matter.

The Minister has indicated that he will consider what Senators are saying about the creation of 5% trust funds prior to the Bill being dealt with in the Dáil. As a result, I will not be pressing my party's amendment. Serious consideration should be given to creating these trust funds, particularly as the planning legislation enacted last year will give rise to added burdens and costs for prospective buyers. These additional costs will arise for good reason, namely, to facilitate the putting in place of items of social infrastructure such as schools, etc. The 5% trust funds are as important a development in this regard. If I was to buy a house tomorrow, I would like know that a trust fund would be in place in order that the estate or development in which I was going to live would not remain half finished. I hope the Minister will take cognisance of the arguments we have put to him.

Senator Denis O'Donovan: I have great empathy for the proposal being brought forward by colleagues on the opposite side of the Chamber. The Law Reform Commission indicated in its report that imposing a 5% levy would be a good step. I am somewhat enamoured of the concept. The Minister and his advisers and officials have probably considered the matter from various angles. I am sure he would be prepared to engage in further scrutiny of the matter with a view to dealing further with it on Report Stage, which is fair.

Would there be any tax implications in respect of the figure of 5%? I accept that it appears to be a small percentage. However, what would be the tax implications — *vis-à-vis* VAT, etc. — for someone who builds a 100-unit development where each unit sells for €200,000 or €250,000? If 96 of the units are fully or substantially complete, how would the 5% be apportioned in the case of the four in respect of which difficulties have arisen? Would it be possible to mediate or arbitrate in the matter?

The Minister made a valid point, namely, that in the past the grant for first-time buyers would not have been passed on to those purchasing homes. Historically, we have failed to deal with this matter. In the early 1980s the Fine Gael-Labour Party coalition introduced grants to allow people to refurbish their homes. That was a great concept and it cost £5 million in the first year. However, many developers took advantage of the scheme and one such individual refurbished 18 or 20 properties. The then Government was interested in assisting those whose roofs might have been falling in or who wanted to build a new bathroom or kitchen. The concept was excellent but the scheme was so widely abused the then Government decided to abandon it before it left office. This example highlights the fact that there have been difficulties with moneys that were meant to benefit first-time buyers, etc., being diverted elsewhere.

Perhaps the Minister might indicate if there are any tax implications in respect of this matter. Will he also outline how the 5% trust funds might be administered? It would obviously be easier to apportion the moneys in the case of small schemes of five or ten apartments or houses. I have some sympathy with the concept. However, we are aware that the greed of builders and developers has led to the purchase price of houses and apartments increasing. I would not like to see such individuals exploit trust funds such as those to which Senator Coffey referred.

Deputy Dermot Ahern: We are *ad idem* with regard to what we want to be achieved, namely, that all developments will be completed — either on a phased basis or *in toto* — in a proper way. We considered what the Law Reform Commission had to say about this matter and a question arises as to how it arrived at a figure of 5%. Senator Coffey stated people would be willing to pay money into these trust funds if they could rest assured that the common areas on their estates would be completed. I understand that, in the context of the Law Reform Commission's proposal and from a taxation point of view, it would be necessary for developers

[Deputy Dermot Ahern.]

to retain the 5% and that, as long as this money was in their possession, they would be entitled to keep the interest that would accrue on it.

If a 100-unit development was being built on a phased basis and if the developer went bust before it was completed, what would be the position on the trust fund? Would it be sufficient to carry out the necessary completion works? It is difficult to say. Myriad issues arise in this regard. The local authorities have not, particularly in the context of planning permission, really used the bond system to ensure the interests of home owners are protected. That system was put in place, via legislation, in order to protect the interests of local authorities which would ultimately be required to take unfinished estates, etc., in charge. The primary purpose of the bonds is to ensure local authorities would have some funding available to them to carry out completion works where they were obliged to take unfinished estates or developments in charge.

I qualified as a solicitor in 1976 and have been a politician for 31 years.

Senator Joe O'Toole: The Minister has only been a Member of the Lower House for 23 years.

Deputy Dermot Ahern: The Senator is correct. He and I entered the Houses on the same day.

In my experience, on any occasion when a housing grant or other change was introduced, developers took the money and then increased the purchase price accordingly. Purchasers and those in the wider community did not, therefore, enjoy the benefit of the grants made available. I hazard a guess that developers would discount the figure of 5% under discussion when making decisions on the amount to be charged for houses or apartments. They will discount the 5% and state that is for a later day. In other words, the purchaser will pay 105% for a house where he or she should pay only 100%. I agree that we need to square the circle on how we can ensure that estates are finally dealt with. This is not only true for this Bill but it may also be a matter for planning and development legislation.

To answer Senator O'Toole's question on other mechanisms, the one real solution we believe we have come up with is contained in paragraph (*j*) in amendment No. 63 which has to do with dispute resolution mandated by the court and alternative dispute resolution mechanisms whereby the home or unit owners and the developer can go to court or mediation and dispute resolution to solve a number of these issues.

Senator Joe O'Toole: I thank the Minister for a very comprehensive response. The most important thing is that the Minister is as determined as we are to find some leverage to achieve the same conclusion. I certainly would not argue that what we are doing is better than what the Minister will come up with. Therefore, it behoves us to wait and see what the Minister brings forward. I also wondered why the figure is 5% and I think it goes back to the old legal and accountancy concept of materiality. Anything close to 10% would be considered a material amount and it would need to be less than that. I understand the figure of 5% emerged from trying to put a quantitative figure on what would be likely to be left unfinished in a house, and 5% seems a reasonable amount.

If a multi-unit development is not completed and we place responsibility on the management committee to complete it, which is the Minister's intention and I thoroughly support it, a question of quantum and money is raised in terms of how that point can be reached. I agree with the Minister's point of view and I supported the Government on the unpopular line on first-time buyers that the money was going into the builders' pockets and being added to the cost. What has changed significantly in the meantime is that it has become a buyer's market. The Minister commented on this and acknowledged that the market has changed. The problem

now is that if someone adds 5% to the price it might not sell. This is completely different to how it was a couple of years ago, as the Minister acknowledged.

While the Minister made an important point on this, we must pass legislation which covers all types of situations and we cannot legislate for a constant recession or buyer's market; it would reflect badly on all of us. The Law Reform Commission conducted an investigation into this and arrived at a conclusion which was supported by engineers and architects. This was to ensure that units are finished prior to people buying and paying for them and prior to a management committee taking over the running of them. I am happy to hear the Minister wants to arrive at the same conclusion, that he is conscious of and acknowledges what has been done by the three bodies I mentioned, and is considering what he will bring back to us on Report Stage. It would be ridiculous for us not to welcome that. We look forward to hearing the outcome of that deliberation and to hearing the proposals he will bring forward. On that basis, I will not press my amendment and I thank the Minister for giving it full consideration.

Senator Paudie Coffey: I can understand from where the Minister is coming. I understand that if there was a 5% levy or charge for finishing estates that developers would load it onto the purchase price. However, we need to learn from the mistakes of the very recent past. We have all seen — and I am sure they are also in the Minister's constituency — the impact of unfinished estates and developments on those who live in them. They feel isolated, let down and deserted because while they can approach the local authority it has probably imposed bonds on the developer which are nowhere near sufficient to finish the estate and put in place the infrastructure needed to complete it to a satisfactory level. They also feel let down by the developer who has either gone out of business or does not have the funds to complete the development.

Legislation in this area is inadequate and has not protected consumers, citizens and the purchasers of these houses. The Minister has outlined that he will make an attempt to procure a mechanism to address the anomalies that exist and I appreciate that. He needs to consult with the Department of the Environment, Heritage and Local Government, whether on this Bill or on the planning and development legislation. Our citizens are being let down by developers and local authorities and they feel abandoned. They feel alone with no assistance or help. The amendments tabled are an attempt to address this. I will not state they are perfect and the Minister outlined his reasons for thinking they are not perfect but they are an attempt to address the matter in the interests of consumer protection and the citizens purchasing these houses in good faith in the belief that they will be finished to a high standard. There is evidence throughout the country of where this is not the case. It must be addressed in this Bill or in the planning and development legislation. I appeal to the Minister and his officials to put the resources and time into finding a mechanism that will prevent the mistakes of the past from happening again. It is essential for the residents and the citizens of the country.

Senator Ivana Bacik: Like Senator O'Toole, I will not press my amendment at this point given that the Minister indicated he will review this. However, the Law Reform Commission's analysis of the 5% concept is persuasive. I re-examined the detail of its recommendation. It points out that the 5% gives a significant inducement to a developer to complete a development in a timely manner to a standard which fulfils the expectations of the certifying architect. In paragraph 4.41 of its report, the Law Reform Commission recommends that once the snagging and certified completion of the development has been achieved satisfactorily, the owners' management company should then be obliged to transfer the 5% balance to the developer. It also recommends that of course where developments have been fully completed prior to sale of the final units, the purchaser would pay the 100% directly to the developer at the closing of the sale.

[Senator Ivana Bacik.]

Apart from the obvious point about the inducement provided by the 5% and the delay in receiving the full price pending the satisfactory completion of the development, the Law Reform Commission identified three key benefits of the provision. As Senators Coffey and O'Toole pointed out, the practical implementation of the recommendation would be straight forward because the operation of the proposal is broadly analogous to the system used by local authorities and developers with development bonds. It is already in operation in the public sector and therefore developers have experience of operating this type of scheme.

The proposal would be of particular benefit to unit owners because it would counter their "knowledge deficit", in the language of the Law Reform Commission. It pointed out that the hand-over of the 5% balance by the unit owners, in other words the consumers, on satisfactory completion would mark an important milestone in the life cycle of the development. It would emphasise to apartment owners that they would have control over the owner's management company and over ownership interests in common areas in the structure of the development. This is significant given the complaints we all hear from apartment owners. The third key benefit of its recommended system pointed out by the Law Reform Commission is that where a developer has not properly snagged a development on completion, there would be a fund available for the purpose of completion. To answer Senator O'Donovan's point, the Law Reform Commission also went into great detail on the tax implications of the proposal and expressed concern that the recommendation would be tax neutral. The key benefit this recommendation has over the measure proposed by the Minister in amendment No. 63 is that it is pre-emptive, that it does not require the consumer to have to take any further action. It envisages this being a part of the process of completing a sale where the development is not yet completed and the units are being sold. It seems an eminently practical solution but if the Minister has a better one then we are happy to hear to it because we are all working in the interests of the consumer in this regard. The amendment has a good deal of support from the Law Reform Commission, architects and engineers. I urge the Minister to consider it again on Report Stage.

Deputy Dermot Ahern: I understand why the architects and engineers are supportive of the amendment — there is business in it for them.

Senator Paudie Coffey: In fairness, they might be protecting their clients' interests.

Deputy Dermot Ahern: Then there would be a statutory requirement for them to give certificates of completion. They would not come cheaply. We have all been lobbied by various groups. We have to understand where they are coming from. If one were to adopt a measure such as the amendment proposes, independent certification of the completion would be required.

The Law Reform Commission does not investigate the effect of the retention of 5% of the purchase price by the management company on the price of such developments. The inter-departmental group did examine that question, albeit two years ago. All the major Departments were represented, in addition to the National Consumer Agency. While I do not attribute the proposal to the National Consumer Agency, it was the general view of the group at the time that to add 5% would have an effect on the purchase price to the detriment of the purchaser. It would be helpful to go back to the group and the National Consumer Agency for their opinions on the matter. I would like to take more advice on it.

I agree with speakers on the other side of the House and Senator O'Donovan on the involvement of the Department of the Environment, Heritage and Local Government. The 5% would not be necessary if the bond system was properly implemented by local authorities. We are aware that has not been the case. Perhaps instead of the 5%——

Senator Paudie Coffey: Perhaps for the same reason as the Minister in not wishing to implement the proposal on the 5%.

Deputy Dermot Ahern: Perhaps because the 5% is pretty clear. It is actual money. Local authorities did not require proper bonding and then it took housing estates in charge in cases of non-compliance or non-completion. The local authority bonding system related to a different type of circumstance. It was devised for traditional housing estate developments. Non-completion involved roads and footpaths. By and large in multi-unit developments one is talking about completely different issues in that one is dealing with a lot of internal common areas. It may be that a better and more detailed bonding system should be put in place. We will talk to the Department of the Environment, Heritage and Local Government to see whether anything can be done. It may be that we will return to the notion of 5% or other percentage deduction before the Bill is finalised.

The Bill has taken a long time but it is an extremely complex one that involved detailed negotiations between Departments and with outside interests. To a certain extent the Bill has been rushed in that there has been a political imperative to introduce the legislation because there has been much hoo-hah in the Dáil in recent times on why the Bill has been delayed. We have been accused of holding it up and being against people's interests. If we are introducing legislation we should do it properly. I would like more time. The matter might not be resolved before Report Stage in the Seanad but I would like to think it would happen before the Bill is completed in the Dáil.

Senator Regan was proposing an amendment on taxation that was ruled out of order. The advice I received on his proposal is that it is more than likely that the provision he was suggesting would fall foul of EU rules, namely the VAT directive and the European Court of Justice case law which does not allow member states to make a person liable to an amount greater than he or she is entitled to receive.

An Leas-Chathaoirleach: Is amendment No. 22 being pressed?

Senator Ivana Bacik: Not at this stage in light of what the Minister has said although I very much hope he will come back to us on the matter before Report Stage in the Seanad. I accept what he said about wanting to take time but if we could have a decent interval between Committee and Report Stages in the Seanad we might have an opportunity to hear if the Minister has a proposal equivalent to the 5% retention proposal we have put on the agenda. I would be grateful if the Minister might consider doing that before Report Stage in the Seanad. I will not press the amendment.

Amendment, by leave, withdrawn.

Government amendment No. 23:

In page 5, subsection (4), line 32, to delete "the developer shall" and substitute "the person to whom *subsection (2)(b)* refers shall".

Deputy Dermot Ahern: Amendment No. 23 is a technical amendment clarifying a cross-reference in subsection (4).

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 24:

[Senator Ivana Bacik.]

In page 6, subsection (6), line 1, to delete "The", where it firstly occurs, and substitute the following:

"Except where the multi-unit development has been completed, the".

This amendment is designed to make section 2(6) compatible with section 9(1). It mirrors the introductory wording of section 3(2), which states: "Except where the multi-unit development has been completed, the transfer...shall reserve the beneficial interest therein". The reference in section 2(6) simply refers to the transfer. We are transposing the words from section 3(2) into section 2(6). That would make the section properly compatible with section 9(1), which deals with the determination of certain beneficial interests on completion of a development. Section 9(1) provides that: "Where a multi-unit development has been completed the owner of any beneficial interest in the common areas and reversion in the units shall as soon as practicable thereafter make a declaration for the benefit of the owners' management company that as respects the development such beneficial interest stands extinguished". The intention is to ensure compatibility between the sections.

Deputy Dermot Ahern: I cannot accept the amendment because the section is designed to cover new developments only. Provision has been made in sections 3 and 4, respectively, for completed and semi-completed developments. The way we have structured the Bill takes care of new developments and semi-completed developments.

Senator Ivana Bacik: I am not pressing the amendment at this stage.

Amendment, by leave, withdrawn.

Section 2, as amended, agreed to.

NEW SECTIONS.

Senator Ivana Bacik: I move amendment No. 25:

In page 6, before section 3, to insert the following new section:

3.—A developer may not retain any units on completion of the development. Each unit shall be subject, on such completion, to a common legal framework including liability for charges.

The amendment proposes the insertion of a new section 3 to the effect that a developer may not retain any units on completion of the development and that each unit on completion shall be subject to a common legal framework including liability for charges. The provision arises from a suggestion by the Apartment Owners Network based on a case where a developer had retained units thus avoiding liability for service charges at any time into the future.

Deputy Dermot Ahern: Preventing a developer from retaining a unit for his own legitimate purposes may very well infringe his property rights under the Constitution. What the Senator is trying to do is to combat the practice whereby a developer would retain a unit thereby preventing the management company from taking over the common areas. That will no longer be possible following the enactment of the legislation so therefore it is not necessary to prevent a developer from retaining a unit in a completed development. Sections 3 and 4 make quite clear what has to happen in terms of the transfer of common areas. The amendment is unnecessary and would potentially infringe a private individual's property rights.

Senator Ivana Bacik: In light of what the Minister has said I will not be pressing the amendment.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 26:

In page 6, before section 3, to insert the following new section:

"3.—No person may sell a unit unless the purchaser has supplied his or her residential address to the owners' management company and has undertaken to notify the company of any future changes in address.".

This amendment also proposes to insert a new section and again arises from a suggestion by the Apartment Owners Network. This new section would deal with second-hand units and states "No person may sell a unit unless the purchaser has supplied his or her residential address to the owners' management company and has undertaken to notify the company of any future changes in address." The amendment is concerned with addressing the situation whereby at present, the Bill appears to leave second-hand sales unregulated, with the result that purchasers of second-hand units may be unaware of the obligations of membership of the owners' management companies. The amendment attempts to address this issue and I await the Minister's response regarding that mischief it tries to address.

Deputy Dermot Ahern: I am not altogether certain that the Senator's proposal would achieve what she desires. I stated previously that I would consider the possibility of mandating in the legislation some form of basic information that would have to be given to purchasers on purchasing in order that they knew of their rights, entitlements and duties *vis-à-vis* the management company. I am not altogether sure. The amendment proposes that no person shall sell a unit unless the purchaser has supplied his or her residential address to the owners' management company and has undertaken to notify the company of any future changes in address. While this may be unworkable, it also is pretty draconian. It would be fairly invasive for those who wished to purchase property to then discover they would be obliged, forever and a day, to give their details to a management company. Even though such individuals may have had three or four changes in their dwelling ownership over a ten-year period, they still would be obliged to continue providing their change of address details to a management company with which they had dealings ten years previously.

Senator Ivana Bacik: I certainly take on board the Minister's comments. He may be correct that there may be a better way to deal with this. I take it he can perceive the mischief the amendment seeks to address.

Deputy Dermot Ahern: Yes.

Senator Ivana Bacik: There may be a better or less intrusive way to deal with it. Certainly, his suggestion that the converse should be the case might be the better way to deal with this issue. In other words, a purchaser would be given information about his or her obligations within the owners' management company. Consequently, I will withdraw the amendment at this stage, while reserving the right to table a slightly differently-worded amendment on Report Stage if the Minister has not done something at that Stage to address this mischief.

Amendment, by leave, withdrawn.

SECTION 3.

An Leas-Chathaoirleach: Amendment No. 28 is related to and is an alternative to amendment No. 27. Amendment No. 33 also is related. Amendments Nos. 27, 28 and 33 may be discussed together. Is that agreed? Agreed.

Government amendment No. 27:

In page 6, subsection (1), lines 14 and 15, to delete "of the multi-unit development concerned" and substitute the following:

"of the multi-unit development concerned together with the reversion".

Deputy Dermot Ahern: The purpose of the technical amendments Nos. 27 and 33 is to ensure all ownership interests held by the developer, including the reversion, are transferred to the owners' management company. I understand that as amendment No. 28 has the same purpose, it will not be required if amendments Nos. 27 and 33 are accepted.

Senator Ivana Bacik: As amendment No. 28 is the same as amendment No. 27, I am grateful to learn that the Minister intends to accept this principle. The purpose of amendment No. 28 was to address an omission the Labour Party had observed in the Bill, which was that the section did not require transfer of the reversion to the management company. Clearly, the Minister now has addressed this omission in amendment No. 27. I am grateful he has accepted the principle and am delighted that, essentially, he has taken on board amendment No. 28.

Amendment agreed to.

Amendment No. 28 not moved.

An Leas-Chathaoirleach: As amendment No. 30 is an alternative to amendment No. 29, amendments Nos. 29 and 30 may be taken together. Is that agreed? Agreed.

Government amendment No. 29:

In page 6, subsection (2), lines 17 and 18, to delete all words from and including "Except" in line 17 down to and including "transfer," in line 18 and substitute "The transfer,".

Deputy Dermot Ahern: Section 3 deals with developments in which some units have been sold but the development has not been completed. The words, "Except where the multi-unit development has been completed", in section 3(2) are superfluous and amendment No. 29 proposes to delete them. Amendment No. 30 proposes the deletion of subsection (2) from the section. As this would mean that the developer would no longer retain the beneficial interest for the purposes of completing the development, I am not prepared to accept the amendment. Section 9 requires the beneficial interest to be merged in the legal interest following completion of the development.

Senator Ivana Bacik: The Labour Party considered that subsection (2) seemed to mean that while the developer was obliged to transfer title to common areas, he or she would retain the beneficial interest until the development was completed. Consequently, it seemed unnecessary. I have not examined how the Minister's amendment affects this point. I seek a response from the Minister as to whether it deals with the issue. I note it is also dealt with in section 9. However, subsection (2) appeared anomalous to me and the Minister should outline how his amendment affects this provision.

Deputy Dermot Ahern: The Labour Party amendment proposes to delete all of subsection (2) which would then delete the necessity for the merging of the beneficial interest with the legal interest. I believe the deletion of the words as proposed in my amendment deals with the situation I am trying to address, that is, the transfer of developments in which some units have been sold but the development has not been completed. The deletion of the words, "except where the multi-unit development has been completed" from that subsection means it will begin thus:

> The transfer, in compliance with *subsection (1)* of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units concerned shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of the charge affecting any such beneficial interest).

Consequently, this is a stand-alone measure pertaining to the merging of the beneficial interest with the legal interest.

Senator Ivana Bacik: It appears to address the issue I sought to address. While I will withdraw my amendment, I will review it again in the light of the Minister's amendment. I have not had the time to review the impact of the Minister's amendment on what I was trying to achieve but I will withdraw it at this point.

Amendment agreed to.

Amendment No. 30 not moved.

Section 3, as amended, agreed to.

SECTION 4.

Amendment No. 31 not moved.

Senator Paudie Coffey: I move amendment No. 32:

> In page 6, line 25, after "completed" to insert "as certified by a professional person".

Deputy Dermot Ahern: Section 4 imposes an obligation on a developer to transfer the common areas in substantially completed developments to the owners' management company within six months of the enactment of legislation. I do not perceive any need to delay such a transfer by requiring certification by a professional person. There is a risk that this would provide an excuse for the developer not to proceed with the transfer of the common areas as is required and mandated by section 4. It probably would merely delay the issue.

Amendment, by leave, withdrawn.

Government amendment No. 33:

> In page 6, line 26, to delete "and the ownership of the common areas" and substitute the following:
>
> > "and the ownership of the relevant parts of the common areas or the reversion in the units concerned".

Amendment agreed to.

Section 4, as amended, agreed to.

SECTION 5.

Senator Ivana Bacik: I move amendment No. 34:

In page 6, paragraph (*a*), line 38, to delete "2007" and substitute "2009".

Amendment agreed to.

Section 5, as amended, agreed to.

Amendment No. 35 not moved.

Section 6 agreed to.

SECTION 7.

An Leas-Chathaoirleach: Amendment No. 36 is a Government amendment. Amendment No. 37 is alternative to it and they may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 36:

In page 7, subsection (3), line 26, to delete "shall effect" and substitute "shall, at its expense, effect".

Deputy Dermot Ahern: Both amendments have the same intent, that is, to ensure the obligation on the developer to indemnify the owners' management company in respect of claims made against it will be at the expense of the developer and no one else.

Senator Ivana Bacik: As the proposer of amendment No. 37, I am delighted the Minister has accepted its principle, which was suggested by the Apartment Owners Network, AON. It is important the developer should pay or, as the Minister phrased it, "shall, at its expense, effect". Either way, the principle remains the same, but the legislation clearly places the obligation to pay for the insurance policy on the developer. I am delighted the Minister has accepted our amendment. He seems to be on a bit of a roll and I hope it continues in respect of the rest of our amendments on Committee and Report Stages.

Deputy Dermot Ahern: I am very amenable.

Senator Ivana Bacik: In the circumstances, amendment No. 37 falls, as it would have the same effect as amendment No. 36.

Amendment agreed to.

Amendment No. 37 not moved.

An Leas-Chathaoirleach: Amendments Nos. 38 and 39 are cognate and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 38:

In page 7, subsection (5), line 36, to delete "transferred land" and substitute "transferred common areas".

Deputy Dermot Ahern: These are technical amendments.

Amendment agreed to.

Government amendment No. 39:

In page 7, subsection (5), line 37, to delete "transferred lands" and substitute "transferred common areas".

Amendment agreed to.

Section 7, as amended, agreed.

Section 8 agreed to.

SECTION 9.

An Leas-Chathaoirleach: Amendment No. 40 is a Government amendment to which amendment No. 41 is an alternative and amendment No. 43 is related. Amendments Nos. 40, 41 and 43 may be discussed together. Is that agreed? Agreed.

Government amendment No. 40:

In page 8, lines 28 to 32, to delete subsection (1) and substitute the following:

"9.—(1) Where in respect of a multi-unit development the development stage has ended and either *section 2(6)* or *3(2)* applies, the owner of every beneficial interest in the common areas and reversion in the units which is reserved by virtue of those provisions shall, subject to subsection (2), as soon as practicable thereafter make a statutory declaration for the benefit of the owners' management company that the beneficial interest concerned stands transferred to the owners' management company concerned, and the effect of the making of such declaration is that the beneficial interest and legal interest stand merged.".

Deputy Dermot Ahern: The transfer of common areas provided for in sections 2 and 3 specify that, while legal ownership has transferred to the owners' management company, OMC, the beneficial ownership remains with the developer. Section 9 provides that, following completion of a development, a declaration be made by the developer. Amendment No. 40 makes it clear that the required declaration will result in the merging of the beneficial interest with the legal interest, which is already held by the owners' management company. The OMC will then hold both the legal and beneficial ownerships in the common areas and the reversion of the residential units. Amendment No. 43 makes the same clarification in respect of the corresponding provision in section 10.

Regarding amendment No. 41, the transfer of documentation from the developer to the OMC on completion of the development is covered by section 25 and a new Schedule 3 inserted by amendment No. 74. This Schedule states that any declaration made under section 9 or 10 must be given to the OMC.

Senator Ivana Bacik: In principle, our amendment has been accepted, albeit in a different way. I am delighted that the roll seems to be continuing. The principle, suggested by AON, is important. Not only would the owner of the beneficial interest make the declaration, but he or she would deliver it to the OMC to ensure the company knows about it. The purpose is straightforward, but I see that amendment No. 74 accepts the principle and relates generally to the documentation that must be supplied. This is welcome, as there has been a knowledge deficit for too long. Apartment owners have pointed out the problem of a knowledge deficit to many of us on doorsteps. This Bill will generally address that problem, so I am delighted

[Senator Ivana Bacik.]

that amendment No. 74 will accept our amendment in principle. In the circumstances, amendment No. 41 might fall, but I will withdraw it.

Amendment agreed to.

Amendment No. 41 not moved.

Section 9, as amended, agreed to.

Amendment No. 42 not moved.

SECTION 10.

Government amendment No. 43:

In page 8, lines 43 to 50, to delete subsection (1) and substitute the following:

"10.—(1) Where in respect of a multi-unit development the development stage has not ended and either *section 2(6)* or *3(2)* applies, and the owners of 60 per cent of the units in a multi-unit development or a relevant part of the development request the owner of every beneficial interest in the common areas and reversion in the units which is reserved by virtue of those provisions to do so, such owner shall, subject to *subsection (2)*, or unless good and sufficient cause is shown, as soon as practicable thereafter make a statutory declaration for the benefit of the owners' management company that as respects the development or the relevant part of the development concerned the beneficial interest concerned stands transferred to the owners' management company concerned, and the effect of the making of such declaration is that the beneficial interest and legal interest in the common areas and in the reversion in the residential units concerned stand merged.".

Amendment agreed to.

Section 10, as amended, agreed to.

SECTION 11.

An Leas-Chathaoirleach: Amendments Nos. 44 and 45 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 44:

In page 9, subsection (1), line 26, to delete "Where the" and substitute "Subject to subsection (2), where the".

Deputy Dermot Ahern: These amendments provide some safeguard in terms of the right of an OMC to enter upon and carry out works on adjoining land held by the developer. The new subsection (2) provides that the OMC shall not carry out repairs unless it has first requested the person with responsibility for doing so to carry out the repairs and has offered him or her a reasonable opportunity to do so. However, subsection (3) will ensure that, where essential and immediate repairs are required, they can be carried out notwithstanding the provisions of subsection (2).

Amendment agreed to.

Government amendment No. 45:

In page 9, between lines 35 and 36, to insert the following subsections:

"(2) An owners' management company shall not carry out repairs or maintenance pursuant to *subsection (1)*unless it has—

(*a*) requested the person who had responsibility for carrying out such repairs or maintenance to do so, and

(*b*) afforded such person a reasonable opportunity to carry out the repairs or maintenance.

(3) *Subsection (2)* shall not apply where it is essential that the repairs or maintenance concerned be carried out in the shortest possible period, so as to reduce or minimise any loss to the owners' management company or the owner or occupier of a unit in the development.".

Amendment agreed to.

Section 11, as amended, agreed to.

NEW SECTION.

Senator Paudie Coffey: I move amendment No. 46:

In page 9, before section 12, to insert the following new section:

"12.—(1) From the commencement of this section, an owners' management company shall be incorporated under the Companies Acts for a multi-unit development which comprises 5 units or more and shall carry out the functions referred to in this Act.

(2) The title "owners' management company" and the letters "OMC" shall appear in legible characters on all documents signed and issued by or on behalf of an owners' management company, and the owners' management company shall ensure that it is represented as being such a company.

(3) The objects and functions of an owners' management company shall be—

(*a*) during the development stage, to convey the legal title of a unit in the multi-unit development to each unit purchaser and that it shall not prevent or frustrate any such conveyance, and to ensure (in a manner that is consistent with the object and function to convey that legal title and not to prevent or frustrate it) the management and maintenance of the common areas of the multi-unit development and otherwise to comply with the obligations imposed on the company by this Act,

(*b*) after the development stage, to ensure the management and maintenance of common areas of the multi-unit development and otherwise to comply with the obligations imposed on the company by this Act.

(4) Notwithstanding anything in the Companies Acts, the memorandum of association of an owners' management company shall make provision for the following—

(*a*) the name of the company in accordance with subsection (2),

(*b*) an objects clause in accordance with subsection (3),

(*c*) that each unit owner shall be a member of the company,

[Senator Paudie Coffey.]

(*d*) that each member of the company holds one vote of equal weight as each other member, and

(*e*) that, in the event of a sale of a unit after its first sale, each subsequent unit owner shall be a member of the company on completion of the conveyance.

(5) Notwithstanding anything in the Companies Acts, the articles of association of an owners' management company shall make provision for the following—

(*a*) that an annual general meeting shall be held within every calendar year,

(*b*) that every member of the company shall receive at least 21 days notice of the annual general meeting,

(*c*) that the annual general meeting shall take place within reasonable proximity to the multi-unit development and at reasonable times (unless otherwise agreed by a 75 per cent majority vote of the members of the company),

(*d*) that a scheme of annual service charges and a scheme for a building investment fund for the multi-unit development is established and maintained,

(*e*) the form and content of the annual returns of an owners' management company specified in subsection (6), and

(*f*) the covenants and agreements for the multi-unit development, which shall comply with the requirements of section 5.

(6) Notwithstanding anything in the Companies Acts, the annual returns of an owners' management company shall include the following—

(*a*) the accounts of the company in the form of a statement of income and expenditure,

(*b*) a statement of the annual service charge or charges,

(*c*) a statement of the current level of the building investment fund and the annual contribution to it,

(*d*) a statement of any planned expenditure for the following calendar year,

(*e*) a statement of the assets of the company,

(*f*) a statement of the content of and extent of cover provided by any insurance policy (if any) held by the company,

(*g*) the fire safety certificate issued under the Building Control Acts 1990 and 2007 for the multi-unit development.

(7) Subject to the provisions of this section and the other provisions of this Act, the Companies Acts shall apply with the necessary modifications to an owners' management company.

(8) A multi-unit development which comprises 4 units or less may be developed and maintained on the basis of a co-ownership agreement between the unit owners.".

I am tabling this amendment to acknowledge the efforts of the Law Reform Commission, LRC, in its 2008 report on multi-unit developments, which provides a comprehensive analysis of multi-unit developments and their management. The LRC went so far as to include a draft Bill based on its recommendations in the report, of which Fine Gael has taken account by tabling this amendment.

The commission recommended that an OMC, based on the designated activity company envisaged in the Company Law Review Group's draft companies (consolidation and reform) Bill, is the preferred legal structure for larger multi-unit developments, those being developments of five units or more. Our amendment attempts to address this recommendation and I would be interested in the Minister's opinions.

Deputy Dermot Ahern: I am not sure that the Senator would be interested in them because we are at a loss as to why this amendment has been tabled. It ignores the fact that many of the provisions of the new proposed section are already included in the Bill, for example, in sections 2, 12 and 13. The provisions of subsection (5) of the amendment are well covered in section 13. Similarly, the provisions of subsection (4) of the amendment concern membership of the company, a matter covered by sections 6 and 12. By and large, what is proposed in the amendment is already covered in the Bill.

Senator Paudie Coffey: I thank the Minister for his response and I take his comments on board. He mentioned that he will be consulting other stakeholders on elements of the Bill. Will he or his officials consult the LRC at any stage to take the recommendations of its comprehensive 2008 report on board? What has he taken on board from the report and for what reasons has he not included any of the LRC's recommendations? I would be interested in learning the answers to these questions and about whether there will be further consultation between the Department's officials and the LRC on the latter's recommendations.

Deputy Dermot Ahern: It is up to the Government to propose and the Oireachtas to dispose. The LRC gives advice, but it is not an oracle. The Government can take or reject the LRC's advice. It must also take advice from the Attorney General and listen to vested interests, the Opposition and the media. We do not have an ongoing communication with the LRC as regards this Bill. I appreciate the work that the commission regularly does on many issues and we can take some of its reports verbatim. If it proposes a Bill, we can sometimes, but not always, take the bones of that Bill, but we could not do so in this instance. This issue crosses so many Departments it was necessary for the Tánaiste, the Minister for the Environment, Heritage and Local Government, a significant number of officials and me to sit down on a regular basis to try to pull everything together. Many of the measures contained in the Bill were not dealt with by the Law Reform Commission. We considered that, as we were passing legislation, we should do so as comprehensively as possible. I say this with due respect to the Law Reform Commission.

Amendment, by leave, withdrawn.

Deputy Dermot Ahern: This matter was raised by a number of Senators during the debate on Second Stage. It was always my intention that one vote would attach to each unit rather than unit owner. The amendment makes this clear.

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 48:

In page 10, lines 1 to 3, to delete subsection (4).

[Senator Ivana Bacik.]

This amendment is aimed at deleting section 12(4). This subsection restricts the application of section 12 because it states it applies to multi-unit developments, in respect of which development works will commence after the enactment of the Bill. It seems the one unit-one vote rule, of which we all approve, does not apply to existing managements. That seems to be undesirable. In the Government's amendment No. 17 which inserts a new section 2, there is a recognition that the one unit-one vote rule could be modified in a mixed use development. Did the Minister envisage a similar time limit in the case of the new section 2? As I am not sure why this is time-limited, I would be grateful to hear the Minister's view on the matter.

Deputy Dermot Ahern: Senator Bacik's amendment would introduce an element of retrospection in section 12. To do so would be to rewrite existing management company documentation, particularly their constitutions. Such documents are already contained in the legal documentation each unit owner has received. I am advised that this would not be possible. I have endeavoured to make the Bill applicable, as far as possible, to existing circumstances. There would be no point in passing a law which would only apply to future developments when we know most of the problems are in existing developments. We have, as much as possible, made the provisions retrospective from a legal point of view. However, there are circumstances where we cannot go back. We cannot rewrite constitutions or company memoranda of management companies.

Senator Ivana Bacik: I accept the Minister's point.

Amendment, by leave, withdrawn.

Government amendment No. 49:

In page 10, between lines 3 and 4, to insert the following subsection:

"(5) This section applies to the owners' management company of a mixed use multi-unit development subject to *section 2(4)*.".

Amendment agreed to.

Section 12, as amended, agreed to.

SECTION 13.

Government amendment No. 50:

In page 10, subsection (2), lines 31 to 33, to delete paragraph (*h*) and substitute the following:

"(*h*) a statement setting out, in general terms, the fire safety equipment installed in the development and the arrangements in place for the maintenance of such equipment; and".

Deputy Dermot Ahern: Section 13(2)(*h*) requires that the annual report of the owners' management company include a statement on whether a fire safety certificate has been issued for the development. It has been pointed out that a fire safety certificate is issued prior to the construction of a building and continues to apply until such changes are made to the building as would require the issue of a new certificate. Accordingly, there would appear to be little point in requiring that the same certificate appear in successive annual reports. I consider it to be more important and relevant to the owners' management company which has responsibilities

with regard to fire safety that it provide details on fire safety on an annual basis. The amendment provides for this.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 51 and 53 are cognate and may be discussed together. Is that agreed? Agreed.

Government amendment No. 51:

In page 11, subsection (5), line 1, to delete "agreed by" and substitute "agreed in writing by".

Deputy Dermot Ahern: Section 13(5) provides that the annual meeting of the owners' management company must take place in reasonable proximity to the development and at a reasonable time, unless 75% of the members agree to another arrangement. The amendment makes it clear that any such agreement must be in writing. Similarly, section 14(2) provides that a meeting of the owners' management company to decide on the annual service charge must take place in reasonable proximity to the development and at a reasonable time, unless 75% of the members agree to another arrangement. Amendment No. 53 makes it clear that any such agreement must also be in writing.

Amendment agreed to.

Question proposed: "That section 13, as amended, stand part of the Bill."

Senator Paudie Coffey: The Bill is welcome, as it regulates the running of management companies. This section puts a structure on the organisation of annual meetings and reports of owners' management companies and gives a clear definition to residents and citizens involved in multi-development units. Residents and members will receive annual reports and have an opportunity to raise issues at an annual general meeting. Opposition Members acknowledge the Government's action in addressing this matter at long last, as it has caused confusion and concern for some time. This section gives people a voice and an opportunity to address matters of concern to them on an annual basis.

Question put and agreed to.

SECTION 14.

Senator Ivana Bacik: I move amendment No. 52:

In page 11, between lines 14 and 15, to insert the following subsection:

"(2) The developer shall be liable to pay any charge under this section or *section 15*, within 30 days of invoice, for any unsold unit as if there were a unit owner for that unit.".

The wording of the amendment has been suggested by the Apartment Owners Network, the members of which point out that the obligation to pay service charges should begin on the date the first unit is sold and that the developer should pay service charges on all unsold units, on the same basis as unit owners, from that date.

Deputy Dermot Ahern: I ask the Senator to withdraw her amendment. I will undertake to consider the matter and introduce an appropriate amendment on Report Stage which will take into account the content of the proposed amendment. The issue of when a developer becomes

[Deputy Dermot Ahern.]

liable for the payment of service charges or a building investment fund contribution remains to be clarified. That will require more time.

Senator Ivana Bacik: I am grateful to the Minister for indicating his agreement that there is a mischief which we are trying to resolve. I will withdraw the amendment. I would be delighted to see the issue addressed in some way on Report Stage, although not necessarily through our proposed wording. The issue of the timing of the liability for service charges should be resolved in the legislation.

Amendment, by leave, withdrawn.

Government amendment No. 53:

In page 11, subsection (2), line 22, to delete "agreed by" and substitute "agreed in writing by".

Amendment agreed to.

Government amendment No. 54:

In page 12, subsection (6), line 11, to delete "90 per cent " and substitute "75 per cent".

Deputy Dermot Ahern: The proposed threshold of 90% of members attending and entitled to vote is considered too high and out of line with other thresholds in the Bill. Accordingly, the amendment reduces the threshold to 75% of those attending and entitled to vote at a meeting on annual service charges.

Amendment agreed to.

Amendment No. 55 not moved.

Question proposed: "That section 14, as amended, stand part of the Bill."

Senator Feargal Quinn: I support a point made by Senator Mullen which speaks for itself. The Senator proposes that the annual service charge be proportionately allotted between unit owners with due consideration being given to the type and size of the unit owned. The alternative is not suitable and the Senator is aiming at achieving a more suitable arrangement.

Deputy Dermot Ahern: I am sympathetic to the concerns raised, although if we were to be prescriptive in this regard, we might see officials going in to measure units to determine their size and type.

I always err on the side of over-regulating but I will consider whether we can come up with an appropriate wording before Report Stage, although I am not sure we can.

Senator Feargal Quinn: I understand what the Minister is saying. It is a satisfactory answer.

Question put and agreed to.

SECTION 15.

Government amendment No. 56:

In page 13, lines 45 to 47 and in page 14, lines 1 and 2, to delete subsection (4).

Deputy Dermot Ahern: It has been pointed out to the Department that to provide that a sinking fund contribution be apportioned in the same manner as the service charge would be inconsistent with current best practice. While service charges covering insurance, refuse collection, etc., are normally related to the size of an apartment, contributions to the sinking fund are calculated on the basis that all apartment owners use the common areas, for instance, lifts, landscaped areas and so on and that the usage is not directly related to the size of the particular apartments. For that reason, section 15(4) will be deleted by the amendment.

4 o'clock

Amendment agreed to.

Senator Feargal Quinn: I move amendment No. 57:

In page 14, subsection (5), lines 5 to 7, to delete all words from and including "the" in line 5 down to and including "concerned" in line 7 and substitute the following:

"be determined by a professional quantity surveyor following consideration of the drawings, mechanical and electrical services, and the obligations regarding services set down in the lease between the buyer and the developer".

This amendment speaks for itself. I support the requirement for a sinking fund. It is relatively inexpensive at €200 a year for apartments but a minimum charge should not be legislated for because different complexes have different needs. This is particularly relevant to housing estates. Some small housing developments are run by management companies and the common areas to be maintained are limited. For instance, there may only be grass cuttings. Therefore, a minimum annual contribution of €200 to a sinking fund would be excessive for such a residence. An amendment needs to be considered to exclude developments where there is little common space. In recent years developers squeezed so many dwellings into small spaces that many people have no space around their complex. Therefore, a sum of €200 would be too expensive. My proposal is intended to overcome this problem.

Deputy Dermot Ahern: It is better if the decision on a sinking fund contribution is left to the owners rather than putting the matter into the hands of a professional surveyor. If they want to use the services of a surveyor, they are free to do so. I am conscious some owners may have a difficulty in paying high contributions, especially first-time buyers. The legislation tries to encourage the owners to take an active role in managing the development and I would prefer to leave the decision to them.

With regard to the threshold of €200, given the inclusion of traditional housing developments under the legislation, it may be that the sum is excessive for some developments. We will examine providing more flexibility on the figure between now and Report Stage or before the Bill is taken in the Dáil.

Senator Feargal Quinn: I thank the Minister. That is the issue. There are developments in which there is so little space that a €200 charge would be too much. I accept the Minister's comment. However, I support Senator Bacik and also would prefer if the amendment was made in this House rather than in the Dáil. I hope the Minister will have time for consideration of the amendment while the Bill is being taken in the House.

Amendment, by leave, withdrawn.

Government amendment No. 58:

In page 14, lines 20 to 22, to delete subsection (8).

Deputy Dermot Ahern: There is a significant overlap between subsections (3) and (8). Therefore, I propose the deletion of the latter.

Amendment agreed to.

Question proposed: "That section 15, as amended, stand part of the Bill".

Senator Ivana Bacik: There is no obligation on the developer to pay a contribution to the sinking fund. Will the Minister comment on this? I did not draft an amendment in this regard but other Members and I received an e-mail from property management personnel on the matter. The owner of each unit, including the developer or building contractor, is obliged to pay service charges but there is no obligation on the developer to pay a contribution to the sinking fund. If I am correct about this, why is that so?

Deputy Dermot Ahern: If the developer is exiting the development, I cannot see why he would be liable to pay into the sinking fund. Perhaps I am misunderstanding the Senator. This may, in turn, mean the price of each unit could increase because if the developer was required to pay into a sinking fund, he or she may add the payment to the price. I accept developers have to make a contribution regarding the common areas. I will also examine this issue between now and Report Stage.

Senator Ivana Bacik: I put this badly. The three-year timeframe is the difficulty. Section 15(6) states, "The obligation to establish a sinking fund and to make contributions shall apply on the happening of the later" of three years or "18 months since the coming into operation of this section". Clearly by then the developer should have exited. Should good estate management practice not be that the sinking fund should commence from the first year of occupation of the development? There is potential for significant refurbishment, improvements, etc., in the first three years. If the developer does not pay a contribution because he or she is out of the picture by the time the fund is established, should the fund come into operation sooner? Perhaps it is not necessary for the developer to pay if he or she has exited but three years is a long time to wait for refurbishments and so on.

Deputy Dermot Ahern: Three years was a compromise figure. The developer will be long gone after three years. Many of those who purchase units will be first-time buyers and we do not want to overly burden them.

Question put and agreed to.

Section 16 agreed to.

SECTION 17.

An Leas-Chathaoirleach: Amendments Nos. 59 and 60 are related and they will be discussed together.

Senator Ivana Bacik: I move amendment No. 59:

In page 15, subsection (1), line 6, after "make" to insert ", amend or revoke".

I am grateful to the Minister for accepting the principle underpinning this simple, technical amendment to enable the owner's management company not only to make house rules but also to amend or revoke them. The Minister's amendment No. 60 addresses this issue by provid-

ing that house rules may be amended from time to time in the same way as they may be made. I am happy with this. I withdraw my amendment and thank the Minister for accepting the principle.

Amendment, by leave, withdrawn.

Government amendment No. 60:

In page 15, between lines 33 and 34, to insert the following subsection:

"(8) House rules made pursuant to this section may be amended from time to time in the same manner as house rules may be made.".

Deputy Dermot Ahern: This amendment provides for a better phraseology that than proposed in Senator Bacik's amendment.

Amendment agreed to.

Senator Ivana Bacik: I move amendment No. 61:

In page 16, between lines 5 and 6, to insert the following subsection:

"(11) House rules shall have due regard to environmental considerations and in particular may not prohibit air drying of laundry.".

The amendment addresses a bugbear for any of us who has lived in an apartment. There is a right to dry campaign that points out the environmental and personal hygiene advantages of allowing air drying which is prohibited in many apartment leases and covenants. We are seeking to ensure house rules do not prohibit air drying of laundry. It is an issue that excites a good deal of controversy on both sides. Having lived in flats around Dublin for many years, I have always thought it is important to be able to air dry one's laundry, yet I know there is an equally passionate lobby against this practice——

Senator Paudie Coffey: Was the Senator hanging her stockings on the balcony?

Senator Ivana Bacik: ——who consider the hanging of one's smalls on balconies or from windows to be unsightly. This is perhaps a rather contentious point but it should be considered, given the imperative to try to reduce carbon emissions. Tumble drying is one of the most energy intensive household tasks but it can be the only alternative in drying one's clothes if one is living in a confined space. One cannot have one's clothes drying all over the very small rooms one finds in modern apartments, in particular. Therefore, people use tumble driers, but it is extremely undesirable to encourage the practice. It would send an important signal in terms of environmental considerations, as well as personal hygiene, if people were allowed to air dry their laundry in their apartments.

Senator Feargal Quinn: When I read this amendment, I realised immediately the intention in tabling it and it is well worth supporting. While it is unsightly, as Senator Bacik said, to see small exhibited commonly in apartment blocks, on the other hand, the use of tumble driers poses a problem in terms of achieving the climate change objective set. If we do not take steps such as this, we will not even take the first step in achieving it. Therefore, I support Senator Bacik in bringing forward this amendment.

Senator Paudie Coffey: This is an interesting amendment. The issue arises as a consequence of modern living conditions and standards. When people lived in traditional houses, they would have had a back yard or back garden in which to put up a clothesline. I am not saying I come

[Senator Paudie Coffey.]

down on either side of the argument because we would not want to have all kinds of unsightly paraphernalia and various items of attire, in many colours, hanging from apartments. From an environmental perspective, I do not know if the design of apartments should include such a provision which might be more appropriate to the Planning and Development Act. Consideration was given to the storage of wheelie bins and other such services, but is there any technological or engineering design that might overcome this problem? It will be difficult to legislate but, from an environmental point of view, I can understand from where Senator Bacik is coming. People should be allowed to dry their clothes but how they do it is another matter. I am interested in hearing the Minister's response.

Senator Ivana Bacik: I am grateful to Senators Quinn and Coffey for their support for the amendment. I was being somewhat flippant earlier but I want to make one further important point. Inserting a provision such as this in the Bill would not only send an important signal in terms of environmental considerations but it would also force a change in apartment design. Senator Coffey asked if there were ways to overcome aesthetic considerations about unsightly displays of underwear and so on. Families living on the Continent are culturally used to living and being brought up in apartment blocks and people routinely dry laundry on balconies. A provision for air drying clothes is built into the design of apartments. That is what we would see happening if a provision such as this was inserted in the Bill. It would change the way in which apartments were designed; they would be more conducive to family living and could contribute to a change in culture. On the Continent one sees retractable clotheslines on balconies as a matter of course and in apartments which do not have balconies such clotheslines are fitted to window frames. They are not unsightly and people get used to them. It makes apartment complexes look more lived in.

The analogy with the smoking ban is useful in this context. It was claimed it it would lead to difficulties and practical problems. However, pub and bar owners have become creative about the design of smoking areas which are often attractive in appearance. They have generally changed the nature of our pavement culture in a very nice way. Similarly, we have to get over seeing laundry hanging outside apartments as unsightly; we have to develop a different way of looking at this. This is important from an environmental point of view but it is also important if we are trying to generate a culture in which people believe they can live and bring up children in apartments. Up until now our apartment design has been poor and shoddy. For the most part, apartments have been designed for couples or single people. We have to get overcome this problem. Dublin City Council, among other councils, has recognised this and is trying to ensure better planning and the building of bigger apartments that are more family friendly. I would consider this as part of the context for the amendment.

I would like to receive some indication from the Minister that he might be prepared to consider doing something along the lines of what is proposed in the amendment. I hope he can at least appreciate what we are trying to achieve.

Senator Lisa McDonald: Senator Bacik has raised an interesting point. A major problem in implementing what she has proposed is that many leases in multi-unit developments contain a restrictive covenant in this respect. Another common restriction that has cropped up lately is that wooden floors must be more than 10 cm deep. Leases which contain such restrictive provisions pose a difficulty.

The Senator's point about the planning code would be a way forward if balconies were big and wide enough. Most restrictive covenants in leases stipulate that clothing must not overhang the balcony. Therefore, if there was room on a balcony to hang clothes, their hanging would not be restricted. That practical answer is provided for but the fact is that the design of many

balconies is too small to accommodate it. It is probably impossible to make the proposed provision a mandatory requirement, given the nature of conveyancing in respect of multi-unit developments, but the matter could be addressed in terms of the size of apartment balconies.

Deputy Dermot Ahern: I could be flippant and say far be from me to prevent Senator Bacik from hanging her undergarments on her balcony.

Senator Ivana Bacik: Washing my dirty linen in public.

Deputy Dermot Ahern: I balance it by saying I am not sure that if Senator Quinn had an apartment, he would like to see Senator Coffey's undergarments hanging on the line.

I am not sure I agree with Senator Bacik that it is good for people to have their washing hanging on the balcony of their apartment block. I have seen such apartment blocks on the Continent and sometimes the practice gives them an unsightly appearance. What the Senator is seeking to do in the amendment would probably be better achieved through the proper design of apartment blocks, thereby ensuring there were locations where people could air dry their laundry which we would all like to encourage as much as possible. The point made about restrictive covenants in leases applies. It is academic what provision one may or may not want to insert in house rules because it is probably already restricted and prohibited by covenants in the lease. Where would one stop in this regard? We have heard about the requirement regarding wooden floors, the restrictions regarding the keeping of dogs, cats and other animals. It is best left to the people living in apartment blocks and those who are part of the management company to determine the house rules to suit their own requirements, subject to the restrictions laid down in the lease under which they took on the properties.

An Leas-Chathaoirleach: The Minister is hanging the amendment out to dry.

Deputy Dermot Ahern: No. We could give consideration to including a provision that the "house rules should as much as possible have regard to environmental considerations".

Senator Ivana Bacik: I am trying to think of another dreadful pun to wrap up the debate on the amendment.

I note what the Minister and Senator McDonald said about restrictive covenants. The amendment could be seen as having a less broad effect and aims to ensure that where a lease is silent on this issue and there is no restrictive covenant contained in it, the house rules could not then prohibiting air drying.

The Minister cited the example of the keeping of pets. Sometimes, even where a lease is silent on the issue, house rules are brought forward by the residents or the management company prohibiting the keeping of pets or air drying in apartments. I am not suggesting this provision would necessarily override restrictive covenants but, rather where covenants and leases are silent on this issue, the house rules could not prohibit this practice.

Another point which the Minister made under section 12 is that this provision would only be prospective; therefore, it would not apply to existing complexes where house rules have already been drawn up, as I understand it. Perhaps it is of more limited scope than the Minister believes. However, I would be grateful if, as he suggested, he put something in a more positive framework stating that house rules should have regard to environmental considerations and to the desirability of air drying of laundry. That might be a way to deal with it.

I will withdraw the amendment but reserve the right to table a new one with perhaps a more positive wording on Report Stage because it is an important point in terms of lifestyle and the

[Senator Ivana Bacik.]

nature of living in apartments. It is such a burning issue, although "burning" is the wrong word when talking about clothes. It is an issue which, as I said, excites much opinion and controversy.

Amendment, by leave, withdrawn.

Section 17, as amended, agreed to.

SECTION 18.

Acting Chairman (Senator Paul Bradford): Amendment No. 63 is related to amendment No. 62 and amendments Nos. 64 and 65 are alternatives to amendment No. 63. Amendments Nos. 62 to 65, inclusive, may be discussed together by agreement.

Government amendment No. 62:

In page 16, subsection (4), between lines 31 and 32, to insert the following:

"(*d*) directing the establishment of an additional owners' management company where—

(i) there are separate blocks or buildings in the development,

(ii) there are units of a different character in the development, or

(iii) there are units which are used for different purposes within the development;".

Deputy Dermot Ahern: These amendments propose changes to section 18(4). Amendment No. 62 extends dispute resolution to cases where there are separate blocks or buildings in a development, where there are units of different character, residential and commercial, in the development or where units are put to different uses in the development. Amendment No. 63 inserts three new subsections under section 18(4). The need for these new subsections mainly arises from the expansion of the scope of the Bill to mixed use development. Such developments can encounter different types of problems compared with residential only developments.

The first additional subsection provides that the court may make an order which determines whether the management structure of a mixed use development is in line with the provisions of the Act and, if not, the court may direct that certain steps be taken to ensure the management structure is in compliance with the Act.

The second subsection concerns cases that where proposals are made which would alter the character of a mixed use development, the court may make an order which determines whether any such proposal would affect any class of unit owner in a disproportionate or inequitable manner. The third subsection provides that an order may be made which directs the developer to complete the multi-unit development in accordance with the terms of the contract, planning permission or the Planning and Development Acts and the Building Control Acts.

I can accept amendment No. 64 which amendments the collective citation of the Planning and Development Acts but not amendment No. 65.

Senator Ivana Bacik: I wish to move amendment No. 64. I am grateful the Minister has indicated he will accept it. It is a technical——

Acting Chairman: I am advised that if amendment No. 63 is agreed to, amendments Nos. 64 and 65 cannot be moved. We are on amendment No. 62.

Senator Ivana Bacik: I thought the Minister said he would accept amendment No. 64 but not amendment No. 65.

Acting Chairman: Perhaps the Minister would clarify that.

Deputy Dermot Ahern: I am told amendment No. 64 has been integrated into amendment No. 63.

Senator Ivana Bacik: I see that. I am grateful to the Minister for incorporating amendment No. 64 into amendment No. 63. The Minister said he would not accept amendment No. 65 which was a technical amendment to include requirements under the Building Control Acts as well as the Planning and Development Acts in section 18.

I already mentioned the Minister's amendment No. 63 and he also referred to it when we debated my amendment No. 22. This is the way in which he said he would deal with issues around unsatisfactory completion of developments. I have no difficulty with the amendment but it is not enough to address the problems we sought to address with amendment No. 22 and with the equivalent Independent and Fine Gael amendments. While I support amendment No. 63, it is not an answer to the problems which have arisen where developments have not been satisfactorily completed.

Amendment agreed to.

Government amendment No. 63:

In page 17, subsection (4), lines 1 to 4, to delete paragraph (*h*) and substitute the following:

"(*h*) determining whether the management structure of an owners' management company in a mixed use multi-unit development complies with the provisions of this Act, and if not the order may direct that such steps as the court considers necessary to ensure that the arrangements concerned do so comply, be taken;

(*i*) determining whether a proposal to materially alter the physical character of a development which is a mixed use multi-unit development would disproportionately or inequitably affect any class of unit owners;

(*j*) directing the developer of a multi-unit development to complete the multiunit development in accordance with—

(i) the terms of any contract,

(ii) the conditions of a relevant planning permission under the Planning and Development Acts 2000 to 2009, or

(iii) the Building Control Acts 1990 and 2007;".

Amendment agreed to.

Amendments Nos. 64 and 65 not moved.

Senator Ivana Bacik: I move amendment No. 66:

In page 17, subsection (4), between lines 7 and 8, to insert the following:

"(*j*) annulling house rules or any provision thereof if such rules interfere unreasonably with the rights of an owner of a unit.".

This amendment would provide for some appeal mechanism if rules are adopted which are over-zealous. The amendment proposes to insert a new subsection (*j*) under which somebody may apply to the court to annul a house rule or any provision if the rules interfere unreasonably with the rights of an owner of a unit.

[Senator Ivana Bacik.]

I suppose there is a point there in terms of air drying. This might be a way to resolve an issue if somebody was prohibited from air drying clothes and felt that was in some way unreasonable. It is to include a sort of appeals mechanism to ensure house rules do not interfere unreasonably with the rights of an owner. One can imagine in a small development that it might be possible for rules to be adopted to get at a particular unit owner. It is important there is a mechanism such as this within the section.

Deputy Dermot Ahern: I am reluctant to accept this amendment because it could lead to some friction. Who determines if such rules interfere "unreasonably" with the rights of the owner? It could be a source of discontent among unit owners if one person digs his or her heels in on an issue. I would be somewhat reluctant to be too prescriptive in this regard. However, we will look at it between now and Report Stage but I could not guarantee that I could bring in an amendment which would satisfy what Senator Bacik is trying to do.

Senator Ivana Bacik: In light of what the Minister said, I will not press the amendment. However, I am glad he said he will look at this. He can see the mischief with which I am trying to deal. I accept his point that it could give rise to friction but it could also be seen as a way to try to deal with friction where a group of unit owners ganged up on another owner and introduced a rule which interfered unreasonably with the right of the unit owner. The court would decide what was unreasonable which is its function under section 18. That is why we proposed to insert the paragraph.

Deputy Dermot Ahern: It could be a very pernickety issue and a cranks' charter for a difficult tenant who may go as far as the court for a determination.

Amendment, by leave, withdrawn.

Acting Chairman: Amendments Nos. 67 and 68 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 67:

In page 17, subsection (6)(*a*), line 16, to delete "under subsection (3)." and substitute the following:

"under subsection (3), including an order directing—

(i) the registration in the appropriate manner of any deed required to be executed in compliance with the order, and

(ii) compliance with *subsection (7)*.".

Deputy Dermot Ahern: Section 18(6)(*a*) relates to the making by the court of ancillary orders. Amendment No. 67 provides that the court may direct the registration of any deed required to be executed in order to comply with the order made under subsection (3). In addition, the amendment provides that the court may make an order directing compliance with the new subsection (7) which relates to the provision of certified copies of any deed to unit owners of the development. Amendment No. 68 inserts a new subsection (7) into section 18 which provides that where any deed is executed and registered in compliance with an order under this section, a certified copy of the deed shall be furnished to each unit owner.

Amendment agreed to.

Government amendment No. 68:

In page 17, between lines 30 and 31, to insert the following subsection:

"(7) When any deed required to be executed by reason of an order under this section and such order has been registered in the appropriate manner, each unit owner in the development shall without charge to such unit owner be furnished with a duly certified copy of such deed.".

Amendment agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

SECTION 20.

Senator Feargal Quinn: I move amendment No. 69:

In page 18, between lines 6 and 7, to insert the following subsection:

"(3) The Small Claims Court will deal with non-payment of service charges or building investment funds up to the value of €3,000.".

The Minister will understand the purpose of my amendment, which is to provide that the Small Claims Court could deal with cases arising from the non-payment of service charges or building investment funds up to the value of €3,000. The section's provisions for dealing with the non-payment of management fees are excessive and involve a drawn out process of bringing a case to the Circuit Court. This is an expensive step which requires using the services of a solicitor or barrister. The provisions are also contrary to the recommendation of the Law Reform Commission that the Small Claims Court be used in disputes of this nature. Such a procedure would be relatively fast and inexpensive and the system would be much more efficient for all parties concerned. The amendment would be a useful addition to the Bill.

Senator Ivana Bacik: I support the amendment, as its insertion would simplify arrears recovery, speed up the process and save management companies considerable costs associated with pursuing arrears. It is a sensible suggestion which I hope the Minister will accept.

Senator Maurice Cummins: I also support the amendment because we should, where possible, reduce bureaucracy and simplify procedures. This is a good proposal which I hope the Minister is in a position to accept.

Deputy Dermot Ahern: As a general rule, to be eligible to use the small claims procedure, a consumer or business must have purchased goods or services from someone selling them in the course of business. Claims cannot be made to the Small Claims Court in respect of debts, personal injuries or breach of lease agreements. The small claims procedure has always been pro-consumer and was never intended to serve as a mechanism for the recovery of claims against consumers or outstanding rent or other charges from tenants. The small claims procedure excludes claims by landlords against tenants. Inclusion of claims for the recovery of unpaid service charges and sinking fund contributions could undermine the pro-consumer ethos of the small claims procedure which I am anxious to preserve.

The current monetary threshold applicable to the small claims procedure is €2,000. Providing for a higher threshold of €3,000 in respect of this type of claim would be at odds with the threshold applicable to claims generally under this procedure. The limit of €2,000 is also in line

[Deputy Dermot Ahern.]

with the European small claims threshold, although from time to time we examine the possibility of raising the limit.

The Law Reform Commission report which gave rise to the amendment suggests the Small Claims Court deal with contract debts. Notwithstanding the report, the small claims procedure only deals with claims for goods or services purchased from someone selling them in the course of business. I am, therefore, loath to agree to an extension of the procedure, as to do so would result in further claims for the use of the court and the purpose for which the court was originally intended would become completely enveloped. I suggest to Senators that we proceed slowly on this matter. The appropriate court for determining claims of this nature is the District Court which is, by and large, relatively inexpensive.

Senator Feargal Quinn: While I understand the Minister and share his objective, his response does not overcome the problem. The Bill confers jurisdiction on the Circuit Court. Did the Minister indicate that the District Court rather than Circuit Court would be a less expensive option for dealing with this matter? I am not sure I understand the precise details.

As the Minister will note, the objective of the amendment is to reduce costs in cases of this nature. He is correct that the purpose of the Small Claims Court was to benefit consumers rather than landlords. While I understand the objective he is trying to achieve, will he clarify the role of the District Court as opposed to the Circuit Court in cases of this nature?

Deputy Dermot Ahern: The District Court is available under the legislation and would be the first court to which persons would take a case. It is, by and large, relatively inexpensive to take a case to the District Court, albeit not as inexpensive as the Small Claims Court. The latter was designed to deal with minor, non-complex issues, whereas cases arising under the section are relatively complex and would require the adjudication of a District Court judge rather than the small claims procedure.

Senator Feargal Quinn: The Minister understands what my amendment sets out to achieve. If there is another way of achieving the objective, I am willing to have him examine the matter again.

Amendment, by leave, withdrawn.

Section 20 agreed to.

SECTION 21.

Government amendment No. 70:

In page 18, subsection (1)(*a*), line 7, to delete "Upon the request of any party to an application" and substitute the following:

"Upon its own motion or upon the request of any party to an application".

Deputy Dermot Ahern: This section relates to the holding of mediation conferences to resolve disputes in relation to multi-unit developments. I have decided to amend the provision to provide that a court may, of its own volition, direct that mediation be attempted to resolve the conflict. It has always been my intention to encourage the use of mediation in these circumstances and I consider that allowing the court the opportunity to direct that mediation take place will further encourage the use of mediation as an alternative to court proceedings.

Amendment agreed to.

Question proposed: "That section 21, as amended, stand part of the Bill."

Senator Ivana Bacik: It is sensible that the court should be able to refer a case for mediation on its own motion. What model is being used for the dispute resolution mechanism in section 21? Is it modelled on personal injuries legislation? Is it sufficiently tailored to disputes about completion which may require the resolution of technical issues by an engineer or architect mediator or conciliator? Does the Minister have a view on whether the procedure provided for in the section is sufficiently tailored? Would it be preferable to make provision for the Minister to introduce regulations on methods of resolving a dispute where the dispute turned on a particularly technical point that may best be resolved by somebody with an engineering or technical qualification? In raising this issue I am not opposing the section, although I reserve the right to introduce an amendment on Report Stage. I would be grateful if the Minister indicated what model has been used for the dispute resolution procedure.

Deputy Dermot Ahern: We examined recent provisions in the Civil Liability Act and concluded they would be reasonably applicable in this type of case. I do not propose to introduce regulations governing how the mediation should be organised, as this matter is best left to those involved who have the necessary expertise. I am aware of a significant shift, particularly among those in the legal profession, towards the use of mediation and alternative dispute resolution mechanisms. The section provides a sufficient overview to enable matters to proceed in these circumstances.

As I stated, the purpose of my amendment is to encourage dispute resolution through mediation rather than in the a court with a judge determining the outcome. The former option is preferable. The amendment will encourage the Judiciary to insist that people participate in mediation before a matter can come before the courts again. If the Senator wishes to be more specific as to what she wishes us to do, perhaps she will table an amendment on Report Stage.

Senator Ivana Bacik: I need to look at this issue in greater detail. It is a concern that was raised with me by the architects institute. I agree with the Minister that the objective should be to move to some type of alternative dispute mechanism rather than going to court. That objective is entirely positive and I agree that mediation conferences are infinitely preferable. The chair of the mediation conference should not necessarily be a lawyer. I am glad to see it can be another person nominated by a body prescribed. There is a provision in subsection (4)(*b*) for a ministerial order to specify what sort of other person could be chair of a mediation conference. I will have a look at it again and see what precisely are the concerns of the architects institute. I wanted to flag at this stage that they had some concern that this might not be an appropriately tailored process to deal with disputes where there was some technical issue to be resolved. There may be enough flexibility in the current wording to provide for that but I will examine it and see whether there is some improvement that could be made.

Section 21, as amended, agreed to.

SECTION 22.

Question proposed: "That section 22 stand part of the Bill."

Senator Ivana Bacik: I will reserve my right to introduce an amendment, if necessary, on Report Stage. I support the principle behind the section to move to alternative dispute resolution.

Question put and agreed to.

Sections 23 and 24 agreed to.

SECTION 25.

Acting Chairman: Government amendments Nos. 71 and 74 are related and may be discussed together, by agreement.

Government amendment No. 71:

In page 20, between lines 20 and 21, to insert the following subsection:

"(2) On completion of a multi-unit development, a developer shall furnish to each owners' management company concerned the documentation specified in Schedule 3."

Deputy Dermot Ahern: In addition to the transfer of guarantees and warranties provided for in section 25 I want to ensure that all relevant documentation be provided to the owner of a management company. To enable the smooth running of the company, the extensive list of required documentation is now specified in the new Schedule 3 of the Bill.

Amendment No. 74 inserts a new Schedule 3 into the Bill. Section 25 provides that any person who has developed a multi-unit development must, on completion of the development, transfer the benefits of any warranties, guarantees, to the owners' management company. I have received many submissions on this section, all of which stated that their documentation should also be transferred to the owners' management company on completion. The reason given for the necessity of transferring documentation was that the owner of a management company would be more able to function, as provided for in the Bill, if additional information and documentation was available to them. To that end, I have provided that owners' management company should be supplied with any certificates or opinions of completion regarding the planning permission and building control Acts. I have also provided that the management company should receive confirmation that any financial contributions required under the planning Acts have been paid and so ensuring that the responsibility for the payment of these contributions will not fall on the management company on the transfer of control of the development.

In addition, the safety file of the development which contains relevant health and safety information which should be taken into account during any construction work undertaken following completion of the development must be given to the management company. I am aware it is not normally the case that as built drawings of developments are carried out. However, I am also aware that professionally prepared drawings or the latest versions of the drawings of a development are prepared by a design team. It is important that these are available to the management so I have provided for this in the Schedule.

In a related context as built drawings of the service relating to the development, water, sewerage and electricity are prepared on completion of the developments, I have provided that these must be transferred to the management company. In addition to the above I have also provided other information relating to the plant and equipment in the development and the service and maintenance contracts relating to the development must be transferred to the management company. In many cases title documents of the development are not passed on to the management company on the transfer of ownership. I have now provided that they should be transferred along with counterpart leases and other deeds relating to the units in the development. Finally, I have provided that any documents which the developer, while in the control of the management company, is required by law to maintain, together with financial and management accounts and records relating to service charges in respect of the develop-

ment, should also be transferred to the owners' management on completion of the development.

Senator Ivana Bacik: I support Government amendment No. 74. However, I have one query for the Minister on it. Item No. 3 of Schedule 3 requires that the safety file be transferred. Is that sufficiently specific? A fire safety file requires the production of all relevant documents that might be required to facilitate the owners and management company in meeting their statutory obligations under fire safety regulations. I wonder whether that is covered sufficiently in that term.

Deputy Dermot Ahern: The "safety file" is the term used. We understand it would include the fire safety documentation but we can double check it for Report Stage.

Senator Ivana Bacik: I thank the Minister.

Senator Maurice Cummins: Likewise I welcome this amendment. It is important that all those documents would be transferred on the completion of these units. I commend the Minister for introducing such an amendment which clarifies problems that many bodies have highlighted in the recent past. It adequately covers that whole area.

Amendment agreed to.

Section 25, as amended, agreed to.

Sections 26 to 28, inclusive, agreed to.

SCHEDULE 1.

Senator Ivana Bacik: I move amendment No. 72:

In page 21, between lines 3 and 4, to insert the following:

"1. Sections 2 to 4 (obligation to have owners' management company).".

This amendment seeks to ensure that a two, three or four unit development would still have a management company, otherwise it was thought the existing paragraphs of the Schedule would have made little sense. I am not sure if that is already covered in Government amendment No. 17 which deals with smaller multi-unit developments. I would welcome clarification on that issue. Government amendment No. 17 sought to insert a new section 2. It relates to the application of the Act to multi-unit developments comprising two or more units but less than five units. I understand that a modified version of the Bill is to apply to them. Notwithstanding that, would our amendment still be required? It may be superseded.

Deputy Dermot Ahern: We are going on the basis of what the Law Reform Commission recommended. A smaller number of units do not necessarily have the comprehensive common areas we are trying to address in this legislation. What the Deputy is seeking is that units which have two or more but not less than four units would have a management company which would be a fairly significant burden on a small number of unit owners. We have taken the approach recommended by the Law Reform Commission. We have provided in No. 1, subsection (4), Schedule 1 provisions which we believe are sufficient to meet the type of developments that are at issue in this amendment.

Senator Ivana Bacik: I will not press the amendment at this stage.

Amendment, by leave, withdrawn.

Schedule 1 agreed to.

NEW SCHEDULE.

Government amendment No. 73:

In page 21, after line 14, to insert the following:

1. *Section 4* — (Obligation of developer to transfer ownership of common areas of completed developments to owners' management company).

2. *Section 5* — (Obligations to complete development to remain with developer).

3. *Section 6* — (Automatic transfer of membership of owners' management company on sale of unit).

4. *Section 13* — (Annual meetings and reports of owners' management companies) — other than—

(*a*) *section 13(2)(c)*,

(*b*) *section 13(2)(g)* (to the extent that that provision related to the relevant part of the development), and

(*c*) *section 13(2)(h)*.

5. *Section 14* — (Annual service charges).

6. *Section 18* — (Dispute resolution and rehabilitation of multi-unit developments) (other than subsections (4)(*b*) and (4)(*f*) of that section).

7. *Section 19* — (Persons who may apply under section 18).

8. *Section 20* — (Jurisdiction and venue of Circuit Court).

9. *Section 21* — (Mediation conferences).

10. *Section 22* — (Report of chairperson of mediation conference).

11. *Section 23* — (Saver for existing jurisdictions).

12. *Section 24* — (Restoration of certain companies to register).

13. *Section 25* — (Transfer of benefit of guarantees and warranties).

14. *Section 26* — (Restriction of entering into certain contracts).

15. *Section 27* — (Exercise of power to make regulations).

16. *Schedule 3*.".

Amendment agreed to.

Schedule 2 agreed to.

NEW SCHEDULE.

Government amendment No. 74:

In page 21, after line 14, to insert the following:

1. A Certificate of compliance or an architect's or engineer's opinion as to the completion of the development

(i) in accordance with all relevant planning permissions under the Planning and Development Acts 2000 to 2009, (other than in relation to a condition of such permission relating to the making of financial contribution,

(ii) in accordance with the Building Control Acts 1990 and 2007.

2. Certificates confirming that any financial contributions required by virtue of a condition in a relevant planning permission under the Planning and Development Acts 1990 and 2007 or pursuant to any other statutory enactment have been paid.

3. The Safety File relating to the development.

4. Professionally prepared drawings of the development together with the latest revisions of the drawings of the structure or structures prepared by the design team.

5. Professionally prepared drawings showing the services relating to the development, as built.

6. Operational and maintenance manuals relating to plant and equipment in the development.

7. Documentation relating to warranties and guarantees as respects plant and equipment in the development.

8. Maintenance contracts and contracts for the provision of services relating to the development.

9. Test records relating to drainage, water pipe work and heating pipe work.

10. Schedule of plant and equipment setting out the expected useful life of such plant and equipment.

11. Title documents relating to the development including, as respects the common areas and the reversion, the original stamped deeds (including the declaration made pursuant to section 9 or 10).

12. Stamped and registered counterpart leases or other deeds relating to each unit in the development or relevant part of the development.

13. Documentation relating to the owners' management company including such documents and records as the company is required by law to maintain together with financial and management accounts and records relating to service charges as respects the development.".

Amendment agreed to.

Title agreed to.

Bill reported with amendments.

Acting Chairman: When is it proposed to take Report Stage?

Senator Denis O'Donovan: On Tuesday, 23 March 2010.

Senator Ivana Bacik: The Minister has kindly indicated he will consider quite a number of provisions in the Bill between now and Report Stage. Given that Senator Quinn and I have said we would like to see changes made on Report Stage rather than in the Dáil, on the basis of the full debate we have had today, does the proposed date give sufficient time for consideration? I am not opposing Senator O'Donovan's date of 23 March, but——

Senator Maurice Cummins: What about the guidelines?

Acting Chairman: The provision for holding Report Stage on 23 March simply means the Bill cannot be taken before this date. Obviously there can be negotiation to allow for a later date.

Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern): I ask that Senator Bacik intervene with her parliamentary colleagues in the Dáil, who keep asking why this Bill is taking so long in the Seanad. Perhaps she would impress upon them that there is a need to take time for consideration.

Acting Chairman: I will bring an end to the party political broadcast and advise that the Whips can work together to find a date for Report Stage.

Senator Ivana Bacik: I thank the Acting Chairman.

Acting Chairman: I thank the Minister for his attendance and for his behaviour up to 30 seconds ago, and I thank my colleagues.

Report Stage ordered for Tuesday, 23 March 2010.

Sitting suspended at 4.50 p.m. and resumed at 5.15 p.m.

Compulsory Retirement from the Irish Army of Lieutenant Dónal de Róiste: Motion

Acting Chairman (Senator Dan Boyle): I welcome the Minister of State. No. 37 is a motion on the compulsory retirement of Lieutenant Dónal de Róiste in 1969. Before calling on Senator Eoghan Harris to propose the motion, I remind the House that there is a long-standing rule of the Seanad that the President should be outside and above debate in the House. Under Article 13.8.1° of the Constitution, the President is not answerable to the Seanad.

Senator Joe O'Toole: That is sneaky.

Senator Eoghan Harris: I move:

That Seanad Éireann:—

having considered the circumstances surrounding the compulsory retirement from the Irish army of Lt. Dónal de Róiste in 1969;

noting that the former Lt. Dónal de Róiste was denied the opportunity to rebut or answer the charges made against him at a trial or court-martial;

noting in particular that he was—

(i) refused any fair opportunity to present his case;

(ii) refused access to legal advice;

(iii) denied access to the files on his case;

(iv) never informed of the allegations made against him;

(v) never given the right to be heard in his own defence;

noting also that subsequently the law was amended ensuring that such a process cannot occur again;

and while acknowledging that, under Bunreacht na hÉireann, the supreme command of the Defence Forces is vested in the President and in view of the fact that, in 1969, Lt. Dónal de Róiste's commission was withdrawn by the President on the advice of the Government and that he was compulsorily retired from his position as a commissioned army officer;

is nonetheless, concerned at the lack of procedural fairness and the denial of the principles of natural justice to Lt. de Róiste; and

therefore, in the light of all these circumstances and in the interests of natural justice, calls on the Minister for Defence to request and advise the President to revoke and reverse the withdrawal of Lt. Dónal de Róiste's commission.

People know I am not a bleeding heart. I supported the provisions of section 31 in the Broadcasting Act when in RTE, which kept members of the provisional IRA off the air, and I support selective internment. The case of Dónal de Róiste is one that would move the hardest heart.

I will begin by saying that former Second Lieutenant de Róiste is his own worst enemy. He is a person unfitted for the Army because he would not hurt a fly. Everybody who knows him is moved by him as a guileless, innocent class of a person. He is the type who would very easily find himself in the wrong company and not know it. This happened 41 years ago and it was a different country at the time. In 1969 we entered a period of arms trials where future taoisigh and Ministers were before the courts. In retrospect, what was alleged against Lieutenant de Róiste looks like very small beer.

One of the great advantages of the Seanad is that there is privilege to say the kinds of things that are in ordinary people's minds. In the weeks in which I tried to get people to listen to me about Lieutenant de Róiste, I found the normal human reaction was that there could not be any smoke without fire. The truth is that on Friday, 25 April 1969, Second Lieutenant Dónal de Róiste was retired from the Army on advice to the President by the Minister for Defence on very thin grounds.

He was never formally charged but the scuttlebutt that went around came down to the fact that he was in O'Donoghue's pub playing the tin whistle in the company of people who were in Saor Éire. One of those people wanted to buy a car and Second Lieutenant de Róiste, who knew about transport, said there was an auction of used vehicles in Clancy Barracks. The person from Saor Éire came to the auction.

I have been reading the case files thoroughly for a long time. Although I cannot prove it, I believe it was that action of inviting people in Saor Éire to come to a barracks containing sensitive ordnance, particularly ammunition, that made the Army intelligence anxious about de Róiste as a security risk.

Mr. de Róiste did not obtain natural justice. He was apprehended and interrogated without being informed as to the nature of his offences. He was in a state of shock and trauma. To understand that shock and trauma, one would have to understand Mr. de Róiste's family. His father was one of the old guard — a de Valera supporter and a believer in law and order and rectitude in life. The notion that his son, an Army officer, would be under a cloud in any way shattered him. He never spoke to Dónal again. They were never reconciled, which is heartbreaking.

In 1969, Dónal de Róiste was part of a bohemian set that drank and played music in O'Donoghue's pub. Like many older Members of the House, I frequented the same pub and I would not have known Pádraic Dwyer of Saor Éire or what he looked like. Saor Éire was probably the lowest form of political organisation this country has ever seen and I do not blame

[Senator Eoghan Harris.]

Army intelligence for being concerned about Mr. de Róiste being in the company of its members. The late Pádraic Dwyer led the Saor Éire group which, a year after Mr. de Róiste was retired from the Army, shot Garda Richard Fallon in circumstances which remain murky. One could state, therefore, that Army intelligence was prescient in the context of its concerns regarding Saor Éire.

The fact is that Dónal de Róiste had no interest in subversion. A real subversive fired from the service of the Army would have boasted of his military record and his commitment to the Republic and would have consorted with the people to whom I refer for the remainder of his life. Everyone who knows the de Róiste family will be aware that in the intervening 41 years, Dónal had nothing to do with subversive elements. He continued his interest in spiritual matters and the Irish language. In that context, he strikes me as being a proto-member of the Anamchara group. That is the type of thing which interests him. The notion that Dónal would support subversion is a joke to anyone who knows him.

Ordinary people might ask why Mr. de Róiste did not take legal proceedings of some sort. People might also inquire as to why he was retired from the Army. In that context, there were approximately six options open to the Defence Forces in respect of Mr. de Róiste. However, they refused to take the other five options because each would have involved the holding of a court of inquiry or a court martial and charges would have had to have been laid against Mr. de Róiste. No formal charges were ever laid against him. He was interrogated, somewhat brutally, and asked if he had ever met a certain fellow in O'Donoghue's pub. Pádraic Dwyer's name was never mentioned in this regard. The documents relating to Mr. de Róiste's interrogation were not made available until 2002, more than 30 years after his being retired from the Army.

A number of questions arise in respect of this matter. Why, for example, did Mr. de Róiste's solicitor not take action in respect of the matter? It turns out that his solicitor's letter was not sent in time. When it finally was sent at some point in 1969, Mr. de Róiste had already been retired from the Army. Why did Mr. de Róiste not take a High Court case? Anyone who knows human beings will know the answer to that question. A person who comes from a strong Fianna Fáil family and whose father said that he must have done something wrong would not be in a fit condition to defend himself. Mr. de Róiste suffered from what is now referred to as post-traumatic stress disorder and could not cope with the situation in which he found himself. He was interviewed by the Judge Advocate General in 1969 who stated that Mr. de Róiste appeared to be flippant and indifferent. Anyone could recognise his state of mind at that time. In essence, he had tuned out because he was about to be fired from the Army.

The de Róiste family was not wealthy enough to send Dónal to college, so he went into the Army instead. On the day on which he was commissioned, the members of his family were extremely proud. During his interview with the Judge Advocate General, he was asked whether he had consorted with various individuals. With the exception of questions as to whether he knew a fellow named Pádraic, these individuals were never named. According to the Judge Advocate General, Mr. de Róiste could not provide any answers and appeared to be flippant and indifferent. These are the hallmarks of a person suffering from acute post-traumatic stress disorder being informed that his Army career is over and that his beloved father will be ashamed of him for the remainder of his life.

Effectively, Mr. de Róiste did nothing but nurse his wounds for almost 30 years. During the general rough and tumble of the 1997 presidential election campaign, however, Adi Roche was contacted by the *Irish Examiner* and other newspapers in respect of her brother. I must declare that I do not have clean hands in this regard. I was contacted by the *Daily Star* and asked, in my capacity as a spin doctor, what I thought about the matter. I provided what I still believe

to be good advice, namely, that I thought Adi Roche was insane if she believed she could become President of Ireland in view of the fact that her brother had been dismissed from the Army by a previous holder of that office. I could not fathom why Ms Roche did not understand that.

I did not give any further thought to the matter because, like most human beings, I presumed that which is must be right. I was of the view that whatever was done must have been all right. Everyone is aware, on foot of the case of the Birmingham Six, how dangerous is such an assumption. I am convinced that I was wrong not to examine the details of the case in 1997. As Karl Marx stated, however, nothing is wasted. I remained alert in respect of this case and monitored developments. The dirty tricks campaign which Mr. de Róiste believed was perpetrated against his sister during the 1997 presidential election campaign galvanised him into taking a High Court action. In 1999, the court ruled against him on the grounds that there had been an inordinate delay in bringing proceedings. That delay was basically due to the effects of post-traumatic stress disorder. No normal man fails to take a court case for 30 years unless he is suffering from deep depression. Mr. de Róiste appealed to the Supreme Court, which upheld the High Court's decision. As a result, all doors were closed.

Mr. de Róiste took the next step by approaching a very fine investigative journalist, Don Mullan, who wrote a wonderful book, *Speaking Truth to Power*, about the matter. Mr. Mullan has a secondary theory that there was a cover-up involved but neither Dónal de Róiste nor I subscribe to this. The substantive case put forward by Mr. Mullan is unanswerable. I am not a lawyer and it would not be possible for me to go into the nitty gritty of the de Róiste case, which is a Kafkaesque mosaic of double-dealing, confusion and misunderstanding. I recommend, therefore, that Members read Mr. Mullan's book. However, the broad contours of the case are clear. There was a 30-year delay before Mr. de Róiste tried to clear his name. The High Court found that this delay was too long and the Supreme Court upheld that decision. In 2002, the Judge Advocate General, following the publicity generated by Mr. Mullan's book, opened an inquiry, which found that Mr. de Róiste had been dismissed on reasonable grounds. In 2005, the beginnings of a glimmer of justice began to appear when Mr. de Róiste again went before the High Court. In his decision in respect of the case, Mr. Justice Quirke stated:

> By failing to provide the applicant with access to the relevant documents the JAG and the Minister deprived the applicant of the opportunity to make meaningful and informed representations to the JAG within the process directed towards the vindication of his right to his reputation and good name.
>
> A conscious decision was made on behalf of the Minister to deprive the applicant of access to documents to which he was (then), apparently lawfully entitled. The decision was made at the commencement of a process which directly concerned the applicant and was investigating (a), an earlier decision taken by a former Minister for Defence and (b), the conduct of members of the Defence Forces.
>
> That was patently unfair to the applicant.

There have been long delays and a continual kicking for touch in respect of this matter over the years. This matter was raised in the Dáil by Senator Boyle, when he was a Member thereof, and also by Deputies Shatter and Allen. In light of those long delays, it shows enormous moral courage on the part of the Taoiseach to answer the motion we tabled in the way he has done. Effectively, Mr. de Róiste has been offered a review. I welcome the long-belated decision to grant him that review.

Senator Joe O'Toole: Hear, hear.

Senator Eoghan Harris: Accordingly, I am prepared to accept the Government's amendment to the motion.

Senator David Norris: Well done.

Senator Joe O'Toole: I welcome the Minister of State, Deputy Pat Carey. Senator Harris has been working on this matter for some time and he discussed it with me on many occasions during the past year. For both of us, it has almost become an affair of the heart. It takes a great deal of courage to place a public apology on the record in the way Senator Harris did during his contribution. The Senator is of the view that he made mistakes in respect of this issue in the past. What I like about Senator Harris, and this brought me back 30 years, is that he is still able to quote Karl Marx.

The most important aspect to recognise is that we took a great deal of time to frame this motion. The Minister of State will note that the motion does not contain allegations against anybody. No one is rushing to judgement in respect of anyone else. No reflection is cast on either the authorities or the President of the day. It is extremely important to Senator Harris and me that this be made absolutely clear. When reading the background material to this case, I was struck by a saying my grandmother used to use which goes: "Show me your friends and I will tell you who you are". Like all old sayings, there might be an element of truth in it but it rarely tells the whole story.

I would like the Minister of State, Deputy Pat Carey, to cast his mind back to the day we first met in September 1965. He was shown into room 103 or 102, I cannot recall which, and I ended up in room 120. We had many colleagues in that very lively and vibrant house; we were in the habit of bringing all types of people to our common room and we had all types of arguments. It was where I learned that the only good day was one when we all argued. One of the people in the house at the time was Conchubhair de Róiste, as the authorities called him. The Minister of State will recall that he was a colleague of ours and we knew him as Con Roche. During the course of the years 1965 to 1967 we might have had John Healy in our common room to speak with us, but characters — as we called them — also came in and out as did friends. I remember two in particular, whom we referred to as "the dog" and "the duck". The person referred to as "the duck" is the man at the centre of our discussions, Dónal de Róiste. I have to confess a personal acquaintance with the Roche family, as the Minister of State and I knew Con Roche very well and to a lesser extent we knew Dónal de Róiste.

I want to confirm, having been there, that there is no doubt there were shady characters at the time. During those years, the price of a pint was 2s 5d and I had 10s to spend on a Saturday night. That was the price of four pints on Merrion Row, in either O'Donoghue's or Teach Uí Néill across the road from it, and the 4p bus fare back to Drumcondra. All of these people were in that milieu. O'Donoghue's pub was the heart and soul of all that was going on in Ireland at the time. The Wolfe Tones, the Dubliners and Saor Éire were there as were various groups of republicans. I was as guilty by association — I do not remember if that is the case with the Minister of State — as anyone in those locations. The Minister of State understands that I am making a fair point.

What comes around goes around. The judgment I have to offer my colleagues is that I do not believe Dónal de Róiste was in any way a subversive undermining the State. Do I think he mixed in the wrong company for an Army officer? Yes, without a doubt. Were the Army authorities rightly concerned? Yes. These issues are beyond discussion so what are we speaking about? The Government's amendment is fair but I have two points to make on it. In order to know the man and make a judgment an interpersonal contact is crucial, but the amendment states the Judge Advocate General will nominate somebody to review the case and that Dónal

de Róiste will be entitled to make a written submission. To get a true feel of what this is about, an engagement between the nominee and former Lieutenant de Róiste should be allowed.

My second point on the amendment is crucial. Even though it is 40 years later everybody thinks people are on trial. The Army feels that if it goes the wrong way it will reflect badly on it. Let us go beyond that; this is not what anybody is interested in. I am sure the Minister of State shares my view on this so I ask him to ensure that whoever we nominate for this job has no connection, is no way tainted by, and is no way under the influence of the Army in any way. This is no reflection on the Army.

Earlier today, one of my colleagues asked me whether it was fair to assign the attitudes, principles and mores of today to what happened 40 years ago. We have to do this regularly such as when discussing child or physical abuse. It is not fair to do so. Senator Harris and I have confined ourselves to the principles of natural justice in dealing with the matter because they would have been live at the time. We noted in particular that Dónal de Róiste was denied any opportunity to rebut or answer the charges made against him either at trial or at court martial. A court martial, being under the auspices of Army, has slightly different rules of court and perhaps slightly different burdens of proof are required. However, at least it provides a hearing. He was refused any fair opportunity to present his case at the time. He was refused access to legal advice and denied access to the files of the case. He was never informed of the allegations made against him. He was never given the right to be heard in his own defence. The law has been changed to ensure this can never happen again and in that sense we are looking at what we would do were it to happen now.

I would like this matter to be resolved without assigning blame to anybody. Time has passed; perhaps things should have been done differently but we are not saying anybody was wrong. For instance, perhaps it will turn out during the investigation that former Lieutenant de Róiste was organising an auction of Army vehicles in a Dublin barracks, which was critical in terms of the ammunition and armoury kept there, and there is a very strong possibility that the people he drank and played the tin whistle with in the pub suggested that they would go and have a look at what was for sale but were interested in gathering intelligence.

As a former Superintendent of the House stated many years ago, what this young man needed was a kick in the backside and a strong mentor or, as Senator Harris stated, he should have been told to gather evidence against the people. It should have been dealt with differently. This career went wrong unnecessarily. More than that, what concerns us is that it is a life destroyed and a family split. This hurt will not go away and I would like the Minister of State to deal with it in such a way as to relieve a hurt that has been there for more than 40 years.

Senator Kieran Phelan: I move amendment No. 1:

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

"notes that both the High Court and the Supreme Court have rejected Mr. De Róiste's legal challenge to his compulsory retirement on the grounds of inexcusable delay on his part in bringing the challenges, accepts that it would be inappropriate for the Oireachtas to go behind these Court decisions and recognises that in these circumstances his compulsory retirement remains legally valid;

notes that at the time of his retirement, the Chief of Staff ensured Mr. De Róiste was given an opportunity to respond to the issues raised in his case; that he was interviewed by the Deputy Judge Advocate General; that he was offered the opportunity to make a statement but declined to do so; and that he informed the Deputy Judge Advocate General that he had consulted a solicitor at the time;

[Senator Kieran Phelan.]

> notes that having regard to the decision of the Minister for Defence to order a review in July 2002, the report of which was subsequently quashed by the High Court in 2005, the Government will now ask the Judge Advocate General to select a nominee to carry out a review of the documentation on Mr. De Róiste's file to determine:—
>
> > whether on the basis of the documentation and information available to the Defence Forces at the time the decision to compulsorily retire Mr De Róiste was a reasonable one;
> >
> > understands that Mr De Róiste since the 2005 High Court decision has been provided with the Department's relevant documentation relating to the circumstances of his retirement; and
> >
> > welcomes the fact that Mr De Róiste will now be given an opportunity to make written submissions to the review based on that documentation.".

I welcome the Minister of State, Deputy Pat Carey, and the opportunity to speak on this motion. Like many other Senators, while I was vaguely familiar with some of the broad outline of Dónal de Róiste's situation, I was not fully conversant with the particulars of it. I took the opportunity over recent days to do some reading up on the issue, in particular to read some of the interesting and detailed material written by Don Mullan on the case, both in his book and in a series of articles in *The Irish Times* approximately eight years ago.

Without doubt, it is a complex issue and one that has caused some pain and anguish to former Lieutenant de Róiste and his family. I was particularly struck by the letter written by Mr. de Róiste's late mother, Christina, to *The Irish Times*, when she was 83 years old and which was published on 20 May 2002. It stated:

> I believe my son Donal is innocent. I believe he was wrongfully "retired". I believe the case against him was so spurious that he was denied proper procedures. I believe the Government may have been misled in the information presented to it by Donal's accusers and that our one-time hero, Eamon de Valera, may, in turn, have been wrongly advised.

I have read some of the material produced by Dónal de Róiste and by Don Mullan over the past decade and while I freely acknowledge that it does raise some questions relating to events in 1967 and 1969 I cannot state that I am convinced that it overturns or refutes the claims made at the time. It is worth reminding the Seanad of the timeline of events in this case, as the chronology has some importance. In June 1969, the then Lieutenant Dónal de Róiste was, on the advice of the Government, retired by the President in what was called "the interests of the service". As far as I can ascertain nothing further happened until October 1997, when Mr. de Róiste's case became the subject of media interest in the course of a presidential campaign in which his sister, Adi Roche, was a candidate. In November 1998 Mr. de Róiste initiated proceedings in the High Court with regard to his retirement. In June 1999 the High Court rejected the application for judicial review on the grounds of inordinate delay. This decision was appealed to the Supreme Court, which ruled in January 2001 to confirm the High Court finding.

In June 2002, *The Irish Times* published articles on the case by Mr. Don Mullan and in July 2002 the then Minister for Defence, Mr. Michael Smith, requested the Judge Advocate General to inquire into the circumstances of the retirement by reviewing all relevant documentation. Mr. de Róiste objected to the manner in which this review was conducted, particularly the absence of any referral of the documents to him until after the inquiry was complete. In July 2005 the High Court granted Mr. de Róiste an order quashing the Judge Advocate General's

report. It is worth noting, however, that the substantive issue of Mr. de Róiste's retirement from the Defence Forces was not addressed by the High Court. In early 2006 Mr. Don Mullan's book on the case was published.

As I said earlier I cannot say with certainty whether former Lieutenant de Róiste was wronged back in June 1969. What I can say with confidence and certainty, however, is that military justice and discipline in the Defence Forces has moved ahead in leaps and bounds in the 40 years since Mr de Róiste's situation arose. In the past decade we have seen the introduction of representation for soldiers and officers and the formation of two important representative associations: PDFORRA and RACO. That was an enlightened and modernising decision which put the information and consultation of members of the Defence Forces light years ahead of that of many of their European counterparts. This model of representation for privates, corporals, sergeants, lieutenants, captains and commandants alike is the envy of serving soldiers in armies in places such as the United Kingdom and Portugal, to name just two. It shows an attitude to recognising the rights of serving members of the Defence Forces and the need for transparency and accountability in the running of the organisation that did not exist in 1969.

That is not the only reform. It is not long since the outgoing Minister for Defence, Deputy Willie O'Dea, brought forward the Defence (Amendment)(No. 2) Bill 2006 which significantly overhauled and reformed the existing provisions of Part V of the Defence Act 1954. Part V of the Act provided for disciplinary procedures under military law within the Defence Forces and had been in operation for more than 50 years, subject only to relatively minor revisions. The Defence (Amendment) Act 2007, which was rightly welcomed by all sides in this House, made a number of major changes. It established an independent military prosecuting authority, staffed by qualified military legal officers who now decide, as the Director of Public Prosecutions does in civil law, on all issues relating to the prosecution of offences before courts martial. It appointed a court martial administrator to manage and control the administration and business of courts martial. It established an independent military judicial office with the appointment by an independent authority of one or more military judges with appropriate legal qualifications. It scheduled the offences of a disciplinary nature that can be dealt with summarily and, something that might have been relevant in the situation in question, it gave the right in every case for a person charged with an offence to elect for trial by court martial at the outset. It gave a right of appeal to the summary court martial against a determination or punishment awarded by an authorised or commanding officer and restructured the general and limited courts martial to provide for the appointment of a court martial board, which would make findings on the facts and would have no role in sentencing.

Those changes to the Defence Act were both necessary and desirable to ensure the military law justice system is both expeditious and fair to the individual. Reforming the laws on military justice in that way has contributed significantly to the maintenance of discipline within the Defence Forces. The legislation now complies with the Constitution and, most importantly, has ensured the compliance of the system with the European Convention on Human Rights is now beyond doubt. We should bear those important reforms and changes in mind in this debate and note that the attitude to individual and personal rights in the Defence Forces has moved on considerably in the intervening decades, most particularly in the past five years.

I welcome the Government's decision to conduct another review of the relevant documentation; a review I understand will be in line with the July 2005 High Court ruling. I understand and hope that former Lieutenant de Róiste will use this opportunity to put any documentation of evidence he possesses into that process and that he will feel he has received a fair hearing. It is approximately 40 years since he was retired from the service of Óglaigh na hÉireann. It is just more than a decade since he sought to have the matter re-visited in late

[Senator Kieran Phelan.]

1998. I hope this debate and the Government's decision to attempt again to conduct a fair review of the documentation may help bring this matter to a close for Dónal de Róiste.

I compliment Senators Harris, O'Toole and Norris for bringing the motion before the House. Senators Harris and O'Toole have put up a fantastic case for this man.

Senator David Norris: Hear, hear.

Senator Jerry Buttimer: Cuirim fáilte roimh an Aire Stáit and perhaps soon to be Minister for Defence, Deputy Pat Carey. I thank Senator Harris for and compliment him on his eloquent address to the House. One cannot but be struck by the story he painted of a man who is a person of integrity who at worst would perhaps be seen to be guilty by association. The motion and the amendment before us are important because it is not just a question of Mr. de Róiste's case, it is about what we can achieve in the future.

I have listened to the story as outlined by Senators Harris and O'Toole and I have read Mr. Mullen's book, *Speaking Truth to Power*. Therein lies a good example of the need to look at power, to be truthful and to measure power and utilise it properly. In preparing for the debate I was struck by the response to parliamentary questions tabled by Senator Boyle when he was a Deputy, by Deputy Finian McGrath and by Deputy Bernard Allen from Cork. Reference is made in the reply to being retired from service in the Army. I am sure that is not done lightly but the procedures and processes are different now. As Senator Kieran Phelan rightly said, we now have PDFORRA and RACO which are involved in helping Army personnel to defend themselves.

I am younger than many Members present and I was not involved in public life at the time of the decision on Mr. de Róiste. I grew up in a different Ireland in the 1970s and 1980s when there was a need to protect the State and to deal with subversives who were engaged in a war against their fellow citizens. I have listened to the stories and read the articles about Mr. de Róiste. In particular I was struck in the same way as Senator Kieran Phelan by the letter from Mr. de Róiste's mother. He was a man who, as has been said, was guilty by association. That is unfair. If we learn nothing else from this case it is that we must be slow, balanced and measured in our pursuit of justice. I agree with Senator Harris. If one takes the Birmingham Six as the classic example, the comments of Fr. Paddy Hannon and the book by the former Labour MP whose name escapes me——

Senator Dan Boyle: Chris Mullin.

Senator Jerry Buttimer: ——one cannot but be struck by the need for a balanced and measured approach. I thank Senator Boyle. I welcome the amendment which made clear that the Judge Advocate General is being asked to select a nominee. As Senator O'Toole has said, it is important that Mr. de Róiste would be given an opportunity for a personal hearing. That would be a positive approach and it would offer a belated opportunity to Mr. de Róiste to put his side of the case. I accept he had the opportunity to do that previously but Senator Harris was correct in what he said about post-traumatic stress and depression. We must give Mr. de Róiste another opportunity to get due process.

While all are quick to condemn and judge, reflecting on and stepping back from this story must pose a challenge to all to avoid rushing to such condemnation or judgment. Senator O'Toole was correct to suggest we do not rush to judgment and that we avoid reflecting on the officeholders of the time. As legislators and Members of the Oireachtas, it is important to protect the integrity of all citizens and Members should be able to afford them the opportunity to defend themselves. I acknowledge there was an inordinate delay in Mr. de Róiste's reply

and before the bringing of proceedings in the High Court. However, the amendment tabled to the motion gives rise to the possibility that he will be allowed the opportunity to show he was absolutely innocent, given that no criminal prosecution was brought against him, that no charge was levelled at him and that he was not guilty of any crime.

In preparation for this debate I read newspaper reports on the 1997 Presidential election campaign. In this regard, too, although Senator Harris may disagree with me, as politicians Members can learn a lesson. I am fairly good at debating and being adversarial across the Chamber but there is and can be no room in politics for the disservice done to Adi Roche during that campaign. I salute Senator Harris's courage and genuinely admire him for his actions and contribution. While I may disagree with him on economic issues, again he has shown his humanity in the House today. What happened to Adi Roche during the 1997 campaign was wrong. She is a woman and a lady of integrity. I make this point as someone who has met her and grown to perceive her to be a woman and lady of immense stature. She has become a beacon of hope and offers a vision for many, of what one should aspire to be as a citizen and a Christian. While an election campaign is one matter, to destroy someone or to do what happened to her was wrong. This issue must also be addressed.

The Fine Gael Party will be happy to support the motion and the amendment before the House. Were the Minister to allow for a personal hearing for Mr. de Róiste, it would bring the impending Judge Advocate General's review to a different level.

Senator Dan Boyle: I second the Government amendment. I also commend Senator Harris, in particular, as well as his colleagues among the Independent Senators, on tabling this timely motion. He has pointed out that, as a Member of the other House, I raised this issue on a regular basis. One of the more recent occasions on which it was raised in that House coincided with the 100th anniversary of the acquittal of Captain Dreyfus in France, which I found to be particularly ironic at the time. Although there was no anti-Semitism involved and there were no convulsions in national politics, there are parallels between the two cases. The idea of an individual in a military setting being denied natural justice is an obvious parallel and the raising of the case again constitutes a real attempt to address this injustice.

On a personal level, I have come to know Dónal de Róiste quite well because, following my election to the other House, he has been in regular contact with me, both personally and by e-mail. I became familiar with his life after what is euphemistically described in the motion as his retirement, or effective dismissal from the Defence Forces. While he has struggled to deal with the obvious injustice done to him, he has also lived a full, active and, in respect of service to his local community, good and prosperous life. It is of obvious ongoing concern that the injustice he has carried with him throughout his life was reflected in his relationship with his late father. As has been observed, it was a difficulty his mother tried to alleviate when she was alive. It also has been pointed out that the matter was brought up unnecessarily and, I believe, in an act of base politics in the 1997 Presidential election campaign.

Senator David Norris: Hear, hear.

Senator Dan Boyle: However, the issue at hand concerns the rights and entitlements of Dónal de Róiste. Through the court decision made a number of years ago, the ultimate redress must be perceived to be effective. While one cannot prejudge a process, it is to be hoped that, if given a proper context, there will be only one obvious result from such a process. I sense from their contributions that all Members wanted this issue to proceed to what should be a natural conclusion, given the obvious need for natural justice, the framing of the Government amendment regarding the independence in the selection of a third party by the Judge Advocate General and given the placing of a particular time dimension on the process. As Senator Harris

[Senator Dan Boyle.]

so eloquently pointed out, this issue pertains to events that took place 41 years ago. The process must be time-defined, within the remainder of this year or a 12-month period. I look forward to the Minister of State's response in that regard.

Moreover, this should be as open a process as possible, which should allow both a written submission by Dónal de Róiste and, as Senator Buttimer indicated, the opportunity to interact with the process. Members must contribute anything that will alleviate future doubt about whether there is natural justice in this case to ensure the injustice does not continue for a moment longer.

I do not believe the audible sound interference is being caused by my mobile phone.

Senator Jerry Buttimer: It is Twitter.

Senator Dan Boyle: Everyone has his calling.

I point to the work, in particular, of the journalist and author, Don Mullan, through both his articles and the publication of his book on the subject a number of years ago. As Senator Harris stated, he has propagated a conspiracy theory that parallels the injustice done to Dónal de Róiste. In common with the Senator, I do not believe it really matters whether this is true because the injustice of the original hearings is enough. However, I refer to one element that has prolonged the case unnecessarily. While again taking the lead from Senator O'Toole, that stating this is not to point fingers or name names, this pertains to a constant reluctance one sees in many facets of Irish life when those in authority are questioned. I refer to the ability to admit mistakes or change when errors have been made. Unfortunately, this has been as true of our military hierarchy as in other facets of Irish life.

The audible sound interference certainly is not being caused by my mobile phone.

Senator Kieran Phelan: It is not my telephone either, which is in my office.

Senator Dan Boyle: Throughout a period during which the original personnel such as the Army Chief of Staff and other senior officers have long since been succeeded in their positions by others, there was a natural reflex to ensure the original decision stood and was not challenged or questioned. If the motion achieves anything——

Acting Chairman (Senator Diarmuid Wilson): Someone has a telephone in the vicinity. We will be obliged to scan Members on the way into the Chamber in future.

Senator Dan Boyle: That would be fair enough.

If the motion achieves anything, it will be a step forward in respect of the justice now merited by Dónal de Róiste and in a further peeling away of an attitude that, unfortunately, still obtains in Irish life to the effect that authority cannot be questioned and authority lacks the grace to change and be questioned.

I again thank Senator Harris for tabling the motion and Members for the support it has been given.

Senator David Norris: I congratulate Senator Harris on raising this matter and, particularly, on scoring a notable triumph. Senator Boyle raised this issue in the Lower House, as I did several times in this House, but neither of us was successful in having the case re-opened. Senator Harris, through his motion and ably supported by Senator O'Toole, has handled the issue in such a particular manner that he has been successful.

We should put on the record our recognition of the important role played by the Taoiseach and the Minister of State, Deputy Pat Carey. This matter could easily have been brushed under the carpet again. These steps took moral and political courage and decency on the part of the Government. I am pleased that Senator Harris has accepted the Government's amendment, which is a major step forward. Securing the re-opening of a case that was, in my opinion and that of many others, a travesty of justice is a considerable triumph for Seanad Éireann. The first note must be a positive one, a note of congratulations to Mr. de Róiste.

I compliment Senator Harris on his openness about his marginal involvement in the 1997 presidential election. He did no wrong. When he was contacted by a newspaper, he told the truth. I have no doubt that it was unpalatable to the de Róiste campaign and that sinister forces were around, but they did not include Senator Harris. Rather, they were the major parties, which behaved in a disgraceful way. They hauled this alleged skeleton out of the closest and dangled it in front of the hungry media. I agree with Senator Buttimer that Adi Roche is a remarkable, fine, talented and courageous woman. The media fomented division in the Chernobyl Children's Project. I do not want to strike too much of a negative note because this is a positive evening, but the 1997 events are remembered and must not be allowed to sully any future presidential elections. The motion and its amendment are framed in a careful, well crafted and judicious way, as were the speeches of Senators Kieran Phelan and Boyle.

6 o'clock

The facts are stark. Former Lieutenant de Róiste committed no crime and was neither arraigned on nor accused of a crime. He was denied access to legal representation and the possibility of representing himself. He was denied access to documentation that would have been helpful. Each of his human rights was trampled. One cannot argue with the Army, which had the right at the time to do what it did. What it did was morally wrong, but it was within its legal rights.

It has been stated by both sides of the House that this situation could not recur, but I am sorry to tell them that they are wrong. This situation, described so eloquently by Senator Harris as Kafkaesque, is occurring repeatedly on the instructions of Ministers against asylum seekers, not Irish citizens. I have raised a number of cases in which people applied for asylum. The principle is exactly the same. They were denied, but they were told that they could appeal. To do so, they were told that they would need to include the reasons for the original refusal. When they asked to be told the grounds for their refusals, they were denied those reasons. It is the same thing, in that they were tried and convicted behind closed doors on rumour, gossip and scandal.

Each of us could be convicted in this way. As the Minister of State indicated, Senators Harris and O'Toole mix in bohemian company. They could have been held guilty by attainder. All of us could. God knows, I was never a singer of republican ballads or a fan of the Wolfe Tones, but I knew Ronny Drew well and I occasionally attended O'Donoghue's. Among my close personal friends were two extraordinarily talented artists who were very much on the fringes of the most extreme republican movements, including Saor Éire. I disagreed with and disdained their views, but they were valued friends and fascinating people. Could I have been held guilty of the same offence? Perhaps I was foolish to mix in bohemian circles, but it is what literary people did in those days.

It was unfair and wrong that former Lieutenant de Róiste was found against in that manner and summarily cashiered out of the Army. The only parallel I can think of would be the unfrocking of a priest, which occurs rarely despite the possibility of there being many times in which it should happen. As a result, he was not invited to reunions of the mess. He told me this because I have been involved in the case and have discussed it with Senator Harris in

[Senator David Norris.]

recent months. Former Lieutenant de Róiste was frozen out. Tragically, his family was divided and his relationship with close family members fractured. It must have been appallingly painful for him to become a negative element in his sister's presidential campaign.

I share the admiration for Mr. Don Mullen, who wrote a good book on the Dublin-Monaghan bombings.

A point has already been touched upon, but I wish to emphasise it. The provisions in the Government's amendment are fair and reasonable. The amendment calls for "the Judge Advocate General to select a nominee to carry out a review of the documentation on Mr. de Róiste's file to determine". This sounds like an academic, legalistic exercise, which is appropriate, but Senators Harris and O'Toole have superbly pointed out that there is a human element. Shocked by his dismissal from the Army, former Lieutenant de Róiste entered an unusual mental state and was not capable of dealing with the situation. He is a highly artistic and unusual person, perhaps an inappropriate person to have chosen a career in the Army. It is possible that, unless the strong suggestion that former Lieutenant de Róiste be interviewed is included in the brief of the Judge Advocate General's nominee, the process could remain at the level of an arid and futile legal exercise. I hope not, as I am sure that whoever is chosen will be a person of eminence and intelligence, but will the Minister of State ensure that this distinguished person will be requested to include a direct interview with former Lieutenant de Róiste among his or her activities so he or she can get a feeling for Mr. de Róiste's personality and the case's background?

Minister of State at the Departments of the Taoiseach and Defence (Deputy Pat Carey): First, I apologise to the House for delaying Members, but procedural matters needed to be addressed. Second, I compliment Senators Harris and O'Toole and everyone else on their contributions. I must acknowledge that, while I was reading this case's background information in recent days, I came across the nickname the Duck. I wondered whether there was a connection between that person and the person I used to see around the place. I would have met the Dog and the Duck, the two characters mentioned by Senator O'Toole, although I cannot recall making a great impression on them or they on me. At a time when the hostelries on Merrion Row and elsewhere were more attractive than the lecture theatres in Earlsfort Terrace, I must have encountered the individual in question.

A Leas-Chathaoirligh, it is appropriate to place on the record of the House the appreciation of all the citizens of this country for the very fine manner in which members of the Defence Forces have carried out their duties down through the years, often in trying and difficult times. All too often we fall into the trap of judging an event which took place many years ago by the situation and circumstances pertaining to the current time. The events we are discussing occurred some 40 years ago and have been considered on numerous occasions since then. At all times, it has been the view of successive Governments that these matters were dealt with properly and appropriately and in accordance with the Defence Force Regulations extant at the time.

Ex-Lieutenant Dónal de Róiste was retired by the President, acting on the advice of the Government, with effect from 27 June 1969. This was in accordance with section 47(2) of the Defence Act 1954, which provides that "an Officer of the Permanent Defence Forces may for any prescribed reason be retired by the President". Defence Force Regulation A.15 (Officers), section 18(*l*)(*f*) prescribes that "an officer of the Permanent Defence Force may be retired pursuant to subsection 47(2) of the Act, in the interests of the service".

The events leading to the retirement of Mr. de Róiste happened at a time of a major threat to the security of the State and when those charged with protecting that security were faced

with very difficult decisions. It is impossible for us today to put ourselves into their shoes. Many of the people involved are now dead and cannot defend their actions or offer us the benefit of their direct insights, knowledge and information. We can only depend on the information they have left us contained in files and memos. However, from those files and memos one can have no doubt but that those charged with the security of the State acted out of the highest standards of integrity, consideration and justice, in the best interests of the State and out of a sense of public duty.

The continued assertions by Mr. de Róiste, that the reasons for his retirement from the service were never made clear to him are difficult to comprehend, given the facts of the case. Specifically, the records show that, prior to his retirement, Lieutenant de Róiste would have been made aware, in some considerable detail, of the circumstances giving rise to his retirement in June 1969. The records also show that he was given every reasonable opportunity to respond to the issues raised and failed to do so. He was interviewed by officers of the intelligence section of the Army on three separate occasions in April 1969 in relation to a number of serious matters which had come to their attention. He was given the opportunity to respond to these matters thereafter. Having said he would submit a statement in response to the matters put to him by the intelligence section of the Army, he then failed to do so. A full month passed without any response from Lieutenant de Róiste. At that stage, in the absence of any response, he was given a further opportunity to explain his position when he was interviewed on two occasions by the Deputy Judge Advocate General, who had been requested to advise on the matter.

On the occasion of the first interview with the Deputy Judge Advocate General, the details and the seriousness of the matters relating to his conduct were laid out before him. The Deputy Judge Advocate General was so concerned with his lack of any reasonable response that he explained a second time to Lieutenant de Róiste the seriousness of his situation, including explaining to him the terms of his oath as an officer. The Deputy Judge Advocate General then advised Lieutenant de Róiste to go away and consider his position and return the following morning with his statement. At the request of Lieutenant de Róiste, the Deputy Judge Advocate General confirmed to him that he could take legal advice. Given that Mr. de Róiste asked this question, he clearly was in no doubt as to the gravity of his situation. Yet, on returning the following day to see the Deputy Judge Advocate General, he advised that he would make no further statement. I must say that at that stage, in the absence of any explanation of his situation, and indeed an outright refusal by the officer to provide any such explanation, the authorities were left with no alternative but to recommend to the then Minister that Lieutenant de Róiste should be retired in the interests of the service.

I should also point out that it was always open to Mr. de Róiste to take an action under section 114 of the Defence Acts for a redress of wrongs — a well known and well used provision for members of the Defence Forces who feel wronged — or, upon notice that he was being retired from the Defence Forces in the interests of the service, to take judicial review proceedings in the High Court to challenge that decision. He took no such action under either provision at that time and not till 1998, almost 30 years later.

I will now set out in some detail the circumstances pertaining to this case. The situation presented to the military authorities at the time was very serious. A report was received by the Director of Intelligence in April 1969, from a confidential and most reliable source, to the effect that the then Lieutenant de Róiste was in the company of members of an IRA splinter group, which included an individual on remand for offences related to what was understood to be a subversive incident where gardaí were fired upon. Subsequently, he was seen talking to this individual at an auction of surplus military vehicles in Clancy Barracks, Dublin, on 23 April

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1969. At that time Clancy Barracks was the principal ordnance base for the Defence Forces and a highly sensitive defence installation.

At the first interview held on 25 April 1969 with intelligence section, Lieutenant. de Róiste was informed by the military authorities that they wished to inquire about two civilians he had met at the auction at Clancy Barracks on 23 April 1969. Lieutenant de Róiste gave an account of his acquaintance with these individuals. It is clear from the report of the interview that Lieutenant de Róiste was aware of the fact that the main individual involved, whom he was socialising with, was an undesirable, was engaged in questionable and probably subversive activities and had been charged in relation to a shoot-out with gardaí in Ballyfermot.

The second interview was held three days later. On arrival at the second interview with intelligence section on 28 April 1969, Lieutenant de Róiste was informed by the military authorities that this was a continuation of the previous interview and that the military authorities wished to check on some points made by him at this first interview. The interview followed on with confirmation of the details from the first interview, including his socialising with a person engaged in questionable activities and that he understood that the person was under surveillance.

At the third interview with intelligence section on 30 April 1969, Lieutenant de Róiste gave further details of an individual he had met. At the conclusion of the interview, he indicated he wished to submit his own account of the matter in writing. He was advised by the military authorities that he could do so if he wished and if he did submit one that it should be through the Officer in Charge of the Western Brigade. No such statement or account was received from Lieutenant de Róiste.

It is notable that, despite his prior knowledge regarding the individual in question, the security situation then pertaining in the country, and his obligations as an officer to bring such matters to the attention of his superiors, Lieutenant de Róiste did not bring any of these matters to the attention of his superiors, nor did he desist in having contact with the said individual.

It is clear from the information on the files that Lieutenant de Róiste was given some time and opportunity to submit his own account of these matters and that the authorities took no precipitative action. Instead the matter was referred to the Deputy Judge Advocate General to advise on the matter. The Deputy Judge Advocate General interviewed Lieutenant de Róiste on two separate occasions, that is 28 and 29 May 1969.

At the first interview with the Deputy Judge Advocate General held on 28 May 1969, Lieutenant de Róiste was informed that the General Staff had called the Deputy Judge Advocate General to advise on the matter. The Deputy Judge Advocate General informed Lieutenant de Róiste that he had been reluctant to do anything since Lieutenant de Róiste's interview with intelligence section on 30 April last, where he had indicated he would submit a statement on the matter, until he, Lieutenant de Róiste, had been given the opportunity of submitting any statement he wished to make. Lieutenant de Róiste indicated to the Deputy Judge Advocate General that, after his final interview with the intelligence section on 30 April, he had consulted his solicitor. He informed the Deputy Judge Advocate General that his solicitor had undertaken to write to the director of intelligence and the officer commanding, Western Brigade. The Deputy Judge Advocate General indicated to Lieutenant de Róiste that up to the current date — 28 May 1969 — no letter had been received from his solicitor.

The Deputy Judge Advocate General noted that Lieutentant de Róiste did not appear overly concerned about his situation and, therefore, proceeded to take him through his various interviews with intelligence section. When Lieutentant de Roiste indicated to the Deputy Judge Advocate General that he was not aware of what he was guilty of, the Deputy Judge Advocate

General went through the reports a second time in the minutest of detail with him. The Deputy Judge Advocate General reported that Lieutenant. de Róiste's answers were, in some instances, evasive and, in others, flippant. The Deputy Judge Advocate General reported that he had informed Lieutentant de Róiste of the seriousness of the situation. The Deputy Judge Advocate General read over the oath on commissioning as taken by Lieutenant de Róiste and indicated to him that the reports all seemed to suggest he was not being faithful to that oath.

The Deputy Judge Advocate General noted in his report that he had advised Lieutenant de Róiste to go away and give serious consideration to the situation and that he could contact him the following morning with his statement. Lieutenant de Róiste inquired as to whether there would be any objection to him consulting his solicitor. The Deputy Judge Advocate General made it clear to Lieutenant de Róiste that there would be no objection to such a course of action. Any officer, in this case a relatively junior officer, having been summoned to meet the most senior legal officer in the Defence Forces, being informed that the meeting was taking place at the direction of the general staff and then being told to go away and consider his position, could be in no doubt as to the seriousness of his situation. The fact that the officer asked if he could take legal advice would indicate that he himself understood his predicament and the need to respond fully and promptly to the matters put before him.

Lieutenant de Róiste attended for his second interview with the Deputy Judge Advocate General on the following day, 29 May 1969, and promptly informed the Deputy Judge Advocate General that the matter would not take long, as he would not make any further statement and then left. A letter, dated 30 May 1969, was subsequently received by the Chief of Staff at Army headquarters from Lieutenant de Róiste's solicitors, indicating that they were acting for Lieutenant de Róiste and requesting to know what charge, if any, was being preferred against their client. There is no record on the file of any response issuing to this letter or to any follow-up correspondence from the solicitors. On 26 June 1969 Lieutenant de Róiste was informed by letter that he was to be retired with effect from 27 June 1969.

It was always open to Mr. de Róiste to take an action under section 114 of the Defence Acts for a redress of wrongs or, upon notice that he was being retired from the Defence Forces, to take judicial review proceedings in the High Court to challenge that decision. He took no such action under either provision at the time and did not do so until 1998, almost 30 years later. Clearly, Mr. de Róiste was fully advised in the course of a number of interviews of the issues of concern to his superiors. Clearly, he had full knowledge of the gravity his situation and failed to respond to the issues raised with him, despite being offered every opportunity to do so, including through appropriate and timely legal action. Mr. de Róiste obviously had ongoing contact with his legal representatives in the immediate aftermath of his retirement, as two further letters were received from them. It is noteworthy that the only representations made by the solicitors acting on his behalf in these letters related to his gratuity. No reference was made to the substantive issue of his retirement.

Mr. de Róiste initiated proceedings in the High Court in November 1998 regarding the circumstances of his retirement almost 30 years earlier. The High Court rejected his application for judicial review in June 1999 on grounds of inordinate delay in the bringing of the proceedings. He appealed in September 1999 to the Supreme Court which in January 2001 upheld the High Court's decision.

In early July 2002, arising from a newspaper feature article on the case published on 29 June 2002, the then Minister for Defence requested the Judge Advocate General to examine and to review the case. The Judge Advocate General, a civilian barrister, carried out a detailed examination and review of all the historical documentation relating to the decision to retire the individual concerned, by reference to the entirety of the Department of Defence and military

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files on the matter. Her report was submitted to the then Minister in mid-September 2002 and published in October 2002.

In December 2002 Mr. de Róiste applied to the High Court for an order quashing this report by the Judge Advocate General. The High Court found in favour of the applicant for reasons enumerated in the text of the High Court judgment on his application. The High Court judgment of 27 July 2005 related only to the report completed by the civilian Judge Advocate General in September 2002 and, specifically, not to the original decision to retire Lieutenant de Róiste. Mr. Justice Quirke concluded his judgment by stating, "The decision made in 1969 to recommend the Applicant's retirement from the Defence Forces remains unaffected by any Order made in these proceedings." It should be emphasised, therefore, that the High Court judgment in the matter of the report of the Judge Advocate General specifically related to the actual procedures utilised by the Judge Advocate General in the course of her review and examination of the matter in 2002 and the release by the Department of Defence of certain documents to Mr. de Róiste only after completion of the report. It should also be noted that Mr. de Róiste specifically did not seek an order for mandamus from the High Court and, therefore, did not request the court to remit the matter or direct a resumption of the Judge Advocate General's original inquiry or to direct that a new inquiry be held by the Judge Advocate General or any other person. Such a course of action was open to him but was not taken.

Mr. de Róiste applied to the military authorities in May 1998 under the provisions of the Freedom of Information Act 1997 for access to copies of all documents relating to his retirement from the Permanent Defence Force and his period of service in the force. Without going into all the details, I understand that in July 1998 an appeal was lodged by Mr. de Róiste in the case with the Office of the Information Commissioner. Such appeals are a matter for this office. However, I also understand the case was suspended in July 1998 at the request of the applicant's then legal representatives and that it was subsequently discontinued by the Information Commissioner's office in 1999 owing to the non-pursuance of the matter by the individual concerned and his legal representatives at the time.

On 17 July 2001 Mr. de Róiste made a further freedom of information request to the military authorities in relation to the records relating to his period of cadet training. These records were released in full by the military authorities, although I again understand the applicant submitted an appeal on this decision to the Information Commissioner.

Given the serious nature of the scenario presented to the military authorities in 1969 and in the absence of a response from Lieutenant de Róiste to the matters put before him, they were of the opinion that it would be contrary to the interests of the Defence Forces and the State to retain him in service. I am satisfied that Mr. de Róiste's case was dealt with in a manner consistent with the Defence Forces regulations extant at the time. I am also satisfied that he was given every opportunity to present his case, having had three interviews with military intelligence and two with the Deputy Judge Advocate General. It is clear he was made fully aware of the gravity of his situation. He was afforded every opportunity and time to respond to these issues and provide written statements, which he failed to do. He was not precluded from receiving professional legal advice and did so during the events leading up to his retirement.

Notwithstanding the fact that Defence Forces Regulation A.15 section 18(1)(*f*) was amended in 1985, some 16 years after Lieutenant de Róiste was retired, to read: "Any officer shall not be recommended for retirement for misconduct or inefficiency or in the interest of the service unless or until the reasons for the proposed retirement have been communicated to him and he has been given a reasonable opportunity of making such representation as he may think

proper in relation to the proposed retirement", the manner in which his retirement was dealt with at the time was consistent with the later amendment. The decision to recommend his retirement was taken only after detailed and due consideration. I am satisfied Mr. de Róiste was afforded due process in all aspects of the matter.

A decision to retire an officer in the interests of the service is only taken for the most compelling reasons. Given that the Government decision and the advice to the President concerned military security, I am satisfied the matter was handled in an entirely appropriate and proper manner. I am also conscious of the fact that a previous Minister for Defence requested a review of the documentation to be carried out in 2002 and that for reasons which are set out in its judgment, the report of the review was quashed by the High Court. Having considered the matter in some detail, the Government has decided to undertake a further review of the documentation on Mr. de Róiste's file in a manner which addresses the considerations set out in the High Court judgment of 2005 to determine whether, on the basis of the documentation and information available to the Defence Forces at the time, the decision to retire Mr. de Róiste compulsorily was a reasonable one. I expect the review to be completed within the current year.

The Government is happy to offer Mr. de Róiste the opportunity to make written submissions to the review based on the documentation relating to the circumstances of his retirement, which has been made available to him. On that basis and on the basis of all the information I have imparted to the House today, I commend the amendment to the House.

A number of matters were raised by speakers in the course of the debate, which I will bring to the attention of the Taoiseach and Minister for Defence. We will obviously take account of what has been said here.

Senator Dominic Hannigan: I hate to be the one to break the spirit of *bonhomie* and agreement in the House but I wish to say that I am a little disappointed that I am only getting to speak at this point. We all have to organise business around the House. I had expected to speak on this motion about a half an hour ago and realise that three Independent Senators have spoken before me. I request that the Leader examine the way we order our business in future.

Acting Chairman: The Senator should address the matter before the House.

Senator Dominic Hannigan: I intend to, but I want to make the point that as a result of that I am unable to stay to speak for the eight minutes I have been allotted. Consequently, I will have to be brief because of the way the business has been ordered.

Acting Chairman: The Chair has made the decision.

Senator Dominic Hannigan: I will now turn to the issue in hand. I wanted to make that point and I am grateful to the Acting Chairman for allowing me to so do. I thank the Minister of State for a comprehensive summary of the situation. I have gained a lot of knowledge from listening to his contribution and from his explanation of this case. Some 30 years on it is difficult to look at a case afresh and to work out what is right and what is wrong.

I noted three points in the Minister of State's contribution to which I wish to refer. He said he is satisfied that Mr. de Róiste's case was dealt with in a manner which was consistent with the Defence Forces regulations extant at that time. Second, he said he is satisfied that Mr. de Róiste was afforded due process in all aspects of the matter and,third, he said he is satisfied that the matter was handled in an entirely appropriate and proper manner.

[Senator Dominic Hannigan.]

If there is any doubt that a miscarriage of justice has been carried out, it is essential that we examine that and reconsider the evidence available. I welcome the Government amendment and the provision in it that it will take further submissions on this case. If a miscarriage of justice has occurred, we need to put it right. I will conclude on that point because of the shortage of time available to me.

Senator Brian Ó Domhnaill: I listened to the debate with keen interest and I commend Senator Harris on bringing forward this motion before the House. Obviously, 1969 is quite few years ago given that I was not born then. Having read through some of the information available on-line and in the Library on this case in recent days, I noted that this issue must have been a cause of great of concern to Mr. Dónal de Róiste, Donal Roche, during the past 41 years. Having examined the case, I noted that protracted discussions took place between Dónal de Róiste and the Defence Forces at the time. While it is not clear to those of us looking at this case from the outside what the circumstances were in terms of his early retirement from the Defence Forces, it is clear that a process was followed at the time, but it may have failed in terms of the outcome desired by Mr. de Róiste.

He was interviewed by officers of the intelligence section of the Army on three separate occasions in April 1969 on the matters discussed in the House. On the third of these interviews on 30 April 1969, he volunteered to submit a statement on the matters raised but did not do that at the time for one reason or other. He is the only person who could answer why he did not submit the requested documentation.

He was interviewed subsequently personally by the Deputy Judge Advocate General of the Defence Forces on 28 May and again on the 29 May 1969 and was informed, in some considerable detail, of the issues that were the basis for the cause of concern at the time. He received confirmation from the Deputy Judge Advocate General that he was free to consult a solicitor. However, while he was afforded the opportunity to make a further submission or statement to the military authorities, he indicated he would not be doing so at the time. A process was established at the time but perhaps he thought it better not to submit such documentation. Given the serious nature of the situation presented to the military authorities, from reading some of the information and documentation that is available it appears to be the view that the service considered it was contrary to the interests of the Defence Forces in the State at the time and, therefore, Mr. de Róiste was retired.

Reference was made to the 1997 presidential election and what came out of the woodwork at the time. I join other speakers in condemning the nature of the press coverage at the time. It was unfair to the candidate concerned and to her family, including Dónal de Róiste. While I do not know him personally and do not have any link with him, even though the issue was brought to the High Court and to the Supreme Court and a judgment was made in the favour of the State, if there is a perception that there was miscarriage of justice or that the requested retirement was incorrect, it is appropriate for the Government to bring forward this amendment to the motion that will provide an opportunity for a review of the documentation. I very much welcome and support such a review of the documentation. It provides one more opportunity to Dónal de Róiste to bring forward any additional documentation and information he may have which may allow the State to investigate this matter further. Even though he was allowed the opportunity to do that in 1969, for one reason or another he did not avail of it. He is now being given an additional opportunity by the State and this will provide an opportunity for him to bring forward once and for all information which may be of assistance to him in clearing up some of the issues that were raised.

Had Senator Harris and the other Independent Senators not tabled this motion, that opportunity may not have been provided. Therefore, I commend them on so doing and it is appropriate they did so. With the opportunity now being provided by the Government that the Judge Advocate General will be asked to select a nominee to carry out a review of the documentation, I hope Mr. de Róiste will make a submission which could form the basis for any opinion or decision that would be formed as part of that review.

Some progress has been achieved in this debate. The matter has been discussed in Seanad Éireann. Senator Harris has been responsible in accepting the Government's amendment to the motion. I hope this process will provide the required opportunity and perhaps this House will have an opportunity to further scrutinise at a later date progress that can be made on this case.

Senator Paddy Burke: I welcome the Minister of State to the House. I congratulate Senator Harris, ably assisted by Senator O'Toole, on tabling this motion. We have had a very interesting debate on this subject. If I cast my mind back to 1969, I was a teenager in second year in secondary school in Ballinafad college, which was a day school and a boarding school run by the SMA Fathers. It had some students from Northern Ireland who were known as refugees because of the Troubles which had started in the North.

The world today is a very small place but at that time, it was as if Northern Ireland was a million miles away, even from County Mayo. It was so far removed from people in County Mayo, which was only a stone's throw from Northern Ireland. I am sure Northern Ireland was at least a million miles away from where Lieutenant de Róiste's was brought up in County Tipperary and, after that, in County Cork. To a large extent, we did not know what was happening in Northern Ireland, nor did our parents, because it was like a different country, even though it was part of our native land.

This is an amazing case and it would seem an injustice was done. That is why I compliment Senator Harris on tabling this motion, with which we agree. He has accepted the Government amendment, which we also accept. I congratulate the Taoiseach, who is acting Minister for Defence, on tabling the amendment.

It would seem Lieutenant de Róiste was a very naive young man. He brought a person who, according to the information we have, was a hardened criminal to Clancy Barracks. It was a funny place for the Army to have an auction if it was not going to scrutinise the people who went to it, in particular if it knew a hardened criminal was going. Obviously, it knew he was there and in the company of Lieutenant de Róiste.

I believe Jim Mansfield bought all the equipment used in the Falklands War and subsequently auctioned all of it on the docks in Liverpool. People from all over the world went to that massive auction. I do not know how the British Government disposed of the equipment to Mr. Mansfield or how he bought it but all those people were not brought into a place like Clancy Barracks, which was described by the Minister of State as the principal ordnance base for the Defence Forces and a highly sensitive defence installation, to view the equipment.

Perhaps the Army was right that Lieutenant de Róiste was a naive young man and this individual, with whom he was hanging around, was able to get information from him and perhaps he was a risk to the security of the State at the time without him knowing it. However, it would seem he was never really told about this.

Were soldiers at that time warned by their supervisors as to the dangers of associating with particular people? Gardaí and members of the Defence Forces at that time were all members of and ran GAA clubs. They ran hurling and football clubs throughout the country and I have no doubt there were people in those clubs who were involved with the IRA, Sinn Féin and so

[Senator Paddy Burke.]

on. There is no doubt gardaí and members of the Defence Forces were mixing with these people.

Senator Harris has made a very compelling case in regard to an injustice done. The Army believes it was right but the Government is making the right decision to carry out a review. As Senator O'Toole said, I hope the person put in charge of the review is truly independent and that this case can be brought to a conclusion.

Senator Kieran Phelan read out the very moving letter written by Lieutenant de Róiste's late mother. As Senator Harris said, Lieutenant de Róiste was retired but he was effectively thrown out of the Army. I imagine there was a stigma attached to that at the time. Getting thrown out of the Garda or the Army was like young girls getting pregnant in that people turned their backs on them and that is what happened in this case.

As Members spoke, I wondered whether Lieutenant de Róiste went to his local Deputy or priest to put his case. At that time, people went to the parish priest or the local curate or to a Deputy. It appears he got legal advice but it would seem the legal advice comprised only one letter. The other two letters concerned his retirement pension, gratuity or whatever he was entitled to.

He was a naive young man who, as a speaker said, got caught up in Irish traditional music and who could have been easily led. Senator Harris said he was a man who would not harm a flea, which I believe. I am delighted Senator Harris is accepting the amendment tabled by the Government and that an independent person will be appointed who will report back. I hope we can get closure to this case.

Senator Pearse Doherty: Ní bhainfidh mé úsáid as an t-am ar fad atá agam, mar tá cruinniú eile agam. Ba mhaith liom mo thuairimí a nochtadh don Seanad agus dul ar an record i dtaobh Dónal de Róiste agus an tacaíocht atáim ag tabhairt don rún a chuir an Seanadóir Harris faoi bhráid an Tí. Cuirim fáilte roimh an leasú fosta. Tá sé contráilte, i ndiaidh 40 bliain agus níos mó don éagóir seo a bheith déanta, go bhfuil sé suas chuig Seanadóirí le rún a chur os comhair an Tí sé sa dóigh agus go mbeidh fiosrúchán neamhspleách againn ar na doiciméid a bhaineann leis an cás seo. Níl dabht ar bith go bhfuil Dónal de Róiste ag iarraidh a ainm a ghlanadh le tamall fada anois agus go bhfuil cúl tugtha ag an Rialtas ar an gceist sin.

I support the motion and welcome the amendment and the review of the documentation on Dónal de Róiste's case, which will be carried out. Dónal de Róiste was dismissed from the Defence Forces without charge, court martial, trial or due process of any kind. It should not have happened in the first place. It was a dismissal on a spurious basis which amounted to the charge of guilt by association because he was alleged to have been seen in the company of members of a republican splinter group, Saor Éire. We have heard the real reasons behind it, in particular in Mr. Mullan's book, that it may have been because of Dónal de Róiste's refusal to support a civil court case involving a senior officer responsible for a drink driving incident.

It is important to note that it is more than 40 years since Dónal de Róiste was dismissed from the Defence Forces without charge. After all his efforts to clear his name, it is wrong that a Member of the Seanad must table a motion in Private Members' time to get some movement on a case which is a miscarriage of justice. Dónal de Róiste was not given an opportunity to clear his name and was wrongfully dismissed from the Defence Forces. Persons in such circumstances should not have to rely on politicians whom they know are in a position to table motions on their case.

I am pleased Senator Harris tabled the motion as I know and it is widely accepted that he was the source of the information which resulted in the furore at the time of the 1997 presiden-

tial election. I am glad there has been an acknowledgement in this matter. Perhaps the Senator is trying to heal the wounds of that time.

Senator Eoghan Harris: On a point of order, that is simply not true. Senator Norris acknowledged that, as a spin doctor, I was simple asked to give a comment. The campaign against Adi Roche came from other quarters.

Senator Pearse Doherty: It is widely accepted but whether it is true is another matter. I did not say it was a factual truth but that it is accepted. I think the Senator understands that this is something he needs to do to clear his name.

On the issue, it is important that the motion has been tabled and we are seeing some movement on the Dónal de Róiste case. At the time, there was paranoia in the political establishment in this State and anti-republican hysteria was developing. This was also evident in the campaign launched against Adi Roche during the presidential election of 1997 when Dónal de Róiste was tied in with Ms Roche's campaign.

Justice must be done on this issue and must not be long-fingered in response to a motion tabled in this Chamber. In 2006, the chairperson of the Green Party, on which the Government depends, called on the Minister for Defence, Deputy O'Dea, to issue an apology to Dónal de Róiste. Since the resignation of Deputy O'Dea from the Government, responsibility for defence lies firmly in the lap of the Taoiseach. I hope the commitment given in this debate will result in real movement and has not been made to spare the blushes of Senator Boyle. I hope also that the review will be completed within a short timeframe. I welcome the amendment and commend Senator Harris on his motion.

Senator Eoghan Harris: I misspoke earlier when I stated Dónal de Róiste was retired on 25 April 1969. The correct date was 27 June 1969.

Although politics gets a bad press, this has been a good day for politics. I thank the Minister of State and Senators Kieran Phelan, Norris, O'Toole, Ó Domhnaill and others for their contributions. I was particularly struck by Senator Burke's contribution in creating a picture of the world that lies between the lines of, as it were, the official record, of which the Minister of State's contribution reminded us. Reading through his statement is like reading through the files in the case. Everything is there except the truth. It is like statistics. When taken out of context they lie and do not tell the truth. Facts are the same in the sense that one can have all the facts but unless they are contextualised, they do not tell one the truth.

On the question why Dónal de Róiste did not do something with his solicitor, Don Mullan has this to say:

> As previously discussed, Roche went to a solicitor on 1 May 1969, the day after the 'third interview' [with the Deputy Judge Advocate General] and the advice given was to 'do nothing' until the solicitor wrote and ascertained what was happening. Tragically for Roche, and through no fault of his own, it now appears that the solicitor's firm failed to take immediate action.

That is only one of the contexts that were missing. Fortunately, for the past 20 years, Mr. de Róiste's solicitor, Mr. Eamon Carroll of Noonan Linehan Carroll Coffey solicitors of North Main Street in Cork, has been a powerful advocate on his behalf.

The bits between the cracks, the human misery, were found out today and described by Senators who spoke. It may be that the letter of the law was applied to Dónal de Róiste but the spirit of the law and humanity were not. I reiterate that down the years everybody concerned — journalists, politicians, Ministers and the Army — constantly kicked to touch. While everybody

[Senator Eoghan Harris.]

acted within their rights, they did not go the extra bit of the road to catch the human side, about which Senator Burke spoke so eloquently.

The bits between the cracks were this. The case of Dónal de Róiste has been compared to the Dreyfus case. That may seem to be a highfalutin comparison but Dreyfus only spent a number of years in penal servitude whereas Dónal de Róiste has spent 41 years living with the psychological torment of having his career blasted at the beginning.

A second lieutenant in the Army is a like a second year student in college. A young man of that age is capable of any foolishness and if he was particularly foolish — I believe Dónal de Róiste was a particularly naive individual — it is up to the State to act *in loco parentis*, as a parent, when making a case for him. He was a bit of an eejit in some ways and if he was too much of an eejit to make a case for himself and mind the back of his head, we, the State and body politic, have an obligation to do so on his behalf. The beginning of looking after Mr. de Róiste *in loco parentis* has started today with the courageous decision of the Taoiseach to take the matter on board. The Taoiseach, who is often traduced, had every temptation to kick to touch on this issue, as previous Administrations have done. He did not do so but instead took the matter on board.

7 o'clock

Senator Joe O'Toole: Hear, hear.

Senator Eoghan Harris: I thank Senators for having spoken well in this debate. I will leave the last word to Mr. de Róiste who cannot speak for himself tonight. Last night, I received a touching e-mail from him in which he stated he had complete confidence that the democratic system would see justice done eventually. He does not have malice or bitterness and seeks only to have his name cleared. In the postscript to Don Mullan's book, he wrote the following:

> It is said that the law is what separates us from barbarism and humour separates us from animals. To be mis-labelled a terrorist by the faceless forces of the State and punished *in perpetuum* is anathema to democracy. No smoke without fire, they said. You must have done something wrong for them to arrest you. That is the kind of thinking that led to Hitler's Germany and the 1890s burning of Bridget Cleary.
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> Like my father, I joined the army to serve my country. My family could not afford to send me to college and the army provided me with a great career opportunity. I believe that to this day it is considered an honour to be called up. I never had any quarrel with the army. I can assure Óglaigh na hÉireann, the President, and the government that they have nothing to fear from me; nor do they have anything to fear from the truth.
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> 'An error does not have to become a mistake unless we are unwilling to correct it,' US President John F. Kennedy said. I trust that the President, on the advice of the government, will correct this error before it becomes a historic mistake.

That process has started here today.

Amendment put and declared carried.

Motion, as amended, agreed to.

Acting Chairman: When is it proposed to sit again?

Senator Kieran Phelan: At 10.30 tomorrow morning.

Adjournment Matters.

Thalidomide Compensation Scheme

Senator Mary M. White: I ask the Minister for Health and Children to support thalidomide survivors in their demands for acknowledgement, apology and disclosure of documents, and their demands for a health care package that properly addresses their unique health care needs now and in the future.

Minister of State at the Departments of Health and Children, Social and Family Affairs and the Environment, Heritage and Local Government (Deputy Áine Brady): I am pleased to take this opportunity to outline the position in relation to the matter raised by the Senator.

The thalidomide product sold in Ireland was manufactured by Chemie Grunenthal, a German company. In May 1970 an offer of compensation made by the German manufacturers of thalidomide applied to Irish children. The German compensation, paid through a statutory foundation set up for the purpose, was in the form of a lump sum and a monthly allowance for life. The foundation is funded by a covenant from the German drugs manufacturer.

In 1974, the Irish Government decided to augment the compensation provided by the German foundation. The decision was to provide to each Irish survivor a lump sum of four times the German lump sum and a monthly allowance for life, equivalent to the German allowance. In 1975, the lump sum paid by the Irish Government ranged from €6,400 to €21,200.

There are currently 32 Irish survivors of thalidomide. The Irish monthly allowance is paid by the Department of Health and Children. The total annual payment received by survivors, including the German payment, is currently up to €28,500 per annum. The majority of Irish survivors receive the maximum amount. The monthly allowance is tax-free and is not reckonable for State benefits. Each individual is also automatically entitled to a medical card. The Government accepts the concerns expressed by Irish survivors of thalidomide regarding their continuing and increasing health needs as they get older.

The Minister and Department officials have met with the Irish Thalidomide Association, on a number of occasions with regard to its request for a review of payments by the Irish Government to the survivors of thalidomide. The Minister considered the detailed proposals made by the Irish Thalidomide Association, met with the association in March 2009 and undertook to consider its claim further. In May 2009, the Department asked the State Claims Agency to examine the association's claims and assess its requests in the context of Irish and international provisions for survivors of thalidomide and in the context of Irish case law and precedent, and to advise the Minister accordingly. The State Claims Agency met with representatives of the association on 25 June last year and has listened carefully to its position. The agency has expressed its willingness to meet again with the groups representing survivors of thalidomide, following which it will report to the Minister. Any proposal that results from this process will need to be considered by Government. The Minister awaits receipt of the report of the State Claims Agency.

Senator Mary M. White: I thank the Minister of State for her reply. Recently I had the privilege of meeting members of the Irish Thalidomide Association who appeared before the Joint Committee on Health and Children. Most of us can remember firsthand the tragedy that struck those innocent victims within the womb when their mothers, unwittingly, took as a relief from morning sickness, in the early 1960s, a drug that was wholly untested and yet licensed for sale by the Irish State. Many babies did not survive the pregnancy. Many more died in infancy,

[Senator Mary M. White.]

leaving a legacy that spreads much further beyond the tiny number of survivors — just 32 acknowledged by the State. This group are survivors in the true sense of the word. It is extraordinary that so many of them have managed to lead ordinary lives. All this heroic effort has come at a terrible cost.

The overuse and misuse of disabled bodies trying to live normal lives has come at a terrible price with many experiencing chronic pain, deteriorating health and mobility issues. Heroism is on the list in dealing with childhood by thalidomide survivors. As Maggie Woods, the chairperson of the Irish Thalidomide Association, said "thalidomide stole my body but the State stole my childhood". Many of the survivors were not able to be cared for in normal homes or schools and were sent away to institutions and industrial schools to add more punishment to these innocent children.

After two years of campaigning and nearly 50 years of distress there has been no progress with the review of the 1975 thalidomide arrangement which the Irish Thalidomide Association has called for. After the recent meeting with the Joint Committee on Health and Children we resolved to contact the Minister to ask the grounds for not allowing a meeting between the State Claims Agency and the survivors. The demands of this tiny group are very modest. First, it demands an acknowledgement of the wrong. It was wrong that this drug should be licensed by the State. Second, it demands the issuing of an apology to the survivors and their families and those who did not survive. Third, it asks for the disclosure of documents. The Department of Health and Children has refused to grant voluntary disclosure from all Departments pertaining to this tragedy for 50 years. Why? Fourth, it seeks a health care package that properly addresses their unique needs so they can maintain the level of deteriorating health being experienced and continue, where possible, to lead independent lives.

It was not expected that these thalidomide victims would survive into adulthood. They have put extraordinary pressure on themselves. Many are limbless or with tiny hands and feet. They have survived but they have exerted themselves to the limit. To see them and listen to them is a very moving experience. It is good that they have survived. They have done their best to live normal lives. Two of them have children. Another has studied medicine and has become a doctor. They have put so much pressure on their bodies that now in their early fifties they are experiencing the illnesses suffered by people in their seventies and eighties, such as arthritis.

What we are seeking is a compensation package similar to that provided by the British Government in Northern Ireland during the past two months. Last month a €1.1 million compensation package for Northern Ireland's 18 survivors was provided by the North's health Minister, Mr. Michael McGimpsey. This highlights the lack of progress on this issue by the Department of Health and Children, despite two years of talks between the Department and the Irish Thalidomide Association.

Gaelscoileanna.

Senator Maria Corrigan: I appreciate the opportunity to raise this important matter and I thank the Minister for coming to the Chamber. I raise the issue of the provision of a gaelcholáiste for south Dublin. There are six local gaelscoileanna in the area which have been tremendously successful. This has afforded the opportunity for children to be educated through primary level. There is no second level gaelcholáiste in the immediate area but there is one in an adjacent area. In recent years it has just about managed to provide placements for children who wished to access second level education through Irish. However, in the last couple of years, due to the increasing number of local gaelscoileanna it has not been in a position to do that for everybody. A committed and dedicated group of parents and gaelscoileanna in the area have come together to address this problem. The VEC has a building that is no longer

used on Sydenham Road, Dundrum, which would be an excellent location for a gaelcholáiste. I understand from the campaign group that the VEC is prepared to be the patron of the gaelcholáiste and provide the premises, although it would require work which would need to be funded. The gaelcholáiste would meet the needs of the six local gaelscoileanna.

Studies completed in recent years have shown that there is now sufficient capacity to fill a two-stream second level school in the area. There is a premises available and if funding was provided, the school could open in September. Given the time of year and the urgency of the matter, I would appreciate a positive response from the Minister of State.

Deputy Áine Brady: I am taking this Adjournment Matter on behalf of my colleague, the Minister for Education and Science, Deputy Batt O'Keeffe. I thank the Senator for raising it, as it affords me an opportunity to outline to the Seanad the process being used to ensure there will be adequate accommodation in schools at primary and post-primary level in all parts of the country.

The forward planning section of the Department of Education and Science has carried out a study of the country to identify the areas in which, owing to demographic changes, there may be a requirement for significant additional school provision at both primary and post-primary levels in the coming years. The study was conducted using data from the Central Statistics Office, the General Register Office and the Department of Social and Family Affairs, in addition to recent school enrolment data. After consideration of these factors, decisions will be taken on the means by which emerging needs will be met within an area.

The forward planning section utilises the latest in geographical information systems, GIS, technology to assist in planning school requirements for the future. The GIS contains information on all schools in the country at both primary and post-primary levels. A range of demographic information is linked spatially to the relevant schools and this allows for the mapping of various demographic scenarios at local level. Typically, the demographic information is obtained from the CSO, the General Register Office, the Department of Social and Family Affairs, An Post's GeoDirectory and information supplied by local authorities through development plans. Growth projection figures are applied to the existing population with a view to assessing future requirements at primary and post-primary level.

The forward planning section of the Department is in the process of carrying out detailed analysis of more than 40 locations of highest population growth in order to determine school accommodation requirements up to and including the school year 2014-15. When the required reports have been completed for these initial selected areas, the section will continue to work on preparing reports on a priority basis for the remainder of the country. Overall post-primary accommodation requirements in the south Dublin area, including the case for the provision of a new Irish language post-primary school, will be considered in this regard.

I thank the Senator once again for raising the matter.

Senator Maria Corrigan: I thank the Minister of State, whom I understand is here on behalf of the Minister for Education and Science. However, the reply could have been about any proposal or school in the country. A specific proposal regarding the premises on Sydenham Road has been forwarded to the Department of Education and Science. If the offer is not taken up within the next 12 months, the premises will no longer be available because the VEC will be obliged to offer it to others. It has been empty for the last 18 months, but it cannot remain empty in the hope this proposal will be acted upon.

Children are in sixth class in local gaelscoileanna. They have done wonderfully in their education through Irish. It would be a missed opportunity for them and us if they were not allowed to continue their education through the language. This area of south Dublin has expanded

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rapidly in recent years. The children concerned want to complete their second level education through Irish, from which they will benefit, as will we as a community. I would appreciate it if the Minister of State passed on these sentiments and asked whether there was any specific information available on the Sydenham Road proposal.

Deputy Áine Brady: I have noted the two points the Senator made about the six local gael-scoileanna and the vacant VEC building which I will pass on to the Minister.

Senator Maria Corrigan: I thank the Minister of State.

Rural Transport Services.

Senator Brian Ó Domhnaill: I raise an issue that has emerged in my constituency of Donegal South West with regard to the use of the rural transport service in transporting people to day centres within the area. The service is currently operated by Seirbhís Iompair Tuaithe Teoranta, or SITT, as it is commonly known. SITT and the HSE have been working together on a pilot project for an integrated transport service to HSE-run day centres in towns within Donegal South West. The pilot project ended on 31 December 2009 and has been shown to be beneficial. It is in the process of being rolled out throughout the county. The people who avail of the service to various day centres, including Carrick Day Centre, the Woodhill Resource Centre, Killybegs Day Hospital, Donegal Day Hospital, the Cleary Centre, Rowanfield House and St. Agnes's Centre, are receiving an excellent service. However, in February they were asked to contribute €3 per day for the service. We may imagine a person attending one of these day centres five days a week, for whom €3 may seem a small amount but it equates to €15 per week, which adds up.

In early February the SITT rural transport company wrote to each passenger advising him or her of the €3 charge. The letter stated:

> To date, transport for passengers accessing HSE Centres and Services was fully funded by the HSE. Regrettably, there is a shortfall in the amount of funding available at present and therefore it has been necessary to introduce a small charge of €3 per person per day.
>
> This is payable to SITT and should be given to the driver working on behalf of SITT on your day of travel.

This is a cause of concern. A meeting was held on 22 February by some of those involved in the process. I subsequently raised the issue with the HSE locally and the response I received from the local health manager in Donegal was as follows:

> Due to the limited public transport services in the county, the HSE provided free transport services to day centres; day hospitals and other centres. With the establishment of the rural transport schemes, it was envisaged that an alternative viable transport system would be established and the HSE would focus its resources on service delivery. To date this has not happened. In order to sustain transport services and provide access to HSE services the following was agreed with SITT [not with the passengers but with the transport provider]:
>
> 1. Transport services to HSE centres would be provided by SITT.
>
> 2. A €3.00 charge would apply to daily return journeys from February 2010.
>
> 3. The HSE will resource SITT to provide transport services to HSE centres less the income generated in 2010.

4. Transport routes will be streamlined to avoid duplication by different services.

5. HSE services will co-ordinate holiday periods.

That was the response of the HSE, but it does not address the problem, which is why I am raising the issue in the light of the concerns expressed in my area. I have received a large volume of representations on the issue which affects elderly individuals and vulnerable groups within our society. The people concerned have free travel passes. I am requesting that the free travel pass cover this service. I do not expect an immediate response to the issue and I do not expect the Minister of State to have had all the information before my presentation tonight. I ask that the issue be reviewed given the anxiety and stress the issue is causing these patients travelling to the day centres.

I appreciate this is a financial burden to the HSE, whose budget is under financial pressures like every other budget in the State. Nonetheless, this was a pilot project in operation in south Donegal and will be rolled out to the rest of the country. It is a small charge relative to the overall HSE budget but it is detrimental to the budgets of the passengers in question. As they are social welfare recipients, the €15 would alternatively be spent on groceries or heating bills. I ask that the matter be reviewed if possible.

Deputy Áine Brady: I thank the Senator for raising this matter and providing me with an opportunity to clarify the position.

The provision of non-emergency patient transport is an area where there is considerable expenditure annually in the health services and where, in the interest of safeguarding the provision of front-line services, improved management and control is a necessity. The special group on public service numbers and expenditure programmes report — the McCarthy report — recommended that a review of the continued provision of non-emergency patient transport by the HSE be carried out with a view to securing efficiencies of at least 20%. In addition, the renewed programme for Government agreed in October 2009 commits to exploring the provision of a full-scale transport system in rural areas using the network expertise of Bus Éireann, the physical infrastructure and personal resources of the school transport system and the financial resources currently being spent on transport by the HSE and the Department of Education and Science.

In this context, the Department of Health and Children has set out the principles which should underpin the HSE's operational practice for non-emergency patient transport. These principles emphasise that it would be expected that, as a rule, patients should be in a position to make their own transport arrangements unless there are clear clinical factors involved. The provision or arrangement by the HSE of other forms of transport should be confined to circumstances where the HSE is satisfied that while the person does not require clinical support on the journey, his or her medical condition warrants the making of arrangements for transport, either directly provided by the HSE or in limited circumstances by other providers. In such cases the HSE would also need to be satisfied that the person was not in a position to make or fund his or her own transport arrangements.

In order to realise the maximum efficiencies in 2010, the Department has requested that based on the principles set out, the HSE develop a new set of rules for the provision of patient transport. Savings at a minimum of €10 million in 2010 and a further €5 million in 2011 should be achievable under the new arrangements.

The specific issue raised by the Senator concerns the arrangements made between the HSE in Donegal and Seirbhís lompair Tuaithe Teoranta, SITT, a rural transport service for the provision of transport for patients to HSE day centres, day hospitals and other centres. As

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public transport services are available, the HSE had provided free transport services to day centres, day hospitals and other centres in Donegal. With the establishment of the rural transport schemes, it was envisaged that an alternative viable transport system would be established and the HSE would focus its resources on service delivery. This has not happened to date and the HSE is now required to deliver savings for 2010 in line with its service plan.

In order to sustain transport services and provide continued access to HSE services in Donegal, it was agreed with the local transport provider that a charge would apply to daily return journeys to HSE services from February 2010. The HSE will resource the provider for the provision of the transport service to HSE centres, less the income generated from the charges. It was also agreed that transport routes would be streamlined to avoid duplication by different services.

I understand the HSE has acknowledged that the notice and quality of the communication regarding the introduction of the transport charges was inadequate in this instance. This is now being addressed by the HSE in conjunction with the transport provider and the HSE has apologised for the limited notice to service users. While I appreciate there is an additional financial cost for users with the introduction of these charges, I am informed they were kept to a minimum. I am sure the Senator will agree that in these challenging times, the absolute priority must be to maintain the front-line services within the resources available. I will take on board the points made by the Senator and discuss them with the Department and the HSE.

The Seanad adjourned at 7.25 p.m. until 10.30 a.m. on Thursday, 11 March 2010.