



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Thursday, 1 April 2010.

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SEANAD ÉIREANN

Déardaoin, 1 Aibreán 2010.
Thursday, 1 April 2010.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.

Prayer.

Business of Seanad.

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

The need for the Minister for Health and Children, in the interests of dental health, to outline the provisions and resources that will be made available to prevent tooth decay under the dental treatment services scheme.

I have also received notice from Senator Brendan Ryan of the following matter:

The need for the Minister for Health and Children, given that many residents from Balbriggan and surrounding areas must travel 22 miles to Gardiner Street to apply for supplementary welfare allowances and that this was meant to be a short-term arrangement which has now lasted for six years, to immediately restore this vital service on a local basis to the people of Balbriggan.

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

The need for the Minister for the Environment, Heritage and Local Government to introduce an emergency regulation to compel all head shops to obtain planning permission.

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

The need for the Minister for Justice, Equality and Law Reform to clarify the reasons for the significant increase in the number of people within the legal profession participating in the free legal aid scheme as outlined in the most recent report.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment. I have selected the matters raised by Senators Coffey, Ryan and Ó Domhnaill and they will be taken at the conclusion of business. Senator Keaveney may give notice on another day of the matter she wishes to raise.

Order of Business.

Senator Donie Cassidy: The Order of Business is No. 1, motion re draft directive on the rights to interpretation and translation in criminal proceedings (back from committee), to be taken without debate at the conclusion of the Order of Business; No. 2, Criminal Law (Insanity)

[Senator Donie Cassidy.]

Bill 2010 — Committee Stage, to be taken at the conclusion of No. 1 and adjourn not later than 1 p.m., if not previously concluded; and No. 3, statements on the importance of competition in the insurance industry, to be taken at the conclusion of No. 2 and conclude within 60 minutes, on which Senators may speak for five minutes.

Senator Fidelma Healy Eames: This Easter week the Irish Human Rights Commission launched its first report on the disability sector. That report revealed serious gaps in services for 77 profoundly disabled adults in the Pope John Paul II centre in Ballybane, Galway. It took a 2003 RTE report to show that most adults in the centre shared rooms fit for children and that they could not move. This report shows their human rights have been infringed. Why do we continue to treat our weakest so badly when we let the rich walk on water and when our Government decides on behalf of the taxpayer to bail out Anglo Irish Bank and to write off its directors' debts? There is something seriously immoral at the core of this value system.

One of the main recommendations in the Irish Human Rights Commission report was the need for increased speech and language therapy needed for eating, swallowing and to prevent choking to keep these profoundly disabled adults alive. They get speech and language therapy one day per week. The father of an autistic person in the centre told me at the weekend that he received more speech and language therapy in 1960s Ireland for his stammer.

As a nation, our value system is seriously screwed up. We have got it all wrong. Will the Leader arrange an urgent debate on this Irish Human Rights Commission report? Questions must be answered. Why did the HSE and the Brothers of Charity ignore the needs of these profoundly disabled adults and allow them to live in what their parents call haunting conditions? Why has it taken this report for the HSE to say it will co-operate? What does the word of the HSE mean anyway? It means very little. Last week it moved to cover up my revelation that UCHG did not have the €12 million for cancer drugs. Who is accountable when the Minister for Health and Children will not answer?

Meanwhile back at the bank, the boys continue to play with our nation, thanks to Fianna Fáil and the Green Party. The news is that Anglo Irish Bank has posted the biggest losses in Irish corporate history of €12.7 billion. I have received telephone calls about this and I bet the Leader has too. The citizens want to know why Fianna Fáil and the Green Party are prepared to bring our nation to its knees to save a failed and fraudulent bank in which three investigations are taking place simultaneously into corporate irregularities and criminal activities.

Of equal concern is the fact that Mr. and Mrs. Citizen are owed €2.8 billion by the Quinn group. What is the Quinn group's obligations to the taxpayer?

An Cathaoirleach: There will be a debate on insurance later.

Senator Fidelma Healy Eames: How will the Government recoup this €2.8 billion?

An Cathaoirleach: The Senator is a minute and a half over time.

Senator Fidelma Healy Eames: Will the Leader ask the Taoiseach to come into the House to lead a debate on morality and the guiding principles of government? Clearly, the Taoiseach had his eyes wide shut. It is time he opened his eyes and answered the people.

An Cathaoirleach: Does the Senator want to be ordered out of the House? It is not appropriate for the leader of a group to carry on like that, not obey the rules of the Chair and make a skit of this. I am disappointed with the leader of a group who does not obey the rules of the House.

Senator Joe O'Toole: I notice the media have jumped on the fact the public service pay deal is a bad one and will be rejected by the members. That is the news story of the day and the way it is being played. It is important to recognise that at a time when the economy is on its knees for whatever reason, and we have discussed this many times, and when there is pressure on every public service, there is no possibility of doing what might be described as a good deal. The idea that the unions and social partners could negotiate an increase in salaries at a time when we are cutting back on items such as those Senator Healy Eames mentioned is ludicrous.

As I said in the House, the public sector union leadership was prepared before Christmas to deal with cutbacks in salaries in certain areas and it was prepared to do so again last week. It will be a very difficult deal for public sector unions to sell to their members. I appeal to Members to recognise that this deal was the best that could be done at this time. It creates certainty and the hope is — I am an optimist — that it will bottom out the difficulties for public servants, lead to transformation and build on improved rewards from here on in. That is the basis on which it might or might not be accepted. Journalists have a responsibility to ask questions of all the people involved. For example, if this is rejected, what is the new strategy or where do we go from here? There are serious issues involved. It is a very difficult time to be a trade union leader in the public and private sectors. This is where the difficulty lies.

Yesterday the Oireachtas Joint Committee on Social and Family Affairs met a farmer's wife who has lost her contributory pension. There is a huge debate taking place on this matter. I have raised this issue up to six times in this House over the past ten years. People pay A rate PRSI and when they reach 65 years, 66 years or whatever the appropriate age, they are entitled to claim a contributory pension. That is the law of the land unless one happens to be working for one's spouse who happens to be an auctioneer, a doctor, an accountant or a farmer. For some reason, all we have said about equality legislation since 1973 has gone out the window. Even though one has paid one's contributions, the State has decided that one is not entitled to this contribution because one might not really be working for one's spouse. It is completely wrong. I have raised this issue before and asked people in the legal area to look at it in terms of equality. I would like to see a case taken to Europe because it is inequitable and old fashioned.

Senator Alex White: Will the Leader be able to assist in answering a question I and others have about Anglo Irish Bank which has arisen in recent days? One of the many justifications put forward for adopting the current strategy towards Anglo Irish Bank is that it is not like Lehman Brothers, the balance sheet of which was apparently worth only a small percentage of the full value of the US economy, in that its balance sheet constituted approximately half of the value of the Irish economy. That is one of the arguments being thrown out without much more discussion. That is an extraordinary statement.

How the balance sheet of any bank, even that particular bank, and we could say more about that, or even a respectable bank, in the circumstances of the time, when we hear so much about plurality and the necessity for plurality and competition in banking and financial services, could constitute half of the value of the economy is an extraordinary state of affairs. Couple that with the fact that Anglo Irish Bank poisoned the well of Irish banking a long time before it was apparently discovered on the night of 29 September 2008. It was manifestly happening for a considerable period of time before that date.

The Taoiseach is upset at being drawn into this in that he was Minister for Finance at the time when no real action appears to have been taken. The people are entitled to question what action was taken by politicians. It is central to this debate not only to talk about the Seanies and so on but to look at what action was taken by the Government to arrest this. We are entitled to ask about regulation and such issues. It is not right for politicians, in particular the

[Senator Alex White.]

people at the top, to seek to exclude themselves from the debate or from any kind of argument in regard to it by simply saying they acted on the best advice they had at the time. It is simply not good enough. The date of 30 March 2010 will be viewed as a momentous day on which momentous decisions were made. These decisions must, however, be considered in the context of the decisions that were made exactly 18 months previously on 30 September 2008. I will repeat a question that has been asked many times and to which an answer has not yet been forthcoming. When will we find out exactly what was said by the banks on that fateful night, exactly what they sought and exactly the response of the Government in terms of the argument, rationale and justification for holding on to what was clearly a poisonous bank?

Senator Niall Ó Brolcháin: I ask the Leader to continue to hold important and welcome debates on banking. I concur with Senator Healy Eames that children with special needs are a priority. As I have stated previously, I am the father of a child with special needs. The Seanad must push the issue of speech and language therapy as far as possible. While I agree with the Senator on the need to prioritise special needs, to suggest that changing policy on Anglo Irish Bank would enhance special needs provision is wrong. One cannot link the two issues.

Senator Nicky McFadden: We want the voices of children with special needs heard.

Senator Niall Ó Brolcháin: The two issues do not need to be brought together.

Senator Fidelma Healy Eames: The issue is one of commitment to investment.

Senator Niall Ó Brolcháin: I ask the Senator to allow me to speak.

An Cathaoirleach: Members may not interrupt other speakers.

Senator Niall Ó Brolcháin: People talk about bondholders as if they are some mythical creatures in other countries. The reality is that some of the largest bondholders in Irish banks are local authorities, credit unions and so forth. Has the House debated who are the bondholders and who would be affected if the Irish banking system were brought down? Does the Fine Gael Party seek to do something completely different from the Government and, if so, what precisely are its plans?

Senator Fidelma Healy Eames: Is the Senator not aware of our plans?

Senator Niall Ó Brolcháin: I have spoken to Fine Gael Party spokespersons on finance as well as some of the party's Senators and Deputies.

Senator Jerry Buttimer: Does Senator Ó Brolcháin wish to join the party?

Senator Niall Ó Brolcháin: I would like to know what is different about the Fine Gael Party's plans for the banking system because I am not aware of the difference.

Senator Jerry Buttimer: Our plans are set out in the national recovery plan.

An Cathaoirleach: Senators must not interrupt. Only questions to the Leader are permitted on the Order of Business.

Senator Niall Ó Brolcháin: We must have an honest debate on this issue. Senator O'Toole indicated that we are dealing with the least worst option. If the Fine Gael Party has a magic wand solution for the banking system, I would like to hear what it is because I have not heard it thus far.

Senator Paul Coghlan: I share Senator Ó Brolcháin's appreciation for the debates in the House on banking. Perhaps we are fortunate that the Government's plans for Anglo Irish Bank are with the European Commission. As Senator Alex White noted, Anglo Irish Bank poisoned the well a long time ago. The action being taken now is an example of closing the stable door long after the horse has bolted. This is the most serious matter the country has ever faced. No one in this or the Other House wants in any way to land the taxpayer with any future liability, notwithstanding promissory notes, measures to spread investment in the banks and so forth.

I have repeatedly spoken of the great credibility enjoyed by Deputy Richard Bruton. He is taken seriously by everybody, even those who hold differing views from him. We can argue about good and bad banks. The Government established the National Asset Management Agency and clearly believes in the good bank, bad bank model as it is being adopted for Anglo Irish Bank.

Perhaps the nation will be saved because the matter is before the Commission and we must await its ruling. I agree in large part with Senators' comments on Anglo Irish Bank. We must wait but we do not want to be patient because this is a very serious matter. I hope, therefore, that the Commission will quickly issue its ruling.

Senator O'Toole spoke wisely about the agreement reached between the Government and public service trade unions. We must be realistic as certainty is needed for the future of the economy. I hope people will proceed in a level-headed manner as there is no good in anyone getting carried away. I ask the Leader to comment.

Senator Labhrás Ó Murchú: I return to the issue of Israel's blockade of Gaza. It is evident that the blockade has produced an unprecedented humanitarian crisis, perhaps the worst since the Israeli occupation began in 1967. Israel is now in contravention of the Geneva Convention. As an occupying force, it is responsible for the welfare of 1.5 Palestinians in Gaza. Although it has indicated it has disengaged from Gaza, it remains in effective control of the area and is, under Article 55 of the Fourth Geneva Convention, still responsible for it.

Israel is also flying in the face of the agreement on movement and access signed in 2005. It is clearly not listening to world opinion, including the views of its close friend and supporter, the United States. If Israel does not respond to the humanitarian crisis, it should be brought before an international tribunal and held responsible for the suffering it is inflicting on women and children in Gaza. If the world does not speak out and demand such a tribunal we, too, will be found wanting at the bar of history when this matter is judged subsequently.

Senator Joe O'Toole: Hear, hear.

Senator Labhrás Ó Murchú: Others who have been criminally responsible for the creation of humanitarian crises have been held accountable before tribunals. I call on Israel to take the action required. Failing that, the House should call on world opinion to ensure Israel is held responsible before a tribunal in the near future.

Senator Rónán Mullen: The Minister for Health and Children's statement that the Government's cardiovascular policy and implementation plan, which would transform stroke services, will go to Cabinet within a week has been welcomed by the Irish Heart Foundation, among others. Implementation can only be effective if funding is provided. It is said that the death rate from stroke would be reduced by 25% if patients had access to stroke units but only 11 acute hospitals have such units. Thrombolysis, a miraculous treatment which could help 20% of patients, was only provided to 178 acute stroke patients last year. I ask the Leader to arrange a debate with the Minister for Health and Children at the earliest opportunity. Not only do we need a plan, we desperately need to have funding earmarked for its implementation.

[Senator Rónán Mullen.]

Today, the Policing and Crime Act, which introduces measures aimed at tackling the heinous crime of sex trafficking, enters into force in the United Kingdom. The legislation shifts criminal liability from people who are exploited and does not allow a defence of not knowing that a person was controlled. This provision is much tighter than the provisions of our human trafficking legislation. There is, therefore, a danger that Ireland could become the red light district of western Europe, as people in the North, where the regime is tougher, move South. When Sweden introduced tough laws on trafficking that criminalised the purchasers of sexual services the measures drove trafficking of such persons to other Nordic countries. We need to tighten up our laws. We must decriminalise the sale of sexual services while targeting those who avail of them. The modern day slavery of sex trafficking must be urgently addressed.

The Constitution provides that the same Dáil shall not continue for a longer period than seven years from the date of its meeting. In light of economic circumstances and the unpopularity of politicians, we should seriously consider extending the lifetime of the current Dáil and Seanad to the full seven year term. In the day that is it, I ask the Leader for a commitment to hold such a debate.

Senator Ivor Callely: I listened with interest to the comments of Senators on Anglo Irish Bank, in particular those of my good friend and colleague, Senator Alex White. It is great to be able to pose retrospective questions as we know now where we are. I am curious to know whether the approach advocated by Senator White is Labour Party policy. Is he saying the State has the right to investigate and invade an operation that was solely private at the time?

Senator Alex White: Yes.

Senator Ivor Callely: We know it has since been nationalised by the State.

Senator Alex White: The answer is “Yes”.

Senator Ivor Callely: It would be welcome if the Senator could clarify whether the Labour Party has such policies on private industry.

An Cathaoirleach: Senator Callely should ask a question of the Leader rather than concerning himself with the Opposition parties.

Senator Alex White: I would be delighted to do so.

Senator Ivor Callely: I do not know whether such policies are socialist, communist or otherwise.

Senator Alex White: I would relish the opportunity.

Senator Ivor Callely: I am aware that the Minister for Finance and the Taoiseach have said they are appalled by what they have found. They have made it clear that the regulatory system which was in place failed.

Senator Fidelma Healy Eames: Eyes wide shut.

Senator Ivor Callely: I would like to ask the Leader about the rescue package. I welcome that AIB and Bank of Ireland have earmarked €3 billion for small and medium sized enterprises. I want to lay down a marker to the Leader in this regard. I ask him to respond to me when he finds out what mechanism is in place to ensure the €3 billion is not used for what one might

consider soft lending. I want to ensure we continue to fuel entrepreneurship, which involves people taking risks and going the extra step. I ask the Leader to ascertain what mechanism is in place for the allocation of that €3 billion. To conclude, can the Leader give me an update on cervical cancer vaccinations?

Senator Jerry Buttimer: I ask the Leader to arrange a debate on social partnership. Such a debate would be important in the aftermath of last night's decision by the TUI. I concur with Senator O'Toole that it is important for the unions, their members and, in particular, the media to listen to the social partners. They should reflect on and analyse what is at stake. They should give proper and fair commentary on what was agreed at the Croke Park talks last Monday. Everybody is under pressure, especially our workers and our citizens. That is why we need a debate on social partnership. I suggest that social partnership should be extended to include the Houses of the Oireachtas. We should have a meaningful and active engagement with the social partners. The debate I am calling for should be an honest one. I ask the media to be honest, rather than sensational, in its analysis and commentary.

I join Senator Healy Eames in asking for a debate on disability services. The disabled and their families are becoming the forgotten community in society. The promises that were made in 2007 and previously have been forgotten. These people have needs and rights. We have an obligation to look after them, but we are not doing so. As politicians, it behoves us to do so. I want this debate to take place as soon as possible after the Easter recess. If one speaks to representatives of Inclusion Ireland, the Disability Federation of Ireland or any of the other groups, one will be told that the gap is getting bigger. It is a chasm. The Government does not seem to be able to deal with the non-financial aspects of this matter. Senator Healy Eames referred to speech and language services. This debate is urgently needed because people are waiting for assessments and for respite beds.

Senator Terry Leyden: While Senator Mullen's intervention may have been very appropriate on the day that is in it, I do not think it will become a reality. I appreciate that it would be attractive for everyone.

In light of the developments in the banks and in NAMA, can the Leader arrange a debate after Easter on the progress being made with the events taking place in the banks? People are angry about the payment of €1 million in bonuses to three directors of Anglo Irish Bank and the pay increases that were given to the staff of the bank recently. I compliment the incoming chairman of Anglo Irish Banks, Mr. Alan Dukes. To my mind, this is Tallaght 2. I hope he will not be treated as he was treated when he agreed to Tallaght 1, in the national interest, some years ago. I compliment Mr. Dukes. Yesterday, Fine Gael members of a committee attempted to remove him from a list of contributors to a meeting in this House because of the commitment he has made to the people in the national interest. I commend him on that.

Senator Paschal Donohoe: That is outrageous.

Senator Terry Leyden: I want to say, in relation to the investors in the——

Senator Paschal Donohoe: Was the Senator at the meeting?

An Cathaoirleach: Senator Leyden should put questions to the Leader.

Senator Terry Leyden: I would like the people who actually have their deposits in Anglo Irish Bank to come forward. Credit unions and charitable organisations have all their money in the bank. If Fine Gael and the Labour Party have their way, it will be abolished. There

[Senator Terry Leyden.]

would be losses right throughout the country. I would like people to say they have invested their money in Anglo Irish Bank.

Senator Fidelma Healy Eames: What about the nation?

Senator Terry Leyden: The Government is protecting interests throughout the length and breadth of Ireland.

Senator Jerry Buttimer: It is looking after its pals

Senator Terry Leyden: Furthermore, I want NAMA to sell off the assets as quickly as possible.

Senator Fidelma Healy Eames: To whom?

Senator Terry Leyden: It should place advertisements for the sale of apartments in Dublin that can be bought up at this stage. People are willing to buy those apartments.

Senator Fidelma Healy Eames: Where will they get the money?

Senator Terry Leyden: They should be put on the market as soon as possible so that people have an opportunity to buy back their own assets at this stage.

Senator David Norris: It is clear from what Senator Leyden has said that we are indeed celebrating 1 April here today.

Senator Alex White: Every day is 1 April for Senator Leyden.

An Cathaoirleach: Questions to the Leader.

Senator David Norris: I agree strongly with Senator Ó Murchú, who as usual spoke in a very clear, dignified and learned manner about the situation in the Middle East. He is quite right to say we need to have a debate on the situation in Gaza. Perhaps we could also consider the Goldstone report, which has been adopted by the United Nations. The report, which is being discussed by the Joint Committee on Foreign Affairs, makes it clear that if people are not held to account for what has happened in Gaza, it will continue to be repeated in a vicious cycle. The recommendations made in the report should be placed before the international criminal tribunal.

I support Senator Mullen's call for a debate on the need for stroke services. I ask the Leader to get some information for me in this context. The HSE's strategic review of neurology and neurophysiology services was finalised in December 2007 before being sent for international peer review. That process was completed in March 2009. We have seen nothing of it. It was commissioned, completed and paid for before it was buried, in effect. We are entitled to have sight of that review. If we are to move forward, we need to know what its conclusions are. An astonishingly large number of the citizens of this country have some neurological condition. The figures quoted to me are so large that I am a little afraid to place them on the record of the House before I check them out completely. We are entitled to see that report so that we can be in a position to act on it.

Senator John Hanafin: I agree with the call for a debate on the Government's cardiovascular policy. We could do some good service in this area, for example by pointing out that more than 2,000 people die as a result of strokes in this country each year. Strokes are the biggest

cause of acquired disability. We need a focused and cost-effective approach. The management of disability is very expensive. I look forward to the debate for which I am calling.

I support my colleagues who have called on Israel to adopt a humanitarian policy towards Gaza. There is no doubt that the current policy is affecting the relationship between Israel and people throughout the world who support Israel. It is particularly poignant that a country whose people have suffered so much is now, in effect, imprisoning 1.5 million people in a very confined space without access to adequate humanitarian aid.

Senator Paul Bradford: I support my colleagues who have called for the debate on social partnership and, more importantly, the pay agreement to be conducted in a mature and sensible manner. We all recognise that the background to the discussions and the arrangements we hope will be put in place is that the country is financially broke — there is no money.

Senator Fidelma Healy Eames: There is money for Anglo Irish Bank.

Senator Paul Bradford: It is important for the facts of the matter to be put before this House and the community for consideration and reflection. We need industrial peace. It obviously just cannot be paid at any price, but what happened last weekend shows there is a recognition at the top of the trade union movement that progress must be made and that common sense must prevail. We have to recognise that at the bottom of the spectrum, those low paid workers who unfairly suffered an income cut in the last budget are looking to have their income restored. We in this House must lead and recognise that progress will unfortunately be slow.

I support Senator O'Toole's point on spouses' pensions for self-employed persons. The treatment of self-employed persons, be they working up front or in the home, is not sufficient. At a time when we are trying to generate economic activity and where we are trying to encourage some people to become self-employed, we have to look at how self-employed people are treated for social insurance purposes. We are not just talking about old age pensions and spouses' pensions here. If a self-employed person becomes ill, he or she does not qualify for any social welfare benefit under the contributory schemes. He or she does not qualify for disability benefit or invalidity benefit. If the business shuts down, the person does not qualify for unemployment benefit. We need to look at how social insurance schemes apply to the self-employed. It needs to be changed if we are to encourage more people to become self-employed.

Senator Paschal Mooney: Over the last week there has been much commentary in the media and elsewhere about the Cabinet reshuffle. There has been a very negative reaction in the media to the appointment of Deputy Hanafin to the important position of Minister for Tourism, Culture and Sport. Will the Leader consider inviting in the new Minister at an appropriate time after she has read into her brief? What has annoyed a great deal of people involved in the tourism industry in the west is this suggestion from the Dublin based media that tourism has been dumbed down or that Deputy Hanafin has been demoted by her appointment to this Department. Tourism is the most important indigenous industry in this country outside of agriculture. Putting a young and dynamic person with great vision in charge of the Department is of great benefit to the tourism industry and to the wider economy. With the honourable exception of Fintan O'Toole in *The Irish Times*, the media rushed over the cliff like lemmings, suggesting that because she had been appointed to a Department dealing with tourism, it was somehow a demotion. This was a grave insult to people along the western seaboard who rely to an extraordinary extent on the importance of tourism as a local industry.

I welcome the appointment of Deputy Hanafin to her new post. She will bring an urgency to her position, especially in light of figures I received last week which indicate that the tourism industry is still flat. In spite of the great work done here by Fáilte Ireland and by Tourism

[Senator Paschal Mooney.]

Ireland abroad, we have not yet registered any potential benefits. I hope it will not be true, but it sadly seems that 2010 will be a bad year for tourism. A good way to respond to the challenges facing Irish tourism is to appoint a Minister of great vision who comes with an impressive track record into what is the most important portfolio for job creation after the Department of Enterprise, Trade and Innovation.

Senator Feargal Quinn: I am not sure if Members of this House are average citizens, but if we are, then 12 of us will have a stroke during our lifetime. Senators Hanafin, Mullen and Norris mentioned the stroke and cardiovascular policy that was supposed to come before the Cabinet in May 2008. It is now due next week. I want to urge the Cabinet not just to adopt the policy, but also to provide funding for it. Ten thousand people will suffer a stroke in Ireland this year. This can be solved, but it takes money to do so. What concerns me is the length of time it has taken to bring this before the Cabinet.

This is organ donation week. The debate on the Human Body Organs and Human Tissue Bill adjourned in this House in October 2008. It was adjourned because the Minister said she wanted to consult the views of citizens. A large number of people are waiting for organ donations. This can be solved, as other countries have solved it, but it is a question of how we do it. Be it presumed consent, more organ donation cards or whatever system we have, we can do it. We adjourned that debate in October 2008 because we assumed consultation would take a few months, but it has now taken more than 18 months. Let us make sure that the Minister gives this priority, along with the stroke service, so we can save lives.

Senator Cecilia Keaveney: I must begin by expressing an interest in the cardiovascular area, because my uncle was a cardiovascular surgeon for many years and specialised in strokes. Not only can the stroke issue be solved, strokes can also be prevented. It is one of the most preventable conditions. I support the calls to drive it to the top of the health agenda.

The Minister of State, Deputy Moloney, was always very supportive of my campaigns for music therapy. This therapy has a capacity to bring back speech for some stroke victims, particularly if intervention occurs at an early stage. It is important the professionalisation of music therapy is recognised in Ireland, because we have the ability to qualify people in Limerick, but we are not giving them professional recognition. We need to promote that as part of the Vision for Change policy.

I support calls to bring the Minister for Tourism, Culture and Sport before the House. We should bring her in here on a separate day for a debate on culture. In the same week a cultural ambassador was appointed in America, we should be focused on the fact that the arts are fundamental to personal development and creative thinking. That is very useful for employers as it allows potential employees reach their potential. Culture and the arts are central to us as human beings and to our economy. Culture is as important as tourism, but I worry that if we brought the Minister before the House, we might just have an all-embracing debate. Her brief is too big for that, as there are three elements to it.

Senator Nicky McFadden: I join with colleagues who have called for a debate on funding for the John Paul Centre in Galway. I fully endorse what Senator Ó Brolcháin has said. There should be all-party support for people with special needs. These people are voiceless, and that was the analogy made by Senator Healy Eames. We can bail out the developers, the bankers and Fianna Fáil, but we cannot provide money for speech and language. Dr. Maurice Manning launched the report and said that living conditions in the John Paul Centre were having a detrimental effect on the dignity and the well being of the people living there. That is an indictment on us as politicians.

I support Senator O'Toole's comments on farming women, who I met yesterday. We have ploughed billions of euro into the zombie Anglo Irish Bank, yet €570,000 would pay these 268 women. It would be a small amount to pay them what they are owed. They entered into a contract, but the Government reneged on it.

I support the call made by Senators Mullen and Hanafin for an urgent debate on the number of people who die as a result of suffering a stroke. Some 2,000 people die every year needlessly. There should be no discrimination based on the age of stroke victims who should be treated equally. Clinics should be established to treat TIAs, minor strokes that act as a warning sign of a potentially fatal stroke later. I am calling for an urgent debate on the issue.

Senator Brian Ó Domhnaill: I want to raise two issues. First, I welcome this morning the launch of the credit review process which has been initiated by the Government to review the credit lending facilities available from Bank of Ireland and AIB. Where individuals have been refused credit or it has been withdrawn from them, they will be allowed to make a submission as part of the credit review process in which the bank's lending criteria will be reviewed and a recommendation made as to whether it should provide credit. The bank will be obliged to accept the recommendation or explain the reasons behind the non-provision of credit. I, therefore, welcome the initiation of the credit review process which is a step in the right direction. The two banks have been refusing credit to SMEs, farmers and shop-owners. This has affected businesses and job growth in my constituency. I hope the new process will allow businesses to obtain the credit they require to survive.

Second, I support my colleagues in requesting the Minister for Arts, Sport and Tourism, Deputy Hanafin, to attend the Chamber. I congratulate the new Minister on her appointment. I share Senator Mooney's view that her transfer to the Department does not amount to a demotion. It is one of the Departments which can drive economic recovery, particularly in the tourism sector. Efforts must be made to attract more tourists which would boost spending.

The Olympics Games in London in 2012 present a great opportunity on our doorstep. I have already raised this matter in the House, but I am utterly disappointed by the attempts the Department has made heretofore to attract visiting teams to train here. We have a great opportunity in this respect. Some 210 countries will compete in the Olympic Games and hundreds of sportsmen and women could be attracted to come here to train prior to the games.

An Cathaoirleach: The Senator has made his point.

Senator Brian Ó Domhnaill: I asked the previous Minister to attend the House, but that did not happen. I am now asking the Leader to arrange for the new Minister to come as quickly as possible to outline the steps that could be taken to capitalise on that opportunity.

Senator Paschal Donohoe: I support Senator Buttimer's call for a debate on social partnership. It is correct and appropriate that union members and their executive officers will have an opportunity to understand, speak about and vote on the arrangement as quickly as possible. A clear fault in previous arrangements was that no role for the Oireachtas was provided for. It is remiss that many of the votes will take place before the matter is discussed in the Oireachtas. We should fix this as soon as possible after the recess.

I also seek a debate on the role of the Oireachtas in European affairs. It is vital that we debate the issue. I want to clarify comments made by Senator Leyden because Mr. Alan Dukes will be invited to address a committee chaired by a Fine Gael colleague. A discussion took place in private session at the committee yesterday on the relevance of inviting witnesses. It is right for such a discussion to take place in private, a move which was supported by all colleagues. Senator Leyden is happy to come here and misconstrue and misrepresent my com-

[Senator Paschal Donohoe.]

ments. The only generous interpretation I can offer for his behaviour is that he is aware, more than most, of the disgraceful plundering which will affect the future welfare of the country undertaken following his party's decision on Anglo Irish Bank.

Senator Mary M. White: In today's *Financial Times* Dr. Patrick Honohan, Governor of the Central Bank, commends the Minister for Finance, Deputy Brian Lenihan's statement on the plan to restore Ireland's banks to health. As everyone knows, the *Financial Times* is the most widely read newspaper in the world. The message Dr. Honohan's article sends to the international community is that in Ireland the path to recover is now clear and that this week's package of banking policy measures represents an important milestone in our economic revival. As Senator Ó Domhnaill said, the credit review process is a critical part of this. Dr. Honohan says that while this package will increase the Government's ownership stake in the banks, it brings certainty as to the level of support for them. The banks are to be managed with a view to ensuring commercial performance and to get the best value for the taxpayer. Dr. Honohan's also states in the article: "Free of the most impaired part of their portfolio, and under new management, the Irish banks will have the ability and the incentive to refocus on providing financial services to support the recovery of the country's economy".

An Cathaoirleach: We can all read the article.

Senator Michael McCarthy: It is in the *Irish Examiner* also.

An Cathaoirleach: The Senator has made her point.

Senator Mary M. White: In the article Dr. Honohan acknowledges Irish workers and taxpayers. That pleases my heart because we all know that the people have been so patient and resilient. We have had a reaction to wage cuts which, in the case of lower paid workers, is easily understood. Sounding an optimistic note on the economy, Dr. Honohan states: "If the consensus view that Irish economic growth will resume in the second half of 2010 proves correct, it will not be before time for the Irish workers and taxpayers, who have faced up squarely to what is, remarkably, widely understood to be a necessary belt-tightening".

Senator Michael McCarthy: If we wait long enough, we will probably get a bedtime story.

I wish to raise a number of issues, including Anglo Irish Bank. Is the Leader aware that directors' loans will be pursued? Last night I saw RTE reporter, Charlie Bird, being hunted from the door of a \$4.5 million pad in the United States by someone who is now wanted by the Garda concerning the shenanigans in Anglo Irish Bank. We should examine the recovery process for the economy, including the minor ways by which we can rebuild the rural economy. Yesterday on the Order of Business Senator O'Donovan requested a debate on the fishing industry and the marine sector generally. Senator Ó Domhnaill has rightly pointed out that the Minister for Arts, Sport and Tourism, Deputy Hanafin's tourism brief has a serious economic aspect. We can use these Departments to reboot the rural economy. If we can find €40 billion for Anglo Irish Bank, surely we can find much smaller budgets to fund these Departments and give Ministers flexibility in promoting Ireland's indigenous activities.

I wish to comment on the reduction in the number of special needs assistants. There was no such thinking when the Act was brought forward in 2004. We are dealing with vulnerable children with disabilities and it is not good enough to take an accountant's or an economist's view of such resources and withdraw SNAs, particularly in the middle of a school year when trust and friendship have been built. We are dealing with children with disabilities who are the

most vulnerable members of our society. I call on the Tánaiste and newly appointed Minister for Education and Science to reverse her predecessor's decision.

An Cathaoirleach: The time allowed for the Order of Business is almost up, but three Members still wish to contribute. I call Senator Carty.

Senator John Carty: I support Senator Mooney in his call that the Minister for Arts, Sport and Tourism, Deputy Hanafin, be asked to attend the House. Tourism is of vital importance, as Senator Mooney rightly pointed out, particularly to my county of Mayo. I congratulate the Minister for Arts, Sport and Tourism, Deputy Hanafin, on her appointment. I also commend the director of the National Museum, Pat Wallace, and his staff for allowing the Cross of Cong to be exhibited in Turlough House for a year, because that too is of great benefit to my county. The cross is returning to its native place for the first time in more than 170 years.

Senator Terry Leyden: It was made in Roscommon.

Senator John Carty: Mayo has the credit for it. I ask the Senator to appreciate that. It was not called after any place in Roscommon.

Senator Camillus Glynn: It is an April fool's joke.

Senator John Carty: I have asked the Leader a number of times for a debate on agriculture and specifically CAP after 2013. I know the Minister is anxious to come to the House and I hope the Leader will facilitate this debate in the new session.

Senator Joe O'Reilly: I thank the Cathaoirleach for his indulgence; I am conscious of the time. I wish to raise a serious issue which I have mentioned before and which has been raised by other speakers this morning, that is, the 268 farmers' wives whose pensions have been removed. They paid their PRSI and they had an expectation that they would receive their pensions. One can imagine the trauma and stress experienced by an 83 year old widow who receives a letter stating she is no longer to receive her pension. It is horrendous and unacceptable. I ask the Leader to intervene personally to have this sorted out and to make a statement to the House on the issue.

I join with other Senators in calling for a responsible reaction by the unions to the social partnership agreement. I hope the agreement is accepted in the interests of the country. However, the greatest obstacle to its acceptance, which must be admitted by the Government, is that a special deal was made for higher civil servants——

Senator Fidelma Healy Eames: Yes.

Senator Joe O'Reilly: ——and that fairness was not adhered to. If we could manifest fairness, all workers would be willing to join in the national effort.

Senator Mary M. White: Hear, hear.

Senator Joe O'Reilly: That is what is at issue. It is wrong that those earning less than €30,000 have been treated in the way they have been. There needs to be a clear signal that as money becomes available their problems will be sorted out. I hope the model is accepted and we can return to industrial peace.

Senator James Carroll: I appreciate the Cathaoirleach allowing me to speak at this late stage. I echo the comments of Senator Ó Domhnaill and Senator White about the credit review process. A key element is that within six weeks AIB and Bank of Ireland must produce reviews

[Senator James Carroll.]

of their lending plans for the SME sector, including farmers and small businesses, a number of which are under threat, as has been mentioned by the Leader several times in the House. In the upheaval of reconstruction that is taking place, it is important that we insist credit is given to businesses. I look forward to the publication of these plans in the next six weeks.

A small but worrying issue, which has thus far gone under the radar is the rise in the prices of petrol and diesel across the country. In my area of County Louth and along the Border, the prices have been creeping up steadily. This must be addressed. I do not know who is the appropriate Minister to deal with this — perhaps the Minister for Transport — but I am sure the Leader will be able to guide me. It is essential that we have a proper debate on this issue, with full and frank statements. There are multinational companies that are taking advantage of the international situation. We must do something about this because it is pressing down hard on our small businesses. Many of these issues are tied in with each other. We must focus on energising our small and medium-sized businesses, whether through credit or the price of fuel. I look forward to the Leader addressing these issues.

Senator Donie Cassidy: Senators Healy Eames, O'Toole, Alex White, Ó Brolcháin, Buttimer, Hanafin, Quinn, McFadden, Coghlan, Callely, Leyden, Bradford, Donohoe, Mary White, McCarthy and O'Reilly expressed their serious concerns and called for an urgent debate with the Minister for Health and Children regarding special needs education. I have already made a commitment to the House that we will have a full and all-embracing debate on the portfolio of health, and the Minister has always been forthcoming and generous with her time in the House.

Issues highlighted in the House this morning include speech and language therapy and the challenge facing those who have had strokes. There is so much that can be done for these people. As has been outlined to the House, 10,000 people per annum suffer from strokes and 2,000 people lose their lives. These are serious numbers. I know the Minister has no difficulty in coming here to update the House on the future plans of the Department of Health and Children in this regard.

Yesterday's statements on banking will be rolled over and we will have further statements during the second week back after the Easter recess. It is my intention that we will review the situation facing the Department of Finance with regard to the banking sector on a week-to-week basis during the next session. As has been said here this morning, the subject must be kept under constant review.

Senator O'Toole and other colleagues mentioned the social partnership deal and the public sector unions. The whole country is watching to see whether the unions will sign up to the agreement made in Croke Park on Tuesday. As we know, the deal includes a review of certain low-paid sectors which will take place after a year. As Senator Bradford said, it is in the country's interest that we have peaceful industrial relations at this difficult time, and the media have a major responsibility in this regard. The editors and sub-editors should, in conjunction with their very professional journalists and radio and television presenters, forget about seeking market share of audience listenership. In the national interest, they have a duty, as we all have — the trade union movement, the social partners, Senators and Deputies — to lead Ireland out of the financial crisis. I call on them all, on this Holy Thursday, to put Ireland first.

Senator Mary M. White: Hear, hear.

Senator Fidelma Healy Eames: That is what we want.

Senator Donie Cassidy: It is of major importance that this agreement is accepted. In this regard, there is no more experienced person in Ireland today than Senator Joe O'Toole, and

when he speaks in this House people must listen. He asked the unions, at this difficult time in our country's history, to support the deal. We fully support the Senator in this.

Senators O'Toole, Bradford, McFadden, O'Reilly and other colleagues outlined their full support for the farmers' wives who, as we all know, are seeking their pension entitlements, having paid their contributions. We should do everything we possibly can to support this very small number of people.

However, there is a bigger issue; that is, the self-employed people who played such an important role in the Celtic tiger, parts 1 and 2. They are now finding that they are not entitled to anything, even though they have paid millions or even billions of euro in PRSI, PAYE, VAT, income tax, capital gains tax, property taxes and stamp duty. They have made an enormous contribution and it is the private sector that will bring the economy back to buoyancy again. We should have an all-day debate in the House in this regard. No section of our community should be left out. They should be given an opportunity to pay their contributions and be included in future pension provisions. Some of them may not have been aware of the various challenges that were facing them, but they soon realised that not only were their businesses gone, but they were entitled to nothing from the State. Hardship is on their doorsteps and they realise their families must suffer for the bare essentials of tea, butter, bread and sugar.

Senator Fidelma Healy Eames: Who is in Government?

Senator Donie Cassidy: It does not matter who is in Government.

Senator Fidelma Healy Eames: Of course it does.

An Cathaoirleach: The Leader please, on the Order of Business.

Senator Donie Cassidy: It is Holy Thursday. I ask colleagues to let me respond and give my opinion, just as we have given them the opportunity to give the House their opinions.

Senator Mary M. White: Hear, hear.

Senator Donie Cassidy: Senators Ó Murchú, Norris and Hanafin spoke about the blockade of Gaza and the humanitarian crisis there. I congratulate Senator Ó Murchú on bringing this to the attention of the House. We fully support his call. The United Nations has a major responsibility in this area. As the Senator outlined to the House, Article 55 of the Geneva Convention is being seriously contravened and this is a major humanitarian crisis. We have been admired all over the world for our independence over the years and for our support for the underprivileged, whether that was by way of bringing education or religion to them or by way of support for various humanitarian causes and in times of disaster. I support Senator Ó Murchú's call for attention to be given to this issue. I also compliment the Minister for Foreign Affairs, Deputy Micheál Martin, on his outstanding efforts on behalf of the people in this regard.

Senators Mullen, Callely, Norris, Quinn, Hanafin, Keaveney and McFadden raised various health issues. As I have outlined previously, the Minister will take these issues on board after the Easter recess. Senator Mullen outlined the issue of human trafficking here and pointed out the danger that as a result of the new regulations being introduced in the United Kingdom, we could be targeted. I will pass his strong views on to the Minister. I do not remember agreeing at any time to have a debate on the extension of the Dáil and Seanad, but I am aware that he has brought this to our attention today, 1 April.

Senator Callely highlighted the importance of the announcement made by the Minister for Finance, Deputy Brian Lenihan, the day before yesterday, in which he announced a commit-

[Senator Donie Cassidy.]

ment of €3 billion from the AIB and Bank of Ireland for SMEs. A €12 billion investment over the next two years will help keep SMEs working and will ensure the Exchequer will in turn get from €3 billion to €4 billion of that back in taxes. We will keep this under review on a monthly basis here.

Senators Mooney, Keaveney, Ó Domhnaill, McCarthy and Carty all congratulated Deputy Mary Hanafin on her new portfolio. On the day of the reshuffle, I said she had probably got the appointment most of us would like to have got if we were in that position, because it is in an area where jobs can be created. Tourism is one of the three pillars on which we must rebuild the economy. There has never been greater value in our tourism market than there is currently. We in the hidden Ireland, particularly in the midlands area such as Athlone and Mullingar, have found that many Irish people now come to the area for weekends. Athlone, with four hotels, does great business every weekend. Last weekend, a big country music festival was held in Mullingar and the numbers that came to it from Scotland, Wales and England were almost unbelievable. There is similar interest in visiting Tullamore. People want to visit the hidden Ireland and they find they are getting value for money.

A recession is an opportune time for people to provide value for money and establish themselves. During a period like the era of the Celtic tiger, people might not have got so much business, but now in areas where value for money is being given, Tourism Ireland and all involved in tourism are experiencing an opportunity they may not have had previously. That said, the challenges facing our new Minister in this area are daunting. Many hotels will find it extremely difficult to remain open after this summer. It is crucial the banks play their part in ensuring overdraft facilities hotels traditionally had to keep going over the winter months are maintained. The most serious challenge facing the tourism industry now is the challenge for the banks to continue providing credit facilities to hotels to keep their doors open for the four tough months of the year from November to February, as has been the tradition. I do not suggest that credit should be extended to businesses that will not be viable, but to hotels in good tourism areas which employ 60 or 70 people. However, this is something we can discuss when the Minister comes to the House.

Senator Quinn reminded us this is organ donor awareness week and asked about the human organ donor Bill. I will look into that and come back to the Senator on it and let him know when it is proposed to deal with it in the House. Senators Ó Domhnaill, Mary White and Carroll welcomed the credit review process which is being launched today. I join them in that. We will review the progress on this on a monthly basis in the House. I also support Senator Ó Domhnaill's call with regard to the benefit the Olympics in London in 2012 offer us. I have no difficulty in including this in the planned debate with the Minister with responsibility for tourism, arts and sport when she comes to the House. Some part of that debate will be devoted to the opportunities that will present themselves with the Olympics taking place in London in 2012.

Senator Carty called for a debate on agriculture, particularly with regard to a long-term plan for it and he called for the Minister, Deputy Brendan Smith, to come to the House for that. We will have an all-day debate on this subject when we return after the Easter recess. Senator James Carroll called for a debate with the Minister with responsibility for enterprise, trade and employment on the pricing of diesel and petrol, which have increased substantially in recent months. This has special concern for people living along the Border and hard-pressed small and medium-sized family businesses. This is another increase in the cost of the day to day running of their businesses. I have no difficulty with arranging for a debate on this at the earliest possible time.

Order of Business agreed to.

Draft Directive on Interpretation and Translation in Criminal Proceedings: Motion.

Senator Donie Cassidy: I move:

That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

an initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings,

a copy of which was laid before Seanad Éireann on 20 January 2010.”.

Question put and agreed to.

Criminal Law (Insanity) Bill 2010: Committee Stage.

Sections 1 and 2 agreed to.

NEW SECTION.

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

Government amendment No. 1:

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

3.—Section 3 of the Act of 2006 is amended by the insertion of the following subsection after subsection (2):

“(2A) Notwithstanding the generality of subsection (2), the Minister for Health and Children by order may after consultation with the Mental Health Commission, designate a psychiatric centre as a designated centre for the reception and, where appropriate, detention, examination and, where appropriate, care and treatment of persons or classes of persons committed or directed thereto by the District Court under section 4(6)(a) for examination.”.

Minister of State at the Departments of Health and Children, Education and Skills, Enterprise, Trade and Innovation and Justice and Law Reform (Deputy John Moloney): Amendment No. 1 provides for the designation of psychiatric centres other than the Central Mental Hospital. On Second Stage I referred to the fact that an amendment was being considered in order to allow centres other than the Central Mental Hospital to be designated for the purposes of carrying out examinations in cases where an issue arises in respect of an accused person's fitness to be tried. At that point Senator Bacik referred to persons who might have committed less serious crimes and I gave a commitment to return to her on the issue.

The amendment will give the Minister for Health and Children the power to designate psychiatric centres for the examination of persons referred by the District Court under section 4 of the 2006 Act in cases where a question of fitness to be tried arises. Following consultation with the Department of Health and Children, the amendment was drafted in order to facilitate the Minister for Health and Children to provide that the Central Mental Hospital need not be used for examining persons who could be dealt with in psychiatric units elsewhere. I commend

[Deputy John Moloney.]

the amendment to the House and thank Senators for their proposals on the matter on Second Stage.

There are some technical difficulties with amendment No. 2, as it stands, in that it effectively would provide that the Minister for Justice, Equality and Law Reform should be in a position to designate centres under the legislation. Given that such centres are psychiatric centres, this power is appropriate to the Minister for Health and Children, not the Minister for Justice, Equality and Law Reform. Amendment No. 1 goes some way towards dealing with the issue amendment No. 2 seeks to address. As stated, it provides that the Minister for Health and Children can designate centres other than the Central Mental Hospital, to which the District Court can refer people for examination where their fitness to be tried is at issue. Accordingly, amendment No. 1 is focused on dealing with those who have committed less serious crimes. However, it is not limited to referrals from the District Court. It also covers referrals from the higher courts in serious cases where security might be at issue.

The use of centres other than the Central Mental Hospital for the examination and treatment of persons who come within the ambit of the 2006 Act is a matter that has been earmarked for examination by the Ministers for Justice, Equality and Law Reform and Health and Children in the context of the comprehensive review of the Act. I am not, therefore, in a position to accept amendment No. 2. I hope Senators will accept that amendment No. 1, by focusing on persons before the courts for minor crimes, goes a long way towards meeting the concerns raised.

Senator Ivana Bacik: I welcome the Minister of State and commend him for his strong and stated commitment to mental health reform. I am delighted he has accepted the principle behind the much more inelegantly drafted amendment in my name. I will not be pressing amendment No. 2 because amendment No. 1 deals with most of the issues I raised previously.

On Second Stage I expressed concern that fitness to be tried proceedings would still be heard in the District Court in respect of minor offences and that the Central Mental Hospital would be the only designated centre. However, amendment No. 1 provides that the Central Mental Hospital will no longer be the only designated centre, to which the District Court may refer cases. That is a welcome development but it does not go far enough. Why confine matters such that the District Court may only make referrals under section 4(6)(a) only? I suggest it might be more logical to extend this designation to any order under section 4. I, therefore, ask the Minister of State to reconsider the position prior to Report Stage. I will be willing, if necessary, to table an amendment on Report Stage in order to deal with the matter.

I am informed by those who work on the front line that if what I suggest is not done, all final orders made under section 4 — following assessment under subsection (6)(a) of that section — will lead to detention in the Central Mental Hospital, regardless of the need for such high levels of security. I am also informed that making it possible to commit a person to a less secure designated centre would be in keeping with European convention case law. I refer, in particular, to the case of *Witold Litwa v. Poland* in 2000, in which it was found that detaining anyone within the meaning of Article 5 of the convention was arbitrary and unlawful, unless less severe measures had been considered. I ask the Minister of State to consider expanding the scope of the provision in order that the Central Mental Hospital will not be the default committal centre.

With regard to Irish case law, there is the very tragic case of *DH (a Minor) v. Ireland*, in which an application was made to detain a minor in the Central Mental Hospital. Mr. Justice Kelly of the High Court refused to make that order and set out clear criteria which he indicated remained the correct statement of law in respect of clinical practice for doctors in the Central

Mental Hospital. In so doing, he set out the approach of the courts in the judicial consideration of orders which directed the detention and treatment of persons in the Central Mental Hospital.

Amendment No. 3 in my name is of relevance to this issue and states, “The reference in this subsection to a court shall not include the District Court”. In the first instance, I am trying to ensure the Central Mental Hospital will not be the default designated centre for all referrals. However, I would prefer a system, whereby the District Court simply would no longer have jurisdiction to make decisions under section 4(6) in respect of someone’s fitness for trial.

I am grateful to the professionals working in the field who briefed me on this matter. Professor Harry Kennedy of the Irish Penal Reform Trust came to the Houses last November and provided Members with an extremely useful briefing on the court diversion scheme he was running out of Cloverhill Prison under the auspices of the national forensic mental health service. As the Minister of State will be well aware, under the scheme those with major mental illnesses who are charged with minor offences are identified and the courts or prosecuting gardaí are asked to defer drop the charges in order that defendants might be admitted to their local approved centres under the Mental Health Act. As a result, such individuals are removed from the criminal system.

Until now, if section 4(6) were used, the process would be prevented and defendants detained at the Central Mental Hospital. Amendment No. 1 will change the position somewhat and people will now be able to be detained in other hospitals, albeit under a different regime. Those working under the diversion scheme want it to be extended nationally in order that persons might be treated in the least restrictive way necessary for their own safety and that of others. They inform me that this would be in keeping with the Minister of State’s stated principles in *A Vision for Change*.

I accept that I have strayed into a discussion on amendment No. 3. However, it is linked to amendment No. 1. I suggest we should remove fitness to plead proceedings in their entirety from the District Court. Indictable cases would go forward to the Circuit Court which could deal with this issue in a reliable and responsible way. I do not intend to cast any aspersions of those who work in the District Court. I have dealt with many criminal cases in that court and I am aware of the high level of pressure on the judges who operate and the lists which obtain in the court. There is a concern that if a defence solicitor asks a District Court judge to use section 4(6), it may be imposed in an insufficiently rigorous manner. In other words, if a defendant is unruly or drunk which can happen in the District Court, the judge may be asked to use section 4(6) and he or she may not have the time to engage in the detailed consideration required in this regard.

I appreciate the intention behind amendment No. 1. I support it in so far as it provides for other psychiatric centres, that is, local psychiatric hospitals rather than the Central Mental Hospital, to be designated. That is an extremely important change. As stated, however, the provision should be expanded to the other courts. It should not just apply to the District Court. In addition, I have a concern about that court’s jurisdiction in this area and it is this matter which amendment No. 3 is designed to try to address.

I support amendment No. 1 but with the provisos outlined. I will certainly be tabling further amendments on Report Stage and ask the Minister of State to consider what I have said. He may already have been briefed on the matter by those who work on the front line but it is important that I raise certain points.

Deputy John Moloney: On Second Stage I indicated I did not intend to be adversarial and that my intention was to ensure the highest standard of practice. I certainly take the point raised and I recognise Senator Bacik’s professional involvement in this area and I will not

12 o'clock

[Deputy John Moloney.]

spend time arguing as I can see the points raised. On Second Stage I made the point that it was a very sound and sensible proposal to designate centres rather than the Central Mental Hospital. I take the point that the last thing to do should be to use the Central Mental Hospital as a default committal centre. I recognise the work of Professor Kennedy in the court diversion system and that is the atmosphere we are trying to create. I will consider Deputy Bacik's suggestions prior to Report Stage and I and my officials have time to deal with the suggestions made. Everything we are trying to do in this area is for the benefit of the patient and to reduce the stigma attached by way of presenting to the Central Mental Hospital. Deputy Bacik can take it that we are at one with her on her suggestions and through A Vision for Change we fully support the court diversion scheme and reducing stigma. We also recognise the need to have designated centres, for all of the points outlined.

Abolishing the power of the District Court to determine fitness to be tried has been suggested and there is a view that this could facilitate court liaison diversion for those charged with minor offences. When a case comes before the District Court and an issue of fitness to be tried arises, the judge could adjourn the case and the person could then be referred to the local psychiatric services. I have taken notes on the points raised and I will have time to discuss and take advice from officials in the Department and respond accordingly in the proper sense on Report Stage.

Senator Ivana Bacik: I am very much obliged to the Minister of State for his very full response. I look forward to hearing more on it on Report Stage.

Amendment agreed to.

SECTION 3.

Amendment No. 2 not moved.

Ivana Bacik: I move amendment No. 3:

In page 5, between lines 17 and 18, to insert the following:

“(c) The references in this subsection to a court shall not include the District Court.”.

I have already spoken a little about this amendment and the intention behind it, which is to remove the jurisdiction to deal with section 4(6) applications from the District Court in its entirety to facilitate the court diversions scheme currently in operation from Clover Hill. I take the Minister of State's point that a District Court judge could adjourn a case and I understand the preference of those working in the diversion programme would be not to have the District Court involved, which is the purpose of my amendment. Their second best preference would be to give the District Court the power to adjourn and obtain a court report from the Central Mental Hospital. I understand this was introduced in the Henchy report in a model criminal law (insanity) Bill. This would be a way of finding whether the Central Mental Hospital was the appropriate designated centre.

A further suggestion to deal with this difficulty of the District Court making these orders in too many cases would be that evidence must be heard from a consultant psychiatrist and the staff of the hospital or local approved centre that would admit the person, and that is now facilitated through the acceptance of amendment No. 1. I already referred to the case of *DH (a Minor) v. Ireland* and others in which Mr. Justice Kelly established that no judge can force a doctor to admit somebody thereby preventing the admission of another person who is more ill and no judge can order a doctor to treat someone contrary to his or her conscience.

Having considered the issue, if the Minister of State still feels that the District Court should retain this jurisdiction there might be other amendments that should be made to ensure rigorous enough scrutiny of the use of the section 4(6) jurisdiction by the District Court. I know the amendment is supported by all of the psychiatrists working in the prison psychiatric in-reach and the court liaison service and by the Irish College of Psychiatrists. I am also told that any amendments which encourage the admission of persons charged with minor offences to the Central Mental Hospital may have very severe consequences for those persons. Sending a person with schizophrenia charged with a minor offence to the Central Mental Hospital is a disproportionate response. I am told there would be a catastrophic outcome to sending people with an intellectual disability to the Central Mental Hospital where they are unlikely to recover. Several such admissions have been made to the Central Mental Hospital and it is a real concern. The Minister of State is well aware that the Central Mental Hospital has a capacity of 93 and its beds are full at any one time, generally with persons for whom a special verdict has been reached in cases involving very serious offences.

Will the Minister of State consider removing the jurisdiction from the District Court under this section in its entirety? If he is not minded to do so, will he take on board some of the other suggestions made to him by professionals working in the area, and which I have just put on the record, to ensure we will not overuse the power before the District Court and that it will not be used in a disproportionate or catastrophic way in respect of persons who should not be detained in the Central Mental Hospital or local psychiatric centres under the criminal law? We all need to ensure that whatever amendments and changes are made in this legislation, they facilitate the rolling-out of the national diversion programme, which is clearly in keeping with the model in *A Vision for Change* and with proved best practice internationally.

Senator Jim Walsh: Senator Bacik has made an interesting contribution on this and I can follow some of the arguments she made. Obviously, she has personal professional expertise or experience in the area, which I do not. However, it strikes me that if we were to remove the jurisdiction of the District Court there could be a delay in processing these cases. When matters go to the Circuit Court there are frequent adjournments for various reasons and I am concerned that if jurisdiction is removed from the District Court such delays could involve public safety issues. Will the Minister of State factor this into his consideration when he examines the matter? The Senator has made cogent arguments in favour of her amendment but I have concerns, and we need to be satisfied on these concerns, that the court process can deal efficiently, effectively and expeditiously with the cases. The cases do not relate to the individual only. Obviously there are personal implications for the individual involved but there are also societal implications and they need to be balanced in any decision or judgment call made by the Minister of State.

Senator Maurice Cummins: I fully support the amendment. Senator Bacik has made a very reasoned argument and I ask the Minister of State to consider it prior to Report Stage.

Deputy John Moloney: I thank Senator Bacik for not moving amendment No. 2 and I make a clear commitment to deal with these issues on Report Stage.

It is fair to state that we do not come to the House to oppose amendments. Far from it; we want the completed legislation to have the central tenets of what is proposed and suggested in *A Vision for Change* and that is from where I begin. Senator Bacik made reference to the involvement of the Irish College of Psychiatrists and this must be taken into consideration as it comes from a position of experience and care.

I will take into consideration the suggestions made and we have time prior to Report Stage to do so. The effect of the amendment would deny the District Court the power to refer a

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person for examination to a designated centre. I want Members to be aware of that implication. This would deny to the court the opportunity to receive a report from a consultant psychiatrist on whether a person is suffering from a mental disorder and in particular whether a person is in need of patient care and treatment in a designated centre. The power of the courts to have such reports before them prior to considering depriving a person of liberty is considered necessary to comply with the requirements of the European Convention on Human Rights. It is also required to be consistent with provisions of mental health legislation. In that context, persons dealt with in the District Court are just as entitled to the protection of such rights as persons dealt with by the higher courts. In that context, I find it difficult to accept the amendment. However, this is not to suggest I will not take into account this suggestion. While I am rejecting the amendment, I do so with the proviso that I will take into account what has been mentioned in the House rather than ignoring the solid statements of support for the amendment which I will take into consideration.

Senator Ivana Bacik: I again thank the Minister of State for indicating he will reconsider this issue before Report Stage and thank other Members for their contributions. In response to Senator Walsh, the issue of delay is a concern. One must also consider the societal considerations, the protection of the public and so on. However, the matters pertaining to the District Court are minor and the difficulty has been the lack of a considered way to deal with such applications before the District Court. It is almost the other problem, that is, too speedy a resolution equally can lead to difficulties, certainly in European convention case law. As I stated, amendment No. 1 will certainly help matters in that it allows psychiatric centres other than the Central Mental Hospital to be used by the District Court for reception, detention, examination and so on. However, an alternative to what is proposed in amendment No. 3 would be to provide more specifically that if the District Court is to retain this jurisdiction, before a section 4(6) order can be made in the court, evidence would have to be heard before admission from a consultant psychiatrist on the staff of whichever designated centre was being directed by the court. It would be the Central Medical Hospital or whatever local psychiatric hospital was being so designated. This would be in keeping with the provisions of *DH (a Minor) v. Ireland* and others and with European case law. I refer, in particular, to the 1979 case, *Winterwerp v. the Netherlands*, in which it was provided that a medical recommendation was essential when committing anyone to a psychiatric hospital because objective evidence of a true mental disorder based on objective medical expertise was required to justify the deprivation of liberty. I accept there are provisions dealing with emergency cases under the Mental Health Act. However, the Mental Health Act 2001 was drafted specifically to comply with European Convention on Human Rights case law and Article 5. It also was drafted to comply with United Nations principles for the protection of persons with a mental illness, Article 20 of which provides that involuntary placement, involuntary treatment or the extension thereof should only take place on the basis of an examination by a doctor, having the requisite competence and experience, and in accordance with valid and reliable professional standards. Section 3, as worded, does not require that the court take this evidence. It states it may request evidence.

Perhaps I have strayed somewhat from the contents of amendment No. 3, but when debating it, it is important to be clear about what the District Court is doing. As drafted, section 3 states, "In a case to which paragraph (a) relates, the Court may request evidence of an approved medical officer". If, contrary to my proposal, jurisdiction is to be kept by the District Court, at the very least the court should be required to hear evidence from the approved medical officer by substituting the word "shall" for "may". Preferably, such a medical officer should be from the designated centre being directed by the District Court to become involved in this procedure under the Government's amendment. If the Minister of State does not intend

to accept amendment No. 3, I ask him to consider other ways of amending section 3 to ensure a tightening up of the manner in which the District Court deals with this issue. This also applies to the other courts but the particular concern is about potential misuse of the section 4(6) procedure by the District Court, which is partly to do with pressures of time, the volume of work and the fact that these are minor matters being dealt with before the court.

Deputy John Moloney: I reiterate that I am prepared to take suggestions on Committee Stage. I also may take advice from the Irish council. In this context, I will have time before Report Stage to take into account and consider all of the proposals made. I again make the point that this is not the kind of legislation on which one simply votes down amendments. It is a matter of trying to come to the correct response, taking into account the Government's clear commitment given in *A Vision for Change* regarding mental health reform, of which this is part. While I will not accept the amendment, I will consider the suggestions made and use the time to come to a proper response on Report Stage.

Senator Ivana Bacik: I am grateful to the Minister of State and will not press the amendment at this point. However, I will revert to it on Report Stage.

Amendment, by leave, withdrawn.

Section 3 agreed to.

Sections 4 to 6, inclusive, agreed to.

SECTION 7.

Senator Ivana Bacik: I move amendment No. 4:

In page 8, line 48, to delete "A person is in material breach of his or her" and substitute "The clinical director may revoke a".

This amendment relates to the provision in section 7 that inserts new sections 13A and 13B in the 2006 Act. As drafted, section 13B(2) states, "A person is in material breach of his or her conditional discharge order where the clinical director on reasonable grounds believes that the person is in breach of one or more conditions of his or her conditional discharge". The purpose of the amendment is to change the somewhat *Alice in Wonderland*-like quality the Labour Party believes is attached to the current wording which is reminiscent of Lord Atkin's judgment in *Liversidge v. Anderson*. It states a person is in material breach where the clinical director believes a person is in material breach. Instead, the amendment proposes the deletion of the words, "A person is in material breach of his or her" and their substitution with, "The clinical director may revoke a". The amended provision, therefore, would read, "The clinical director may revoke a conditional discharge order where the clinical director on reasonable grounds believes that the person is in breach". Otherwise, this would be a meaningless section because it would simply repeat the test. Consequently, the Labour Party considers that the amendment would tighten the drafting somewhat. I await the Minister of State's response to this proposal. It would not result in a material change to the subsection.

Deputy John Moloney: While it would not result in a material change, unfortunately, it would unravel the entire structure of the section. Section 13B(1) specifically uses the deeming approach to the revocation of a conditional discharge order where there is a material breach of the order. I note that section 13B(2) provides that a person is in material breach of an order where the clinical director on reasonable grounds believes the person has breached one or more conditions and is either a danger to himself or herself or others or is in need of inpatient

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care treatment. I suggest there is no need for the change proposed in the amendment. More worryingly, it would remove the definition of the term “material breach” which is used throughout the section. Removing it would unravel the structure of the section as a whole. For that reason I do not propose to accept the amendment.

Senator Ivana Bacik: While I take the Minister of State’s point that it might have an effect on some of the other provisions, it might be more accurate and honest for the clinical director to be obliged to take responsibility for revoking the conditional discharge order. Under the wording I have tabled, the position would be more honestly stated.

On the section as drafted, it appears as though the private belief of the clinical director will be enough to have a person in breach; whether this would pass constitutional muster is open to question. This might be worth considering. While I will not press the amendment at this stage, I would like to hear a little more on the issue on Report Stage. I am somewhat concerned about the wording, whereby a person is in breach when the clinical director believes so, whereas what the Bill really is trying to do is to give the clinical director the power to revoke a conditional discharge order. Consequently, it would be more honest to say this.

Deputy John Moloney: I can see the sense in the suggestion that we give the clinical director more authority and allow for more involvement. Before Members return on Report Stage, I will consider the level of unravelling that would be required in respect of this suggestion. Is that okay?

Senator Ivana Bacik: Yes. I thank the Minister of State.

Deputy John Moloney: I must determine the overall implications before tabling an amendment. Would that be okay?

Senator Ivana Bacik: Yes.

Amendment, by leave, withdrawn.

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

Senator Ivana Bacik: Before we move away from section 7, I have something general to say regarding section 13B. On Second Stage, I stated my full support for that section. It is also supported by everyone working in the field. The idea of a conditional discharge has often been suggested since the passing of the 2006 Act, so this is an important and welcome change.

I wish to put down a marker for Report Stage. I have not teased out how I would amend the section, but I may table an amendment. Regarding section 13B, is there any way to address the problem of conditionally discharged persons who leave the jurisdiction? The Minister of State will be aware of the well known case of John Gallagher. Previously, there have been difficulties in that people who were found not guilty by reason of insanity or guilty but insane under the old law left the jurisdiction. Do they fall under the remit of extradition treaties or the European arrest warrant? Should or could there be a specific provision in section 13B? Perhaps it is beyond the scope of this legislation and would be more appropriate for the fuller review mentioned by the Minister of State. I just wanted to flag this point during our debate on section 7.

Deputy John Moloney: I would presume under the European arrest warrant, but I do not want to assume at this stage in the debate. I must discuss it with the Minister for Justice, Equality and Law Reform in terms of what safeguards could be included in which legislation

or even under what aspect of the justice portfolio it would fall. I would presume under the European arrest warrant, but I ask the Senator to allow me to be more definite and to revert on Report Stage.

Senator Ivana Bacik: I have a further technical point to raise about section 7. On page 10 just before the new section 13C, the Bill states: “the Board may exercise all the powers available to it under section 13 in relation to that patient”. Should this provision not also refer to sections 13A and 13B? The current provision might not be appropriate.

Deputy John Moloney: Including a reference to section 13A or section 13B might be possible.

Senator Ivana Bacik: I am referring to line 9 on page 10. It is a drafting point that I did not notice previously, so I apologise for not raising it in an amendment.

Deputy John Moloney: I have been advised that we can examine the matter for Report Stage.

Senator Ivana Bacik: I thank the Minister of State.

Question put and agreed to.

SECTION 8.

Government amendment No. 5:

In page 10, line 38, after “Schedule 2” to insert “to the Act of 2006”.

Deputy John Moloney: I commend this technical drafting amendment to the House.

Senator Ivana Bacik: I thank the Minister of State for adopting this Labour Party amendment to redress an omission in the section.

Amendment agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

SECTION 10.

An Leas-Chathaoirleach: Amendments Nos. 6 and 7 are related and may be discussed together with the agreement of the House. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 6:

In page 11, subsection (1), line 8, to delete “(Insanity)” and substitute “(Mental Disorder)”.

I raised this issue on Second Stage when I discussed the way in which the philosophy of the law on the treatment of persons with mental disorders in the criminal system has evolved. Generally speaking, the treatment of persons with mental illness has moved from an incarceration model to a welfare model and then to a rights model. A great deal of civil legislation has reflected this change in thinking and the language contained in mental health legislation has been carefully crafted. It is unfortunate that in terms of the treatment of persons with mental disorders in criminal law, we are still using the highly outdated word “insanity”. I hope the Minister of State will be sympathetic to my point. It was unfortunate that the Criminal Law

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(Insanity) Act 2006 used that word, but it is even more unfortunate that we are continuing to use the word in a 2010 Bill amending the Act.

The Minister of State may claim this is a matter for a broader review, but we could have changed the terminology in this Bill. For that reason, I have tabled these amendments. “Insanity” is not a word that would ever be used nowadays in psychiatric services. It is not a word that we in the criminal courts would use except for the fact that we must use it when speaking to clients or among ourselves about the particular defence that is still known as insanity. It is unfortunate.

Other language is clearly available. I have suggested the term “mental disorder”, which is used in our mental health legislation. Section 4 of the 2006 Act on the fitness to be tried proceeding refers to mental disorders rather than insanity. Section 5 uses the not guilty by reason of insanity terminology, albeit with a definition of insanity that uses more modern language.

I do not know why we are still using this language in up-to-date legislation. This amending Bill would have been an ideal opportunity to try to change the language and make it more reflective of current practices when dealing with people with mental disorders. The Minister of State referred to the need to reduce stigma, a statement with which I fully agree. Unfortunately, the continued use of the word “insanity” heightens the stigma with which people are treated. Neither does it do anything for the victims or for broader society. We must be mindful when discussing criminal law matters that we are also discussing victims and society. The wider public recognises the word “insanity” as outdated when dealing with people with mental disorders in any context.

Deputy John Moloney: I thank Senator Bacik again. The name change suggested by the amendments might appear on the face of it to be a simple matter but it raises complex and fundamental issues. I might take some time to go through a few of them.

The word “insanity” was used in the title of the 2006 Act because it is the correct description of that Act’s contents. The Act’s definition of “insanity” was drafted in light of judicial authority over the precise meaning of insanity and the circumstances in which the finding of insanity would excuse a person from criminal liability. The House will be aware that the issue was extensively debated during the passage of the Act through the Oireachtas. That Act’s gestation period was ten years, during which time this issue was examined in great depth. I mention these long periods of deliberation to stress the complexity of the issues that have now been raised.

The plea of insanity in law is an excuse rather than a condition in that it is a factor that excuses liability for the commission of a crime. Our law places the matter firmly within legal parameters directly related to personal responsibility for one’s actions. In this scenario, medical evidence will be influential, although not decisive. This means that an accused person who has been diagnosed as mentally insane may fail to satisfy the criteria for criminal insanity in law.

Section 5(1)(b) of the 2006 Act provides for the verdict of not guilty by reason of insanity. The point I am making is that one might be suffering from a mental disorder, but it must be such that the accused person ought not to be held responsible for the act alleged by reason of the fact that he or she did not know the nature and quality of the act or, in other circumstances, did not know that what he or she was doing was wrong or was unable to refrain from committing the act.

This provision appropriately emphasises the fact that the issue for the court is fundamentally one of legal responsibility rather than psychiatric responsibility. We do not want a jury to arrive at a view whereby any mental disorder, regardless of how trivial it might be, could provide

grounds for acquittal. Our concern is that the threshold could be lowered. I am particularly interested in hearing the Senator's response to this point. The 2006 Act provided a high threshold and it is important that psychiatry is not perceived as a get-out-of-jail-free card for people in circumstances in which public confidence in the administration of justice could be adversely affected. Changing from "insanity" to "mental disorder" could send a signal that the threshold is being significantly lowered. That is our greatest concern. The criminal law is the main focus of the 2006 Act and it would be misleading to change the Title to refer to mental disorder. The term is primarily used to decide a person is in need of care and treatment in a psychiatric hospital and is the primary focus of the Mental Health Act 2001. While there is an aspect of that focus in the 2006 Act it is not the primary focus. It would be undesirable to introduce any doubt or uncertainty into this area of the law.

The purpose of the Bill is to deal with two issues which have arisen in relation to the operation of the 2006 Act and which require urgent attention. The Bill is not a suitable vehicle to address fundamental issues. If such issues require discussion it would be more appropriate to have them discussed in the context of the planned comprehensive review of the 2006 Act, which I have already committed myself to commencing later this year. It is important that we stick to our time commitments. I will, however, be happy to bring the issues raised by Senator Bacik to the attention of the Minister for Justice, Equality and Law Reform and to ask him to consider them in that context. At this point I cannot accept the amendment but I assure Senator Bacik that the matter will be considered at the appropriate time. I will bring that review to the House during this year.

I bring to the attention of the House the need for another name change. Following the making of the necessary order, the Minister for Justice Equality and Law Reform will lose responsibility for equality issues. I propose to bring in an amendment to effect this change on Report Stage, if the order has not been made by then.

Senator Ivana Bacik: I thank the Minister of State for his response. I know the 2006 Act had a long gestation period. It is a shame that, during that period, a better term was not found to replace the term "insanity". I accept what the Minister of State says about mental disorder. That may not be the appropriate term because it may lower the threshold of guilt. I am well aware of the genesis of the defence of insanity in the 18th century Foster-Hatfield case and the 19th century M'Naghten rules.

We have changed some of the language of this area. We no longer talk about the trial of lunatics, which term was routinely used in the 18th and 19th centuries when this law was being evolved. We could move on from the use of the term "insanity". A better term might be one specific to this area, unlike the term "mental disorder" which, as the Minister of State said, is used elsewhere and has other meanings. We might speak of the mental incapacity special verdict. The question is one of capacity. The definition in section 5, which is taken from the M'Naghten rules and from our own case law, such as the Doyle case, is about lack of capacity. A term which encompasses that would be more appropriate than "insanity".

I accept that it is not a simple matter of changing the name of this Bill. A more comprehensive change throughout legislation is required. I am delighted this is to be considered in the review.

We introduced a fundamental change in section 6 of the 2006 Act, which includes the diminished responsibility provision. This allows someone charged with murder to be convicted of manslaughter instead, on the basis of diminished responsibility. We have already made some fundamental reform to the law. Other fundamental reform could be carried out and it would be of great benefit in lowering stigma.

[Senator Ivana Bacik.]

I would be grateful for any further views the Minister of State might have on Report Stage. I accept that this is a more complex matter than can be done in this one Bill. However, I will press the matter on Report Stage because it is an important point.

Deputy John Moloney: I have to accept that in a ten year period we did not examine the implications of change. However, as the opportunity presented itself we moved from speaking about the trial of lunatics to referring to mental incapacity. The comprehensive review of the Bill will present an opportunity for further change. Between now and Report Stage I will also have an opportunity to examine the implications of the proposal with the Minister.

Senator Ivana Bacik: I thank the Minister of State.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 7:

In page 11, between lines 9 and 10, to insert the following subsection:

“(2) The Act of 2006 and this Act may be cited together as the Criminal Justice (Mental Disorder) Acts 2006 and 2010.”.

Amendment No. 7 makes the same point. Its purpose is to ensure that the 2006 Act will be referred to in future as a part of a number of Acts to do with mental disorder rather than as an insanity Act. It is part of the proposal we are making to shift the language away from the outdated 18th century notion of insanity towards a 21st century idea of mental disorder. There may be a better term. Something more specifically to do with this defence might be appropriate. Nevertheless, I would like to see us changing from the use of the term “insanity”.

This amendment is widely accepted by all those who work in the criminal justice and psychiatric areas. I have been told that people are very keen that we move from this outdated language.

Amendment, by leave, withdrawn.

Section 10 agreed to.

Title agreed to.

Bill reported with amendment.

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

Senator Jim Walsh: Ag 2.30 p.m. ar 20 Aibreáin 2010.

Sitting suspended at 12.40 p.m. and resumed at 1 p.m.

Insurance Industry: Statements

Minister of State at the Departments of Finance and Tourism, Culture and Sport (Deputy Martin Mansergh): The Government believes competition in the insurance market is essential if consumers and businesses are to obtain good value for money. Up to about 18 months ago insurance prices had fallen significantly for a prolonged period, reflecting Government initiatives such as the establishment of the Personal Injuries Assessment Board and legislation to improve road safety, which has reduced accidents significantly, and also competition within the

market, with a resulting impact on insurance prices. In more recent times, however, prices have begun to increase owing to the recessionary pressures in the economy, which is also affecting financial service providers, including the insurance industry, and other factors such as an increase in claims following the recent severe weather events during the winter as well as a fall in investment returns and the continuing stress in the financial markets.

In this context, the Government, in its revised programme for Government, made a commitment to review insurance costs to ensure the consumer is benefiting to the maximum extent possible from competition in the sector. At present, the Department of Finance is preparing this and hopes to commence the review shortly. The review will examine a number of issues dealing with the existing levels of competition within the sector, in particular the non-life insurance area and the following factors that impact on this.

One factor is size and scale of operation. The nature of the insurance industry is such that, except in specialist niche areas, scale of operation is very important. There are two main reasons for this, the first is known as the pooling effect, that is, the bigger the pool of customers or policyholders, the greater the company's ability to absorb losses when they arise as only a small number of people in the pool make claims at any one time. The second is the diversification effect — the broader the range of insurance products a company offers as well as the greater the amount of markets it operates within, the easier it is to offset losses against sectors that are growing and profitable. Another factor is the level of capital resources required. To enter a marketplace, considerable capital resources are required at the outset to satisfy the Financial Regulator's regulatory requirements. New entrant companies are required to hold even higher capital requirements than existing companies because of the higher risk associated with breaking into the new market. A further factor is the size of the market. Ireland is a relatively small market and, therefore, many companies find it difficult to establish a foothold in the marketplace, especially when there are a few very large, well-established companies here already. A further factor is the level of economic activity taking place in a marketplace. In the current economic climate there is little incentive to enter the market and aim to develop new business as existing companies are struggling to maintain their level of business. Another factor is the trend in the number of claims being made. Before entering a market it is usual for companies to get a sense of the extent of claims within the market, and whatever judgement they make will inform their views on whether and when to enter the market. The increase in the number of claims in recent years is a factor which might make a company hesitate in committing to the Irish market. A more Europe-wide phenomenon, which also could be a factor here, is the apparent reluctance by people to engage with cross-Border companies which do not have an establishment in Ireland.

Competition in the insurance sector takes place within a regulated marketplace to safeguard both the short-term and long-term interests of policyholders and third parties. Without this, there is a risk that companies entering the market would be insufficiently prepared for the challenges in the sector, involving significant risk to policyholders and others exposed to losses. To avoid this scenario, insurance companies are required to meet a series of prudential requirements which are derived from EU legislation known as Solvency 1. In the first place, insurance companies are required to hold sufficient assets to cover their insurance liabilities, that is, their expected losses. On top of this, companies are required to maintain a solvency margin that is an additional amount to cover unexpected losses or fluctuations in asset values, for example, the recent November flooding where the losses for insurance companies have been greater than they forecast at the start of the last year. Therefore, the role of the Financial Regulator is also important in ensuring the regulatory requirements in which competition takes place are complied with. The actions of the Financial Regulator in recent days provide an example of this.

[Deputy Martin Mansergh.]

Following an application by the Financial Regulator, Mr. Justice John Cooke in the High Court appointed Mr. Michael McAteer and Mr. Paul McCann from Grant Thornton to act as the two joint provisional administrators to Quinn Insurance Limited under the Insurance (No. 2) Act 1983. They have already begun their work, they have an on-site presence in the company and will oversee its actions and work with the management. The appointment was made after the court was informed that the Financial Regulator had a number of concerns, including that the insurance company had significantly breached its solvency ratios and its subsidiaries had entered a series of guarantee agreements which had reduced its assets and had failed to deliver a financial recovery plan that met the Financial Regulator's requirements aimed at restoring financial health. In other words, the Financial Regulator had concerns about the way the company was conducting its affairs and that it was not meeting the regulatory requirements. In particular, the regulator expressed concern that the company may be unable to comply with the requirements of the Insurance (No. 2) Act 1983 in that it had failed to make adequate provision for its debts, including contingent and prospective liabilities.

I am informed that, following a meeting between the Financial Regulator and the company, it was revealed that the effect of the guarantees had reduced the insurer's unencumbered assets by some €448 million and thus wiped out the company's solvency cushion. The fact that these guarantees had been in place was a matter of the gravest concern to the Financial Regulator. This raised serious governance and accountability questions about the internal control mechanisms as well as the accounting and administration procedures and practices within the company.

The Financial Regulator has commenced an investigation into these matters within Quinn Insurance that have very recently come to light and we must await the outcome of this investigation. I should also stress that it is the courts which will make the final decisions on the question of an administrator. Therefore, we must be careful not to prejudice the position regarding any matter that is *sub judice*. The courts will make the final determination on the relevant facts. That is the reason I must be fairly circumspect in what I say.

I recognise that the Financial Regulator has taken the action to seek the appointment of the two joint provisional administrators in the best interests of the firm's policyholders and that the appointment will allow the firm to remain open for business and to continue to be run as a going concern with a view to placing it on an ongoing and sound commercial and financial footing. This will assist in the maintenance, in the public interest, of the proper and orderly regulation and conduct of the business.

I welcome the fact that Irish policyholders of Quinn Insurance Limited can continue to renew policies, carry out new business and make claims in the normal way. Quinn Life business, which is a separate entity, is not affected by these measures.

It is important to note that at this stage, there is no requirement for additional funds from the insurance compensation fund as the administration is only of a provisional nature. If the administration is confirmed on 12 April and should the administrator subsequently need additional funds to help him with the business, there is the facility of the insurance compensation fund established under the Insurance Act 1964. This fund was used in previous insurance company administrations, for example, in PMPA in 1983 and ICI in 1985.

As regards the employment implications of the decision to appoint the administrators, the aim is to stabilise the company which in turn will help to protect employment. The administrators are there to continue the company as a going concern.

The Government remains acutely conscious that while economic activity continues to remain weak, it is imperative that we do nothing to further erode private sector employment. We are particularly conscious of the contribution of the financial services sector to employment in this

country and it is the Government's objective that this sector emerges from the current downturn strong, competitive and able to withstand any future downturns.

Senator Joe O'Toole: I thank Senator Donohoe for allowing me to speak ahead of him. I declare an interest in that I was very involved in the drafting of the Personal Injuries Assessment Board legislation and in its passage through the House. I am currently the vice chair of the Personal Injuries Assessment Board. I was also very active on the joint committee which inquired into insurance a couple of years ago.

I welcome the Minister of State and thank him for his important contribution. I do not intend to disagree with any of the significant points he made but wish to add to them. Since Governments made insurance a big issue — the Minister of State will recall it was an issue when he was a Member of this House — the cost of insurance reduced by almost 41% until January 2008. However, it has gone up by 17% since then. I want the Minister of State to recognise that in the context of small businesses and individuals.

Many people are gloating that Quinn Insurance appears to be in trouble. I completely support what the Financial Regulator did and was delighted to see him do it quickly. Over the past year, however, some people in the insurance industry have been thinking that the Financial Regulator and the Government have been busy with the banks and that nobody has been taking any notice of them. Prices crept up over the past year, in particular in the first six months of last year and in the first couple of months of this year. We need to look at that and protect businesses. As late as this week, a speaker at an insurance conference said cheap insurance companies tend to be failed insurance companies.

Let us be clear. Quinn Insurance is not in the same category as PMPA. PMPA went out of business because it was using premia to try to pay for claims. That is not what happened here. As the Minister of State rightly pointed out, what happened here was that for a combination reasons, the tier 1 solvency level of Quinn Insurance was breached. It is a technical and an important issue. I understand and appreciate the way Quinn Insurance responded to it but the Financial Regulator was right.

Our job must be to support Quinn Insurance in working its way through this and to maintain confidence in the industry. Quinn Insurance is a good business model, and I say that as someone who works at the edge of this business through the Personal Injuries Assessment Board. It introduced direct insurance, longer opening hours and early settlement which is now a huge part of every company's policy, and it was the first company to go on-line. It has been a trail blazer in many ways.

There is no clear indication as to which Minister is responsible for insurance. That should be made clear and I ask the Minister of State to convey that to Government. We need to keep Quinn Insurance in business and begin every speech we make, as the Financial Regulator did this week, by saying that policyholders do not need to worry because this can be done. We also need to recognise that Quinn Insurance is not like PMPA or Anglo Irish Bank. In fact, it has been a victim of and infested by the problems of Anglo Irish Bank. My colleague, Senator Wilson, and others will make the case about employment and what the company is doing. From a disinterested point of view, I would say we must ensure there is no attempt to undermine confidence in Quinn Insurance. Some 5,000 jobs are on the line, which the Minister of State mentioned.

When PMPA went bust in 1984, an insurance levy was brought in which remained in place until 1993. When ICI went bust, another levy was brought in. Both levies paid off the money owed but a 3% insurance levy is still being collected for no reason. It is purely a tax. That is adding to the cost of insurance for small businesses and individuals. Will the Government look

[Senator Joe O'Toole.]

at that as soon as possible? I will not make outrageous or outlandish demands that it be done next month but I want it to be top of the agenda.

More than anything else, I want the Minister of State to recognise that what has gone on here is manna from heaven for other insurance companies which are very happy to see Quinn Insurance in trouble. As public representatives, we must be very careful to support and even applaud the Financial Regulator for taking action but we must also recognise that Quinn Insurance is a good, solid and sound company which has made a few mistakes in terms of its solvency which can be put right and that it is in the interests of insurance policyholders and all the people involved that it remain to the fore in this industry.

At another time, I would like a longer debate on some of the other issues creating costs in insurance. For instance, Personal Injuries Assessment Board costs could be reduced if the Government looked more closely at the regulation which is allowing challenge after challenge to take place to what is probably one of the better ideas to come from Government over the past ten years. These are serious issues and I would like the Minister of State to convey our thoughts to Government and ensure it acts on what we have said.

Senator Diarmuid Wilson: I welcome the Minister of State and thank him for coming to the House at such short notice to address this very important issue for the county from which I come and the entire economy. The appointment by the High Court of joint administrators to Quinn Insurance Limited came as a great shock to me and the people of County Cavan. I know Sean Quinn personally and regard him as a practical patriot whose initiative, hard work, risk taking and investment has created a working community of 7,000 people worldwide. Some 5,500 people are employed in this country and thousands of them are employed in my county of Cavan and in the surrounding counties. Quinn Insurance has centres in Enniskillen, Navan, Blanchardstown and Cork and its headquarters are in Cavan town.

The issues at stake are guarantees given by subsidiaries of Quinn Insurance Limited as securities for borrowings off the wider Quinn group. According to the Financial Regulator, this has only very recently come to light. My understanding of the facts is that the existence of the guarantees has been in the public domain since 2005 as they were filed in the company accounts. They are legal and are used widely. Quinn Insurance Limited brought the guarantees to the attention of the Financial Regulator on Wednesday, 24 March 2010, a little more than a week ago, in the context of a re-financing scheme. Quinn Insurance Limited was prepared to remove or retain them.

The Financial Regulator moved, without notice, to take High Court proceedings on 30 March 2010 to appoint provisional administrators to Quinn Insurance Limited. Given what has happened to this country in the past two years as a result of poor practice and poor regulation of the banks, I not only see the necessity for robust regulation and a strong Financial Regulator but welcome it. However, I take issue with the unfairness and injustice of a regulator, an agent of the State, moving without notice against a company which has contributed significantly to my county and the country. This action has devastating consequences for that most critical but intangible of assets, confidence. A company must enjoy confidence. In one hour, the regulator shook to the core the national and international confidence that had taken 37 years to build in a company which, even in these incredibly tough times, is on track to report quarterly profits of €50 million. Regardless of any action an administrator takes, the national and international damage to the company and its consequences for thousands of employees will not be rebuilt in one hour.

Did a company that has made such a significant contribution not at least deserve notice or fair play instead of finding itself the victim of over-compensation for the failure of the Office

of the Financial Regulator to take action previously? The Regulator did not give the necessary time to work through its concerns and instead took action that damages the interests of all stakeholders, including the State. The Quinn Group has never been more profitable. The action taken by the Financial Regulator has major implications for Quinn Insurance Limited and the wider Quinn Group. Every day that passes is a disaster for the company and, by association, the overall group.

The action of the Financial Regulator has caused massive reputational damage, including overseas and especially in the United Kingdom. Sean Quinn, his family, co-directors and employees are seriously hurt by the innuendo that something untoward was taking place which is clearly not the case. The action and associated media circus have resulted in aspersions being cast on Mr. Quinn, a decent and honourable man, and his group of companies. This is grossly unfair to probably the most modest and successful entrepreneur Ireland has ever produced.

On local radio yesterday and many occasions in the past, the Minister for Agriculture, Fisheries and Food, Deputy Brendan Smith, noted the key importance of the Quinn Group, not only to County Cavan but to the entire economy. My party colleagues on Cavan County Council, councillors John Paul Feeley and Sean Smith, did likewise.

Quinn Insurance Limited did for the insurance industry what Ryanair did for air travel in Ireland. It created real competition in the sector and is now the State's second largest insurer. The company did much the same for the health insurance sector when BUPA decided to pull out of Ireland.

The Quinn Group continues to provide employment opportunities and economic development in some of the most marginalised areas of the country. Any damage caused to the group will have calamitous repercussions for County Cavan and the country. I ask the Minister for Finance to ensure the administrators do not do anything more to damage Quinn Insurance Limited and the entire Quinn Group.

Senator Paschal Donohoe: I welcome the Minister of State. I will make two points and ask a number of questions. If the Minister of State is unable to provide answers, I ask him to revert to me later. The message the Seanad wants to send out in the matter before us is that the employment provided by the Quinn Group and its contribution to the national economy must be maintained. In so far as it is legally possible, I ask the Government to recognise this and pass on the Seanad's view on it.

Tuesday was a dark day for everybody but it was made darker by the announcement relating to the Quinn Group. Everybody wants the issues arising between the group and the Financial Regulator to be resolved, either through the courts or discussion between the two interested parties, in a manner that results in the maintenance of a healthy and competitive insurance market and the jobs in the group that are of major importance to the country as well as the counties represented by many Senators.

While I recognise and support the legal independence of the Financial Regulator, the role it performs and the reason for its regulatory function, it is within the rights of Senators to ask the Minister of State to relay to the Regulator a number of questions concerning recent developments, particularly given the importance of the Quinn Group to the economy and insurance industry.

On an issue to which Senator Wilson briefly referred, the public statements of the Quinn Group appear to indicate a high level of profitability in the group, even in this difficult year. It has been reported today, however, that even if the Quinn Group is able to assure the Financial Regulator that the sum of €450 million in question is available — I am sure it will be able to do so — the Regulator will seek to pursue action against the group. Given that the business

[Senator Paschal Donohoe.]

appears to be healthy, many of us want to know the reason the Financial Regulator proposes this course of action. What information is available to the Regulator that leads him to believe this option is appropriate?

It has also been reported today that the Financial Regulator has indicated that, at the next court hearing on 12 April, it will advocate that the Quinn Group be maintained in indefinite administration. It is important for Members, insurance policy holders and employees of the group that further information is supplied on the reason the Regulator believes indefinite administration is an appropriate course of action.

It appears from what I have read that the Quinn Group and Financial Regulator find themselves in the current position as a result of the cumulative effect of a series of actions taken since 2005. In recent years, the House has frequently discussed regulation in the banking industry. Was the Financial Regulator aware of the actions taken in 2005 that brought us to this point? How were the responsibilities of the board of the Quinn Group discharged? It is not in anyone's interests to find ourselves at this point after five years.

The Quinn Group has indicated it is considering its options in light of recent developments. I hope the group will consider refreshing or amending the business plan, which was presented to the Financial Regulator and rejected in March, in such a way as to ensure it meets the approval of the Regulator and maintains the group's presence in various markets as well as the jobs it currently provides. Members, insurance policy holders and workers want to find a way to deliver a successful resolution to the issue.

Senator Mark Dearey: I wish to outline a couple of the critical contexts in which this is happening. I will also address the substantial question of the authority of the Financial Regulator to do what it has done. I will also consider the best way of giving Quinn Insurance a fighting chance of emerging intact from the situation it faces now that this action has been taken.

The primary context to which I refer is the employment one. If this action leads to job losses, it will reverberate around County Cavan and as far as my home county of Louth. I was a member of the Border Regional Authority until a few weeks ago. As one of the key characteristics of the Border region is its weak urban fabric, it has little opportunity to build up large employment bases. The employment provided by Quinn Insurance in Cavan town is one of the few shining examples in the area. It is of regional and national significance that this business should continue in the Border region, in which there are few exemplars of wealth generation that spin out into the rest of the regional economy. We need to move warily, bearing in mind at all times the enormous implications any hastiness might have for families and the business sector in the region.

My party fully recognises that the Financial Regulator has the authority to supervise the insurance industry. We welcome that absolutely. In the light of the complete failure of lax regulation in the banking sector which is about to cost this and future generations dearly, we need to continue to uphold the authority of the Financial Regulator in these matters.

I understand Senator Wilson's stout defence of the Quinn family and the business it conducts. It is clear that the discovery of the guarantees has had a serious impact on Quinn Insurance's balance sheet which has moved into a deficit of over €200 million having had a surplus of a similar amount. It is important for the Quinn Group to be given every opportunity to demonstrate how it can manage its debts, present a plan that will lead it out of this situation and create an opportunity for Quinn Insurance get back on its feet, having paid off its debts. It is incumbent on us to ensure the group will have such an opportunity. Senator Wilson is right to

say the reputational damage done will not heal in a day or a week. However, it can be healed and it is critical that this happens.

Quinn Insurance is one of just two companies to offer insurance cover to the music promotion industry, in which I work. Approximately eight or nine years ago my insurance premium was approximately four times more than it is now. Insurance was 200% higher than it is now, not 50%, as Senator O'Toole suggested. That reduction has resulted in part from the arrival of additional players in the sector. It is imperative that there continues to be competition in the insurance sector. If there is not, we will return to the bad old days when people were under-insured and got into all sorts of problems when claims were made against them. I accept that regulatory failure has fed into the situation in which the country finds itself. The effects of the situation at Anglo Irish Bank have weakened the Quinn Group's reputation and its fabric. I appreciate that Quinn Insurance has created employment and brought competition to the insurance market. However, we need to continue to uphold the authority of the Financial Regulator. We should also give the group as much space as possible to deal with these problems and emerge intact.

Senator Ivana Bacik: I welcome the Minister of State. I am pleased to have an opportunity to contribute to this debate. As others said, the events of last Tuesday, 30 March, represented the catalyst for this debate. On that dark day for us all, the Minister for Finance disclosed the extent of the public debt and the amount of money that would have to be poured into Anglo Irish Bank and other banks. It was revealed not only that we had already put €4 billion into Anglo Irish Bank, but also that we would put a further €8.3 billion into it this week and a further €10 billion in the future, giving a total of €22 billion. There is enormous public anger about the bailout of Anglo Irish Bank, in particular. As many have acknowledged, although this zombie bank is not of particular systemic importance, as other banks might be, its bailout will impose a greater cost on the Exchequer than the bailout of any other bank. There is immense public anger about this.

We also received bad news on Tuesday about the appointment of administrators to Quinn Insurance. As the Minister of State said, Mr. Justice Cooke agreed on that day to an application by the Financial Regulator that two provisional administrators be appointed to Quinn Insurance Limited. Clearly, our concern must be with those who are directly employed by the company and understandably face an uncertain time. One has to stress, as the Minister of State has done, that this is a provisional administration, that the matter is *sub judice*, that the administrators will run the firm as a going concern and that it will remain open for business. Senators on both sides of the House are hoping the jobs of the many people employed in the firm will be protected.

I am sure other Senators, like me, have received an e-mail from an employee in Cavan who has expressed dismay at the way in which this situation has come about and her great uncertainty and fear for the future as a result of the actions of the Financial Regulator. Like other Members, I know County Cavan very well. I have many friends in Belturbet. I know the extent of poverty and disadvantage experienced by people living in Border counties during the years, although perhaps less so in recent years. For many years, throughout the 1980s and 1990s, they did not get the advantages enjoyed by people in other parts of the country. That is all part of the context of this debate.

Having said that, there is cause for less dismay about Tuesday's announcement when one bears in mind the clear need for more robust regulation of the financial services sector. The other big announcement on Tuesday, to which I have alluded, was the announcement by the Minister for Finance, Deputy Brian Lenihan, that billions of euro would be poured into Anglo Irish Bank, in particular, and other banks. That announcement was a direct result of the failure

[Senator Ivana Bacik.]

of regulatory structures, the lack of a robust regulatory system and the absence of decisive action that should have been taken by the Financial Regulator. Such action should have been taken, in the interests of allaying the fears of consumers and customers, when it became clear that banks which made profits for many years were not maintaining a sufficient asset base to remain properly solvent. This real problem was a fundamental aspect of the lead-up to the collapse of the banking system.

If we want to have a robust system of financial regulation, we will have to allow action to be taken by the Financial Regulator. I say this as a matter of general principle because we do not know what will happen in the case of Quinn Insurance. We hope it will stay afloat, its employees will remain in place and its consumers will be protected. However, we have to recognise the need for robust regulation. We must acknowledge that a sequence of events led to Tuesday's application in the High Court. There was a history of Quinn Insurance Limited failing to provide the Financial Regulator with financial recovery plans. It has been widely reported that the Financial Regulator had been trying since 2008 to require Quinn Insurance to deliver an acceptable and viable financial recovery plan. A settlement was reached with Quinn Insurance in October 2008 when the Financial Regulator found reasonable cause to suspect that regulatory requirements had been breached. Following that decision, Sean Quinn stepped down as chairman of the insurance company and there was a series of other events that ultimately led to the discovery that the Quinn Insurance Group had a black hole in its accounts and that the unencumbered assets had been reduced by €448 million. The insurance subsidiary had moved from a position where it had an excess of assets over liabilities of more than €200 million to a position where it had an excess of €200 million of liabilities over assets.

We need to bear in mind the need to maintain a robust regulatory system, while thinking of the employees and consumers of the Quinn Insurance Group.

Senator Donie Cassidy: It is essential that there is competition in the insurance market. When I started an inquiry in 2003, as Chairman of the Joint Committee on Enterprise and Small Business, the cost of insurance was the second largest item of expenditure on the balance of every company and family business. The cost was unsustainable and many families and businesses were not properly insured. We put the case to the insurance industry, with all of the major players present, including brokers, IBEC, SMEs, including Mr. Pat Delaney and his team at the Small Firms Association, and asked them what we could do to help. At the time the chief executive of Hibernian Insurance said Ireland was not a safe place in which to do business. I asked the representatives at that meeting to come back and let us know what they required. When they returned, they told us they needed four Bills to change the regulations in place. For 18 months we went about our business and the Government, under three Ministers and the then Taoiseach, Deputy Bertie Ahern, brought forward those Bills which transformed the insurance industry and made Ireland a safer place in which to do business.

The setting up of the Personal Injuries Assessment Board presented the first challenge. The second was to pass the Civil Liability and Courts Act 2004 that forced everybody who made a claim to swear an affidavit in order that the "no foal, no fee" policy in which solicitors were engaging at the time would make people think before they signed the affidavit. If any part of a claim was found to be fraudulent, the costs of both sides would have to be paid by the person making the claim. This eliminated an enormous number of claims.

The third challenge was to pass the Safety, Health and Welfare at Work Act 2005. There were major developments in the construction industry and the health and safety elements that were missing at the time are now in place.

The final challenge was to allow for random substance testing to take place on the roads. This has resulted in the saving of between 100 and 150 lives each year. All of these challenges were met owing to the hard work and dedication of the joint committee under my stewardship.

The Quinn Insurance Group was exemplary in providing competition in the marketplace. It was the most efficient and most committed of insurance companies. I know that on many occasions the group within five days provided a field sergeant to visit a person who had had an accident and that two or three days afterwards the person concerned received an offer to settle the case. That eliminated huge expenditure on legal and repair bills. The reason for the group's success has been its efficiency. It is an exemplary Irish company which employs 5,500 people here, many of them in the midlands and Border areas, areas which have been finding it difficult to attract employment.

The Financial Regulator has to be complimented on what he has done. He protects policyholders and we support him fully. The Minister for Finance has congratulated him for what he is doing in the name of Ireland plc. Having an insurance policy gives us certainty. We feel certain we will be fully covered, which allows us to sleep at night. It allays the worries of employers and property owners. However, we must understand that two years ago many businesses dealing with banks or insurance companies might have thought they could have a loading of 50% paid and 50% owing. With the new valuations today, it could be 85% on one side and 15% on the other. These are exceptional trading circumstances which are unprecedented. A successful 90-year old man told me the other day that he had never seen anything like it in his lifetime.

I thank the Minister of State for coming to the House at such short notice. We intend to allow the debate to roll over and will continue to seek to help the Minister of State and his Department, the people, the Quinn Insurance Group and the Quinn family. We want them to continue the good work they are doing but they must do so within the terms of the regulations made under the 1983 Act. We will fully support them in every way we can in order to keep competition in the insurance market.

Senator Joe O'Reilly: The Quinn Group and Quinn Insurance are of enormous significance to County Cavan. There are 600 good jobs at Quinn Direct which contribute in so many ways to the economy of the county. There are 1,200 jobs in the Quinn operation outside the business in County Cavan. There are 5,500 people working in the Quinn operation in Ireland and 7,000 internationally. This means the Quinn Group is the largest employer in the country, outside of the public sector. It is an enormous business and of systemic importance to the economy. The Quinn family and the Quinn Group are held in the highest regard in County Cavan and have made a very significant contribution to the cultural, social and economic life of the county.

There are 1.3 million policyholders with Quinn Insurance. We must, therefore, maintain competition in the insurance industry. We cannot allow one player to have a monopoly. Every conceivable step must be made to ensure competition in the industry.

No one questions the need for robust regulation. Any student of recent events in the country would hardly question that there is such a need. However, it is a pity the Financial Regulator was not able to solve the problems in-house through negotiation, observation and working with the firm. Is the Minister of State confident that enough was done in that respect? In so far as the separation of powers allows him to do so, he should make judicious inquiries in this respect and do everything conceivable to avoid an over-reaction.

We could be moving from light touch regulation to over-regulation. I am not saying that is the case, but it is something to be avoided. The situation needs to be monitored. Senator Donohoe asked why it would be necessary for the regulator to proceed with action if the

[Senator Joe O'Reilly.]

shortfall — and we must bear in mind it is only a paper shortfall — of €450 million were put in place to fulfil regulations. We appreciate the regulator's position in insisting on that. Nobody is questioning that, but it seems strange that the regulator would still see the need for action. I would like to hear the Minister of State's response to that point.

I also wish to refer to a couple of matters of which I know anecdotally. Consumers have great confidence in Quinn Insurance locally. They have a good experience in terms of how claims are dealt with, and the courtesy of the staff involved. As a local representative for that area, I have heard nothing bad at that level. I am of the view that the Quinn operation will survive, and I hope it does. It is axiomatic and necessary for our community that it does survive, but I believe it will do so because it is fundamentally in good health.

The Minister should keep a watching brief and do everything he possibly can within his remit to ensure Quinn Direct survives in good health and that normal business confidence is restored. It will take time to do that. Without equivocation, I have no problem in concurring with the sentiments of my colleague from Cavan, Senator Wilson, that jobs are critical to our community. Our Border area has suffered much from emigration over the years and we could not possibly accept any more job losses.

Senator Paschal Mooney: I join colleagues on both sides of the House in welcoming the Minister of State at such short notice. I share Members' concerns about the unfolding developments in the Quinn insurance company. Can the Minister of State be more specific about the Department of Finance review? He said it was part of the programme for Government which was agreed in recent months. In light of recent developments, however, perhaps he could now put a more specific date on the review. There is an urgent need to have this review completed and placed in the public domain sooner rather than later.

In the same context, perhaps the Minister of State could elaborate on why there seems to be a Europe-wide reluctance to insure with cross-border companies. In other words, people tend to stick within their national borders when purchasing insurance cover. I would have thought that, considering the proximity of the UK and its huge market, it might have been incumbent on UK companies to be encouraged to come into this country. I temper my enthusiasm for non-Irish companies, however, with the reality that the bank crisis we are now trying to deal with at Government level started with the introduction of British-based banks. They came in here supposedly to open up competition in the mortgage market, but we have all seen what happened as a result. Many of them have now disappeared off the scene.

Both emotionally and practically, I share the concerns that have been expressed about jobs. Considering that we are now entering into the most important weekend in the Christian tradition, I have no doubt that silent prayers for the Quinn group will be offered throughout the country in the coming days. People will be looking at their mortgage commitments and education costs as well as their jobs. I do not wish to be scaremongering, but the history of administration is not conducive to expanding workforces. It tends to reduce them rather than expand them, but I hope that once the administrators undertake their work, that will not be the case. Those are the sentiments that have been echoed on all sides of the House and ultimately this is about protecting jobs.

The international reaction to the Financial Regulator's decision has raised some concerns. For example, I understand there are 90 employees of the Quinn group in the UK branch in Salford. They will obviously be concerned about their future. Today's *Daily Mail* reports that the UK business, which we have focused on, specialises in motor and professional indemnity insurance and is thought to have close to 400,000 customers. According to that newspaper, Quinn Direct specialised in low-cost policies for younger drivers who often signed up through

price comparison sites. This is a fragile area to be involved in, especially where young drivers are concerned. Even though profit margins have traditionally been high in the small Irish market, I suggest they might lead to some concern in the UK considering the base from which they are operating. This may emerge as the administrators' work proceeds.

Another international commentary came from Lockton Risk Solutions, whose executive chairman, Neil Nimmo, warned that thousands of UK law firms could be impacted if the Law Society were to delist Quinn Insurance as an approved insurer after the company has fallen into the hands of administrators. I presume Mr. Nimmo was referring to the UK's Law Society, but perhaps the Minister of State can clarify that. If the UK business is a relatively smaller part of the wider Quinn Insurance in Ireland, then it gives the scale of what we are talking about. Mr. Nimmo is quoted as saying that almost 2,200 law firms could be left stranded by this disaster. It is an indication of the international concern being expressed. I do not want to add fuel to the fire, however. The best scenario is administration, whereas the worst scenario is liquidation or a shutdown. I appreciate that the Quinn group has issued a robust and aggressive response to the administrators' introduction, and is opposed to it.

Lockton Risk Solutions also stated that even if Quinn remains an approved insurer, questions will be asked about its ability to pay claims in future. The number of firms in the pool has risen from 150 in 2008, and with around 500 anticipated for 2010 it is likely to account for 10% to 15% of premium costs paid by the legal profession. I understand that Barclay's Bank refused to allow the Quinn Insurance group to set aside the €448 million in guarantees. If the administrator is confirmed on 12 April, it is to be hoped these questions about the future viability of the Quinn group will be answered. I am grateful to the Cathaoirleach for allowing me some extra latitude.

Senator Paddy Burke: I welcome the Minister of State, Deputy Mansergh, and am glad to have this opportunity to speak on this matter. It is important to have a strong insurance business in the country. I know the difficulties the Quinn group is going through at the moment, which I presume will have consequences for the insurance industry. The Quinn group is a major employer, not just in insurance but also in various other enterprises. Seán Quinn has been a great entrepreneur and he deserves credit for the tremendous amount of employment he has created in this country.

It is important to have a sound, strong insurance business sector to cover industry and small businesses as well as to provide motor insurance. The regulator has taken steps to deal with the Quinn Group; obviously, he has seen shortcomings in the insurance aspect of its business. I hope there can be a good conclusion to this. The Quinn Group has indicated it can trade out of this and I hope this is the case. It is an indigenous company and it deserves all the backing it can get. From that point of view, the insurance industry is important to the economy and to the people. It is a large employer, but that is not the most important aspect of the industry from the point of view of this debate. I hope we can strengthen our insurance commitments and business throughout the country.

Business of Seanad.

An Cathaoirleach: As the time ordered for this debate was 60 minutes——

Senator Diarmuid Wilson: I propose an amendment to the Order of Business: "That the debate be extended by ten minutes in order to give the Minister of State an opportunity to reply."

An Cathaoirleach: Is that agreed? Agreed.

Insurance Industry: Statements (Resumed).

Minister of State at the Departments of Finance and Tourism, Culture and Sport (Deputy Martin Mansergh): I thank Senators for their concerned and passionate contributions to this debate. The next step in the process is a full High Court hearing, which will take place on 12 April. This will provide the Regulator with the opportunity to make a fuller case for the appointment of an administrator. Equally, however, it will allow Quinn Insurance to address and counter the concerns of the Regulator, and the court will have to make its decision on the evidence submitted.

The four questions asked by Senator Donohoe are essentially questions for the Regulator to answer at the full court hearing — and, indeed, as he is fully independent, to the extent he chooses. I am not in a position to tell the House exactly what was in the Regulator's mind. The events of this week underline the importance of having a strong regulatory system, but a regulator must naturally be in a position to justify fully his actions before a court. I accept the point made by Senator Wilson about the potential impact on confidence of such a serious step. The Regulator must have been fully conscious of those implications and consequences.

Senator O'Toole discussed more broadly the question of competition in insurance, and referred to the insurance levy. In fact, the insurance levy has not been in operation since 31 December 1992. There has been — and still is — a stamp duty of 2% on life insurance premiums which was introduced in 1982 and which forms part of the general stamp duty receipts, being paid into the Central Fund along with other tax receipts. However, this should not be confused with the insurance levy introduced to deal with PMPA and ICI. The Government understands the importance of maintaining employment and recognises the large contribution that has been made by the Quinn Group in recent years by providing greater competition in the insurance market. The importance of healthy competition is well understood. Of course, the company plays a particular role — I refer to all of its businesses, not just insurance — in the Border area, on both sides, but it also has importance nationwide and throughout the island. I acknowledge the systemic importance of the Quinn Group to the insurance industry, leaving aside its other activities.

Senator Mooney raised the question of the review by the Department of Finance. As I said in my opening speech, it will be starting shortly. It is difficult to specify before a review has even started precisely when it will finish, but the Senator's underlying point is that it is urgent, which I accept. The Senator also raised the important issue of the international dimension of the situation that has now arisen. With respect to UK policy holders, the position is that such policies remain valid, but the Financial Regulator has instructed that Quinn Insurance Limited not to write any new business in the UK.

The importance of competition in the insurance industry is well understood. Eight years ago — perhaps it had something to do with the worldwide effects of the terrorist attacks of 11 September 2001 — insurance costs were very high and inhibited competitiveness. As Senator O'Toole explained in some detail, many steps were taken to correct this, and there was a substantial fall in insurance premiums; however, as he pointed out, they have increased again somewhat in recent times. The Senator is correct in attributing this to the impact, among other things, of the bad weather we have had in recent months, including floods and then snow and ice. This is something on which we must keep a close eye, because all aspects of the competitiveness of the economy are extremely important in the situation we are in. We will only get out of our general financial economic difficulties through a fairly radical improvement of our competitiveness. That is the motive behind much Government policy. Like Senators, without in any way prejudicing the decisions the court may take on 12 April, I hope the service and employment provided by the Quinn Group will continue.

An Cathaoirleach: When is it proposed to sit again?

Senator Diarmuid Wilson: The House will adjourn *sine die*.

Adjournment Matters.

Social Welfare Benefits

Senator Brendan Ryan: I welcome the Minister of State, Deputy John Moloney, to the House to deal with this matter.

The people of Balbriggan were informed several years ago that it had become necessary to relocate part of the HSE community welfare service from Balbriggan to offices in Gardiner Street in the city centre of Dublin, due to lack of space. They were informed that this would only be a temporary measure until suitable alternative premises could be procured. Six years later, this temporary arrangement still exists. Up to 250 people per week must travel at their own expense nearly 22 miles each way to have their applications for entitlements processed. The round trip costs a minimum of €8. It is scandalous that this situation has been allowed to develop and that the resolution of the problem continues to be put on the long finger. It is for that reason I raise the issue again. The situation is totally unacceptable.

There are currently five community welfare officers providing a service to the people of Balbriggan, three of whom operate out of the Gardiner Street office. Balbriggan health centre was, and still remains, totally inadequate to provide the range of services essential for the people of Balbriggan, such as public health nursing, dental service, mental health services and community welfare services. The existing single storey building, with a prefab extension to the rear, at Hampton Street, cannot cater for the expansion of the services which has resulted from an increased demand driven by the rapid expansion of housing developments in the Balbriggan area, together with the rapid increase in unemployment in the town.

There were 5,029 people on the live register in Balbriggan at the end of February and due to extreme delays in processing applications, new applicants are forced to seek welfare from the community welfare office while they are waiting to receive their jobseeker's benefit. If they are lucky and live in the south of the town, they can go to the community welfare officer in the local office in Hampton Street, but if they live in the north or west of the town, they must travel into Gardiner Street. Other supplementary payments delivered through the community welfare service include rent supplement, mortgage interest supplement, heating expenses and exceptional needs payments. Applicants for all of these payments must also make their way into Gardiner Street if they live in a certain part of Balbriggan. This problem is well known to the HSE and the Department of Health and Children.

Following previous representations by me on this issue, I was informed by the HSE in May 2008:

A number of possible alternative locations in Balbriggan were examined and one had been deemed suitable to accommodate the community welfare services. This has been put forward to the HSE National Property Committee and a response is pending.

Notwithstanding that reply, the location referred to was never available. Following further representations by me in February 2009, I was informed:

It is anticipated that the Community Welfare Service will be factored into the new employment exchange development in Balbriggan which is due to be operational in six months and the service based in Gardiner Street will move to this facility as soon as it is ready.

[Senator Brendan Ryan.]

There is as yet, more than a year later, no employment exchange development in place and when it is in place, it may not even be adequate in size to provide a full service for social welfare services and will definitely not be adequate to include the community welfare service. Once again, this outlines the lack of commitment by the Department of Health and Children and the HSE to the needs of the people of Balbriggan.

I am demanding that the HSE accepts its responsibility and provides an alternative location in Balbriggan as a matter of urgency. Given the downturn in the property market, there should be no excuse for not sourcing a suitable location. I know that suitable premises are available for lease in Balbriggan today. Action must be taken. The people of Balbriggan deserve better. I hope for positive news from the Minister of State and hope to receive a meaningful response from him, unlike previous responses on this matter.

Minister of State at the Departments of Health and Children, Education and Skills, Enterprise, Trade and Innovation and Justice and Law Reform (Deputy John Moloney): I thank Senator Ryan for raising this issue and for giving me the opportunity to clarify the position on the operation of community welfare services and related services in Balbriggan.

The community welfare service, currently run by the Health Service Executive, administers the supplementary welfare allowance, SWA, scheme on behalf of the Department of Social and Family Affairs. I am informed by the HSE that in 2006, due to a marked increase in claimants of SWA living in Balbriggan, the local health centre in Balbriggan could no longer house this service as it was impinging on the capacity to deliver other services of the HSE. As a result, part of the community welfare service in Balbriggan relocated to Gardiner Street, where capacity existed within the HSE asylum seekers unit. Since then, new SWA claimants living in Balbriggan make application through this centre. I understand that, in the meantime, both the HSE and the Department of Social and Family Affairs have been actively seeking premises in the Balbriggan area. New accommodation for a social services office there is now scheduled to come on stream in 2010. It has been agreed by both agencies that HSE provided community welfare services will also be accommodated in the new facility.

Senator Ryan will be interested to know that in February 2006 the Government decided the community welfare service would transfer to the Department of Social and Family Affairs. There are significant benefits to be achieved in transferring the administration of SWA from the HSE to the Department. The integration of the community welfare service into that Department will mean that all income maintenance schemes will be managed and delivered within one entity. This will provide opportunities in the medium to longer term for enhanced customer service, achievement of efficiencies, co-ordinated control mechanisms and elimination of duplication of effort, with consequential savings to the Exchequer and better outcomes for users of social welfare services. The transfer will alleviate pressure on the HSE and facilitate it in concentrating on its core health and personal social service functions. It will not lead to any changes in the exercise of discretion by community welfare officers when dealing with applications. The flexibility and responsiveness inherent in the scheme will remain.

This flexibility and responsiveness was very much in evidence in the role the community welfare officers played in providing financial assistance to people who were affected by the severe flooding this winter. The transfer is also a good example of the reform and transformation of public services, which are a priority for Government, and which are at the heart of the draft agreement, brokered by the Labour Relations Commission between Government and public service trade unions in Croke Park this week. A considerable amount of preparatory work to allow for the transfer has been completed, but progress has been stalled as the unions had withdrawn from the discussions as part of their campaign against the Government's public

service pay policy. The Government's priority now is to push ahead with the reform agenda as quickly as possible and I look forward to the co-operation of the relevant unions in re-entering discussions on the transfer. The priority objective for the management side is to reach a collective agreement with the unions as soon as possible so the transfer can commence this year.

Senator Brendan Ryan: I thank the Minister of State for his response. As with previous responses on this matter, I note the general comments on the activities of the service. However, the matter at issue is whether a replacement local service will be provided in Balbriggan in the short term for the many people who have to travel to Gardiner Street. The Minister of State's response indicates the HSE and the Department are actively seeking premises in Balbriggan. New accommodation for social services there is scheduled to come on stream this year. It has been agreed that both the HSE and the community welfare service will be accommodated in the new facility. I know the Department is actively seeking and has procured a lease for premises from which to provide its services in Balbriggan. This will not be sufficient in the context of meeting the needs that exist and it will not be possible to provide adequate social welfare services. I have made proposals to those involved, which they are considering. I hope they will arrive at a resolution to this problem.

The Minister of State's reply suggests that the community welfare service may in some way be integrated with the Department of Social and Family Affairs. I know this is not the case. The information available to me suggests that a solo run is being done in this instance. There is no indication that a building out of which both entities might provide services is being sought. As stated earlier, it will not be possible for community welfare officers to provide a full service unless matters are dealt with differently.

I note the Minister of State's reply but the information it contains does not tally with that which is available to me. I wonder whether there might be some way to obtain information on what is really happening in respect of this matter. I do not believe the contents of the Minister of State's script reflect the reality of the position. It is my understanding the position is different to that which he outlined.

Deputy John Moloney: The Senator is obviously closer to this matter than I am. The script which I was charged to deliver indicates that the aim is to secure a suitable premises. The Senator lives in the area and is aware of the actual position. In such circumstances, I will undertake to arrange a meeting involving the Senator, the Minister and me, which will take place following the Easter recess, in order that this matter might be teased out. The Senator will be in a position at that point to furnish to us the information in his possession. This will assist in ensuring we will be in a position to provide a premises out of which both services might be made available. I will inform the Senator next week as to the time and location of the meeting to which I refer.

Head Shops.

Senator Brian Ó Domhnaill: This important issue relates to the ongoing difficulties created by head shops. There are a number of such shops in operation in the constituency in which I live. Two of these establishments, which are a cause of major concern to parents and the authorities at various schools, are located in Donegal town and there is another in Ballybofey. It is completely unacceptable that head shops are able to dispense drug-type products to individuals who, in many cases, are led to believe they have a beneficial effect. That is not the case.

I welcome the fact that the Government has taken the initiative and intends to ban certain of the products sold in so-called head shops from June. While some may argue that the ban should have been imposed forthwith, I appreciate it was necessary to obtain clearance from

[Senator Brian Ó Domhnaill.]

the European Commission. Under one of the Commission's directives, it is necessary for a three-month period to be observed before a ban can be imposed. It will be June before the comments of the Commission and other member states in respect of this matter will be received.

We are taking a step in the right direction by banning certain of the products promoted and sold by head shops. However, there is other action the Government could take to try to deal with the scourge these shops are visiting upon young people, in particular, who might be more vulnerable to the effects of the products to which I refer. The Planning and Development (Amendment) Bill 2009, which is currently before the Dáil, should be amended in order that individuals who are either seeking to establish a head shop or to regularise the position with regard to an existing shop should be obliged to apply to their local authorities for planning permission. Such a move would be welcome because it would provide communities with the opportunity to object publicly to these shops through the planning process. I will be taking part in a march on Saturday next in the constituency in which I live. Many hundreds of people will join that march to protest at the two head shops that are in operation in Donegal town. The majority of communities completely object to head shops and that for which they stand.

There has been some anti-social behaviour in the context of certain of these establishments being the subject of bomb scares. I do not subscribe to such behaviour which is wrong. The Government should take the lead in respect of this matter and should change the planning laws in order that those who run head shops should be obliged to regularise their operations. It should also provide local authorities with an opportunity to nip the development of these shops in the bud. Existing head shops should be obliged to seek retrospective planning permission or for permission to remain in existence. This would allow members of the public to object to their activities.

Existing planning legislation is not sufficiently specific in the context of how it deals with this matter. Those who currently apply to local authorities for permission to establish retail outlets are not obliged to specify what will be sold at those outlets. As a result, members of the public or planning staff would not necessarily know that it might be planned to open a head shop at a particular location. Everyone is aware of cases where commercial planning permission was given in respect of certain retail outlets and where so-called entrepreneurs — if one could call them that — suddenly opened head shops at the relevant premises. We need to nip this type of activity in the bud by changing the planning laws and by ensuring specific planning should be required by those seeking to establish head shops. Those who wish to open such shops should be obliged to disclose the purpose for which a premises is going to be used. I understand that to facilitate this, an amendment to the Planning and Development Acts will be required. The Minister of State may not be in a position to provide a direct response today to my request in this regard. I propose, however, that the matter be considered as soon as possible, especially in view of the fact that the Planning and Development (Amendment) Bill 2009 is before the Dáil and can be amended.

We will be doing young people a great service if we can ban head shops. Members will be aware that young people, who may be under the influence of alcohol, leaving night-clubs in Dublin in the early hours of the morning often frequent head shops. These establishments remain open until 2 a.m., 3 a.m. or 4 a.m. Some form of regulation is required in respect of this scourge on society, in general, and young people and the vulnerable, in particular. We must regularise the position by amending the planning laws. If we do so, it will be one further means by which we might force head shops out of business.

I request that the Departments of the Environment, Heritage and Local Government and Health and Children consider other ways in which we might regulate in respect of head shops.

It is obvious that these enterprises are financially lucrative and that is why those who run them are involved. I request that my suggestion and the others that have been put forward be examined and that prompt action be taken. It would be great if the relevant regulations could be introduced by 1 June when the ban is due to come into force. Planning officers and councillors in my county would welcome the introduction of an amendment to the Planning and Development Acts and have indicated that they would be glad to facilitate its implementation.

Deputy John Moloney: I thank Senator Ó Domhnaill for raising this matter. The issue of so-called head shops is one the Government is addressing in a co-ordinated and multifaceted manner. I welcome the opportunity to outline the actions that are being taken. I accept the points made by the Senator and wish to indicate that the Minister for the Environment, Heritage and Local Government, Deputy Gormley, and his officials are already involved in consultations with the planning authorities in respect of this matter.

At the request of the Minister of State with responsibility for drugs, the Department of the Environment, Heritage and Local Government has been working with the Departments of Health and Children, Justice, Equality and Law Reform and Enterprise, Trade and Employment to develop recommendations for Government on the best way forward in devising an overall response to the issue of head shops. From a health perspective, the Minister for Health and Children has begun the process of prohibiting, under the Misuse of Drugs Acts, the sale of certain substances commonly sold in these shops. This control on the sale of such products is similar to the approach followed in a number of other European countries. This is particularly appropriate because these products are also sold via the Internet.

In so far as the planning system is concerned, planning permission is generally required for any new development or for the change of use of any existing development. The planning regulations provide, however, that changes of use within certain classes of use are exempted development and do not, therefore, require planning permission. One of these classes is “use as a shop”. The planning code does not differentiate between head shops and any other kind of shop. The definition of “shop” contained in the planning legislation refers to a structure for the retail sale of goods. The nature of such goods is not defined.

While the planning system cannot be relied upon as a vehicle for regulating moral matters, the Department of the Environment, Heritage and Local Government is considering, in consultation with planning authorities, whether the planning system could make a sufficiently effective contribution to resolving the issue of head shops through, for example, the introduction of a more restrictive approach to the change of use provisions under planning legislation. Specifically, where a control system is in place under the Misuse of Drugs Acts on products sold on these premises, there may be scope in assessing the merit in amending the planning regulations to require planning permission to be sought for a change of use to sell such controlled products. In this context, it should be borne in mind that, even if the exempted development regulations were amended to address this issue, a planning authority would only be able to consider the land use and planning issues arising from the application for a change of use such as the extent and physical appearance of the building, traffic implications, opening hours and other related planning matters. An application for permission could only be refused where there were good planning grounds for refusing them. Furthermore, any change in the exempted development provisions would not be retrospective and would have no effect on any existing head shop in operation.

Nonetheless, it should also be noted that a planning authority has power under section 84 of the Planning and Development Act 2000 to prepare a scheme for an area of special planning control within a designated architectural conservation area and such a scheme may contain provisions regarding the control of any new or existing uses of buildings within the area.

[Deputy John Moloney.]

However, if the planning authority serves a notice on the owner or occupier of a building, requiring the existing use to be discontinued or made subject to conditions, it may be liable to pay compensation for any reduction in the value of the owner's or occupier's interest in the property concerned.

Senator Brian Ó Domhnaill: I thank the Minister of State for his response which I very much welcome. It is clear that the Department is considering the matter very seriously. Will the Minister of State convey the urgency of dealing with it to the Minister for the Environment, Heritage and Local Government? I appreciate the response and the action being taken. However, it is incumbent on all of us, as public representatives, to deal with the issue in a fast, effective and professional manner. This is being done but this planning matter could be expedited and incorporated in an amendment to the legislation which is before the Dáil.

The Seanad adjourned at 2.35 p.m *sine die*.