



# SEANAD ÉIREANN

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*Déardaoin, 8 Iúil 2010.*  
*Thursday, 8 July 2010.*

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Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Paidir.*

*Prayer.*

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## **Business of Seanad**

**An Leas-Chathaoirleach:** I have notice from Senator Pearse Doherty that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for Enterprise, Trade and Innovation to bring forward legislation to compel all companies awarded State contracts to comply with registered employment agreement rates and pension schemes.

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

The need for the Minister for Foreign Affairs to make a statement on whether he will encourage and support RTE to carry the advertising campaign to promote peace and reconciliation funded by the IFI and others and currently playing on UTV, given its value to the mutual understanding of the peoples on the island.

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

The need for the Minister for Health and Children to make a statement on the establishment of an advisory board on the reconfiguration of acute hospital services in the HSE south region and to outline the reason there is no public representative or patient advocate on the board.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

## **Order of Business**

**Senator Donie Cassidy:** The Order of Business is No. 1, Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2009 — Committee Stage (resumed) and Remaining Stages, to be taken at the conclusion of the Order of Business and to adjourn not later than 5.30 p.m. if not previously concluded; No. 2, motion re referral to the Joint Committee on Finance and the Public Service, to be taken without debate at the conclusion of No. 1; and No. 3, motion re banking, to be taken at the conclusion of No. 2 and to conclude not later than 6.30 p.m. if not previously concluded, with spokespersons having five minutes to speak and on which Senators may share time by agreement of the House. There will be a sos from 2 p.m. to 2.30 p.m.

**Senator Frances Fitzgerald:** In recent times the reputation of politics has taken a considerable hit. People have lost faith in politics and trust in Government. When politicians' words are not met with actions people, lose faith even further. We saw the latest example of this yesterday when the Taoiseach said there had not been cuts to front-line disability services. Some time later, hundreds of people marched outside Leinster House and many of us went out to speak to them, the parents and carers of the intellectually disabled and people with special needs. They attested to the truth of the situation, that their loved ones and they, as families, were experiencing cutbacks in front-line services in respite care and the support services to which they have become accustomed. Surely the Taoiseach is not saying the families are making up these stories. This is the direct experience of these families and individuals. I spoke to the families yesterday, as did many other Senators. Anyone watching the television reports, reading today's newspapers or meeting the families yesterday would have to be ashamed at the level of cutbacks these families and individuals are experiencing.

I spoke to a woman, Fiona, who told me about her 48 year old sister who has an intellectual disability. Maeve cannot live at home and her mental capacity is that of a three year old. She has no speech but has learned to communicate with her family so they can understand her. They describe her as a generally happy person, sociable, affectionate and joyful. I spoke to her mother and her sister who were distraught about the current experience in the care facility where this woman lives. They spoke about the fact that drugs are being used once again as an alternative to therapies. Sedatives are being used instead of alternatives because of the cutbacks to staff and the need to manage the facility. They said it was going back to the Dark Ages, a complete reversal of the kind of care for their loved one they had experienced in recent years.

The Taoiseach may say there are no cutbacks but I have evidence of a facility in Dublin where 120 families will soon have little or no respite service, 80 children aged up to six years will be without occupational therapy, physiotherapy services will be curtailed, a day centre will close and the facility's swimming pool has been closed already. Two children at the facility have no school place for the coming year and many programmes aimed at developing communications and social skills will be severely curtailed. I refer to the point Senator O'Malley made yesterday about administration of the disability sector and the need for the sector to be more efficient. If there have been failings in the area, of which we still need to see evidence, I put it to Government that because it provided the funding, it has the responsibility to see that funding is used efficiently.

**Senator A:** Hear, hear.

**Senator Frances Fitzgerald:** We already know the amount of waste there has been. This matter is a Government responsibility. It is not an excuse for cutbacks to front line services. I repeat my request of yesterday for the Minister with responsibility for this area to address the Seanad before we finish our work for this term, for him to come into this House and talk about the facts and not the theory he talks about in implementing A Vision for Change. The reality is that 700 staff have been cut from front line mental health services in the past year. That is not implementing A Vision for Change. I would like the Minister of State, Deputy Moloney, to come in here and give us facts about what is happening in the disability sector before the end of the term.

**Senator Joe O'Toole:** I could not disagree with one word Senator Frances Fitzgerald said. In fairness, I presume the same would be the view of Members on the other side of the House, but this is a time when action needs to be taken. I want to put my own credibility on the line here. I have stood here and supported Government policy on the harsh economic measures in terms of the support to the banks, the NAMA model etc. I have argued for it and supported

it. The Government came to a conclusion on this and I made the point at the time that I preferred it, say, to the Fine Gael point of view, though it also had merit at the time.

Similarly when it came to the harshest of cuts, including cutbacks in pay in the public sector, the area that I often represent, I supported the Government in terms of the Croke Park deal and the need to do that. Responsible positions have been taken in this House in support of the Government's economic measures. There also has been strong support by all parties on this side of the House for the Croke Park agreement and cuts in public sector pay and pensions etc. Everybody bought into it.

I remind the Leader of that because I ask him to also remind his leadership that there is another leg to that stool. If we are to put money into the banks and to take money from public servants, and people in the private sector have also suffered a loss in income, we need to balance that by ensuring we represent the caring society which worries about the most vulnerable, which worries about those in need of support and about how we are seen to treat the marginalised and the excluded. This is an issue that we need to be seen to address and it was never more important than now.

There is good news this week from the OECD and in terms of the Department of Finance revising its growth forecast from a minus percentage to a plus percentage. These are good things. We hope we will not have the jobless recovery about which some prophets of doom are talking. We need to be clear about this. There is a good deal of deliberately mischievous comment with people saying: "We have growth but where are the jobs?". Every Member who has spent an iota of time examining economic issues recognises there is a lag between employment creation and growth in the economy. We must ensure though that this happens. The point that has been raised on this side of the House on numerous times is that we do not see the Government policy which makes the link between those two things. We want to be reassured about this. I want to see how this will happen. I want to see how we are pushing for this to happen. I want to see proposals from Government such as, for instance, the Fine Gael proposal on creating 100,000 jobs in the green economy. The Government is working on that in the background. We should have such proposals. These are proposals we could all get behind and move forward, but we can only do that in the context of the points that have been raised by Senator Fitzgerald. We must also be seen to take a stand in favour of the people that we pass legislation to support as in the case of the EPSEN Act and other Acts which support people with special needs of various types.

I ask the Leader to take that message back to the Government and to arrange for somebody representing Government to come into this House for a debate on that broad issue, not only on the cuts, but where this sits in all of the broader economic issues we are discussing at present.

**Senator Dominic Hannigan:** Yesterday we heard calls for the Immigration, Residence and Protection Bill, published recently, to be brought before the House. I support that call. People are very fed up about our asylum system. People within the system have to wait four and five years before their cases are dealt with. We should not forget that these are often the most vulnerable people in our society. They have left their homes and come here hoping to start a new life and have found that they have to wait an inordinate amount of time before their cases are dealt with. People in the wider community are also fed up at the cost of this system to the Irish taxpayer. If it takes five years for the case of an average asylum seeker to be dealt with, that costs the State approximately €50,000. Every other European country deals with this process in a much more efficient way. They can deal with their asylum system in one or two years rather than the four or five years it takes us. Clearly, it is the system that is at fault here; it is not the fault of an individual. We need to deal with the issue that is before us.

[Senator Dominic Hannigan.]

I ask the Leader to bring forward the Bill that has been published and is awaiting introduction to this House to enable us to move on with this process. We can change the procedures and ensure the system is quickened up and thereby save the State some money and let people get on with their lives.

I would also like to raise the subject of climate change legislation. We heard as recently as three weeks ago during my party's Private Members' time in this House that the Government expected to publish climate change legislation imminently. The Dáil is rising today but the Seanad will sit next week and it may be that this legislation will be introduced next week. I look forward to hearing the comments of the Deputy Leader on that query.

Will that legislation deal with the issue of the climate change fund of €100 million that the Minister, Deputy Gormley, agreed at the conference in Copenhagen last December? At that time the Government agreed to make a voluntary contribution towards mitigating the effect of climate change in developing countries. Has the Government yet agreed at Cabinet level to release this year's allocation of €30 million from that fund? If so, where will it be allocated? Will it be spent in our priority countries or will it be allocated to some multilateral agency? I would like to know. We are now seven months into this year and we need clarity on this issue. I note other countries that made similar voluntary commitments have already acted. I would appreciate comments on this issue from either the Deputy Leader or the Leader.

**Senator Dan Boyle:** To respond to Senator Hannigan, there have been meetings with environmental NGOs and Department officials on the progress on the heads of the climate change Bill. It is hoped it will be published before this House rises in any event.

On the Senator's second query, the House should debate the wider issue. The Taoiseach gave a commitment on an allocation of €100 million over three years at the rate of €30 million a year, in regard to climate change measures in developing countries. The funding allocation method has not been agreed in terms of the Department this will come under, but I believe the House will accept that is a promise worth delivering on.

On the wider issue concerning disability services in particular, we need to have a wider debate. I was taken by Senator's Fitzgerald's reference to the fact that sedation is being used as a control measure and as a cost control measure. I have seen evidence of this on recent visits to psychiatric facilities. In no way can that be seen to be a bonified medical approach or a caring approach to these particular issues. We need to have these issues identified, exposed and eliminated wherever they are seen to exist.

**Senator Paul Coghlan:** I welcome items 2 and 3 on the Order Paper. Item 2 is the reference to the Joint Committee on Finance and the Public Service of the Governor's report and the report of Regling and Watson. That is welcome and I look forward to the deliberations on that. Item 3 is more important. This motion seeks our approval of the draft Commission of Investigation (Banking Sector) Order, which I am sure we will do. I am glad the terms were extended, otherwise the State would have been found guilty of colluding in the cover up in regard to the very serious specific lapses that happened in some of our credit institutions. I refer in particular to the bed and breakfast arrangement that was in place between two of them, the back to back deposit swaps that took place before AGMs, allowing for the publication of reports to be pumped up and for the propping up of false figures. That is a very important matter. I welcome that we are to debate it. I hope we will have the opportunity in due course to comment further on this. The Leader might make provision for a suitable debate when the time will come.

Will the Leader briefly outline the sitting arrangements for next week, the number of days it is proposed we will sit and the proposed legislation with which we will deal? As the Dáil is rising today, we will not be able to refer any legislation back to it. It is important we know the Leader's proposals for next week.

**Senator Terry Leyden:** I agree with the points made by Senator Fitzgerald. I call on the Leader to arrange for a full discussion on this matter next week — we will have time for such a discussion next week — and for the facts to given on funding for care, particularly respite care. We have received correspondence in this regard and every case is genuine. Families are terrified about the demands that will be placed on them if respite care services are withdrawn or reduced. Senator O'Malley has made the point that we have to examine the allocation to the Brothers of Charily to find out how and where the money is being spent and why front-line services are being reduced. When I was in the Department of Health and Children, there was a particularly strong link with the Brothers of Charity because it was the adviser to the Government on intellectual disability issues. Therefore, there was a strong channel of funding to the organisation which has carried out tremendous work. It operates in County Roscommon. The association in the country for people with intellectual disabilities has provided funding, in conjunction with the Brothers of Charity, on a voluntary in recent years and I am sure it will rise to the occasion in terms of the provision of additional support. I would like the Minister to come before the House next week to give the full facts, provide all the documentation available on the Brothers of Charity and outline the reason respite care services are the first line of attack. When I was in the Department of Health and Children, this was a regular occurrence. Whenever cutbacks were proposed, some officials highlighted the most sensitive areas in the public domain to ensure they and management received more funding. People were used to leverage this funding from the Department. I would like to have the issue clarified next week. Let us have an honest debate to find out if there are six managers in the Brothers of Charity——

**Senator Paudie Coffey:** The Senator is spinning.

**Senator Nicky McFadden:** What about all the managers in the HSE?

*(Interruptions).*

**Senator Liam Twomey:** Any excuse.

**Senator Frances Fitzgerald:** It has a duty to manage the sector.

**Senator Terry Leyden:** It has a good name.

**Senator Paudie Coffey:** Is it only dawning on the Senator now?

**Senator Frances Fitzgerald:** The Senator is worrying about this very late in the day.

**Senator Liam Twomey:** On a point of order, I may have misunderstood the previous contribution, but is Senator Leyden saying officials in the Department are deliberately misleading the media in order to say money is being wasted?

**An Leas-Chathaoirleach:** That is not a point of order.

**Senator Terry Leyden:** I did not refer to officials in the Department. I was referring to officials in organisations which manage funding.

**An Leas-Chathaoirleach:** Senator Leyden, please resume your seat.

**Senator David Norris:** I ask the Leader if he will take No. 36, motion No. 14 on the Order Paper on the situation in Uganda. It involves in some circumstances the reintroduction of the death penalty. No one in this House, no matter how strong his or her opposition to the Civil Partnership and Certain Rights and Obligations of Cohabitees Bill, would oppose the motion. I cannot imagine anybody supporting such barbarous measures in African countries which have been strongly condemned by the churches. As the Leader knows, the original wording of the motion was slightly amended by the Department. It now approves of the motion, for which there is all-party support. Because of the emergency situation we have had changes to the Order of Business for a series of days. I am happy to roll with this and would really be grateful if the Leader introduced the motion, even without debate, as we have had a long debate on these issues and I do not think there would be any dissent. I am prepared to have it taken without debate because I have been asked by the bishop to send it, as it may help to save lives. If we could take it today, even without debate, I would be most grateful.

I ask for a debate on cystic fibrosis services, in the light of the fact that there are further delays in the provision of the promised 34 bed unit in St. Vincent's Hospital. We have all listened to and read the eloquent articles by Orla Tinsley, a wonderful and courageous fighter for the rights of people with cystic fibrosis. She has detailed, without engaging in nasty criticism of any of the staff of the hospital, how she has sometimes had to deal with nurses who have received no specialised training and who may have inadvertently exposed her to health risks and how sufferers, because of their condition, need to be isolated and when they are not, they are exposed to the risk of cross-infection. I was contacted sometime ago by a wonderful young woman, a distant connection of mine, Yvonne McNulty, and I went to visit her. The circumstances are wonderful but the risk of infection is very high when a person is unwell. I understand there are difficulties and that the Government has made what appears to be a very firm and clear promise in this regard. The current difficulties are the result of Bernard McNamara being in financial difficulties but surely they could be overcome. The contract appears to be unusual in that the Government or the authorities of the hospital do not propose to pay until the job has been completed. Surely it should be possible to install a system, whereby there would be a series of payments made as the work progresses. It should not be beyond the wit of those involved to appoint a project manager to oversee the payments and construction of the unit. I am sure my friends and colleagues in the House, with some of whom I disagree very strongly on certain issues, in a genuine spirit of concern for people who are unwell will examine the matter and give a constructive view.

**Senator Paschal Mooney:** I share Senator Leyden's concerns about the manner in which money is being spent in respite care and disability services. I am sure the Leader would welcome a proposal that the Minister of State with responsibility for disability issues, Deputy John Moloney, come before the House to outline the discussions he has had and which are ongoing. I have every confidence in him that those in receipt of respite care services will not, despite media and other commentary in recent days, find themselves without such valuable and important services.

I propose an amendment to the Order of Business regarding No. 36, motion No. 17 on the Order Paper. I raised the matter briefly yesterday and thank all the leaders of the political groupings who have agreed to the following all-party motion:

That Seanad Éireann calls on the Islamic Republic of Iran to spare the life of Sakineh Mohammadi Ashtiani and requests the Minister for Foreign Affairs to convey to the Government of the Islamic Republic of Iran the opposition of the Irish people to all forms of capital punishment.

I propose that the motion be included in the Order of Business and taken without debate. I am sure the Leader will accede to my request because it is an agreed all-party motion and, according to newspaper reports, there is a danger that the woman concerned could be executed before we return to the House next week. This is an important dimension to my request.

**Senator Joe O'Reilly:** As Senator O'Toole pointed out, at the risk of losing public support, on many occasions both he and other Members on this side of the House supported the need for financial retrenchment and corrections to the public finances. Fine Gael went so far as providing an alternative budget. However, a line has to be drawn in the sand. There are certain front-line services for people with intellectual disabilities, the elderly and people with cystic fibrosis which are at risk but which ought not to be. We on this side of the House have no problem in accepting that administration costs have to be cut back and the challenge we present to the Government is that if there are unnecessary administration costs, they should be eliminated. It will not be opposed from this side of the House in so doing.

I draw to the attention of the Leader a very serious matter dealt with in the *Irish Independent* today. In an objective study commissioned by it the National Cancer Registry shows that the costs involved when one has cancer, a nightmare for every person and family, are proving too much for families. The incomes and mortgage repayments of families with a cancer sufferer are at risk. For example, visits to the general practitioner and consultant can cost up to €700 a year. Cancer patients spend €360 on travel, while 63% seek social welfare benefits. Women with various cancers spend in the region of €460 on wigs etc. These costs are prohibitive.

It is a further nightmare for families at a time when they are already suffering. We need to debate this report and the cost and psychological impact of cancer. The public finances can be rectified but people in these circumstances must be prioritised. If we are able to put money into the banks, we should also be able to support these people during the worst times of their lives.

**Senator Labhrás Ó Murchú:** Several issues pertaining to asylum seekers and how the State deals with them could be effectively discussed in this House. I accept we will not get an opportunity to do so before the recess but I ask the Leader to consider a debate on this subject at an early stage after we return. Good stories can be told about immigrants who have been accepted by communities and made positive contributions to the quality of life by sharing their own traditions. Senator Hannigan was correct to raise this issue. I and I am sure other Senators are regularly asked to investigate cases. Some of these are heart breaking cases involving the possible deportation of people who have partners and children in this country.

I am aware that in recessionary times issues such as this are not at the top of the priority list but we are diminished as a people if we do not realise anybody who is marginalised needs urgent attention. When we make representations on these cases, we generally receive clinical replies. We have seen deportations about which we have felt deeply and we often wonder afterwards what happened to the individuals concerned in their own societies. I would fear for the safety of individuals in some cases.

Our people have a history of going abroad and meeting challenges and difficulties but at the end of the day they were well received and contributed to their new countries. Given that we celebrate their history today, is it not right that we should go the extra mile for those who have come here with the best intentions to seek refuge so they are not left waiting on the long finger or in limbo? They are in a cruel and difficult situation and they are worthy of being put on our priority list.

**Senator Feargal Quinn:** I draw the attention of the House to the leading editorial in today's *The Irish Times* on Seanad reform. It is interesting that, while calls have been made to abolish

[Senator Feargal Quinn.]

the Seanad, certain people have recently changed their minds on the need for it. Yesterday's debate showed how the Seanad can earn its keep. I was very impressed with that debate, particularly when I compared it to the proceedings in the Dáil. Concerns were expressed clearly by a number of Senators and, while it was not healthy that the debate continued until 1 a.m., this may simply mean we need to improve how we organise our business. If the Seanad is to survive, it is up to us to earn our keep. Yesterday was a good example of the first steps we can take in that direction.

Nos. 2 and 3 on the Order Paper pertain to banking. The Joint Committee on Finance and the Public Service met this morning to discuss the proposed commission of investigation into the banking crisis. It is welcome that a time limit will be imposed on the commission's work. More importantly, it will not solely focus on the past but will also give advice on ensuring we do not run into the same difficulties in future.

Yesterday I referred to the three month long summer holidays taken by secondary schools in Ireland, which compare to 16 days in Japan. Somebody asked me whether I really expect students and teachers to work over the summer months but my attention has since been drawn to a novel way of teaching languages practised in Britain and elsewhere. It is called the Michel Thomas system and I was very impressed when I was told about it by somebody who has just completed a course. Students take no notes and are told they should not memorise anything. This helps pupils to relax and they seem to be able to form complex sentences in languages they have never previously heard within a few days. German, French and, perhaps, Japanese and Chinese language teaching would bring huge benefits to the country because jobs are waiting to be filled by people who are able to speak these languages. We are at the bottom of the pile in Europe for languages but this system would enable us to learn in a fun and exciting environment. We could have pleasure even while making great achievements. Rather than requiring students to attend school more often, we could bring them both joy and success. Let us find a way of bringing this to the attention of our education authorities.

**Senator Mark Daly:** I second Senator Mooney's proposal on motion No. 17, which would convey our Government's concern about the death sentence imposed on Sakineh Mahammadi Ashtiani. She has been sentenced to death by stoning. No right thinking and civilised nation could condone such a barbaric practice in this day and age.

**Senator Jerry Buttimer:** Why has the Leader not arranged for the Minister of State at the Department of Health and Children with responsibility for disability to come before the House this week? Yesterday the Taoiseach stated that no cuts would be made to front line disability services. He made other comments which are unparliamentary but these say more about him than about the people to whom he referred. The Members opposite made eloquent speeches on Tuesday but words are not enough. The people we met yesterday and every day are suffering from cuts which hurt the old, the poor and the disabled. They still hurt 23 years later. Do not forget that. Yesterday I stated that respite care is a necessity rather than a luxury but it is being taken away from these people. Carers are worried and living in fear because they cannot plan. That is not a good environment in which to live. Cuts have been made to front line services.

I seek a debate on the remarks made by Senator O'Malley yesterday. I researched her claims and found that while there are indeed six Brothers of Charity service organisations in the country, one of which is in Cork, to the best of my knowledge none of the CEOs of these organisations receives a salary equivalent to that of the Taoiseach. If I am wrong I will admit my error in the House. However, the issue is not the salary of the CEOs; it is the cuts to funding and the reduction of services as a result of Government policy.

I ask the Leader to arrange a debate on banking and the potential job cuts in banks. The catastrophe in the banking sector was not the fault of ordinary bank employees but of the people above them. Senior managers and executives were the decision makers and those people continue to call the tunes while refusing to lend money.

**An Leas-Chathaoirleach:** Has the Senator a question for the Leader?

**Senator Jerry Buttimer:** When can we have a proper debate on banking so we can ensure the people who caused the mayhem in the banks are, to quote Deputy Noonan, “got rid of” and the people who do a great job in local branches every day are rewarded?

**Senator Mary M. White:** I draw attention to the annual report on the meeting of Dáil na nÓg in March 2010. I compliment Dáil na nÓg on producing the report so quickly. It has set an example for other organisations which sometimes produce annual reports one or two years late.

The objectives of Dáil na nÓg are to provide a place where children who are representative of young people in Ireland can raise and debate issues of concern to them, act as a tool for children’s concerns to be fed into the development of public policy and provide a model for children’s participation which can be developed at local level with links with the Dáil. Dáil na nÓg lobbied hard for the introduction of a free cervical cancer vaccination scheme. The young people involved are to be complimented on the effectiveness of their lobbying in securing free cervical cancer screening. As the Parliament of older people, we have an obligation to listen to the young people in question.

The themes for this year’s Dáil na nÓg conference were equality of access to education and mental health. How many times have I spoken about the mental health of all the people of this island, especially young people? We have a responsibility to listen to the common sense views expressed by children.

One of the key aspects of equality of access to education is examination pressure. Dáil na Óg recommends that the Department of Education and Skills extend the leaving certificate cycle to three years and reduce the junior certificate cycle to two years. Achieving this objective would not be a big deal. Dáil na nÓg is our customer and we should listen to it.

A further key recommendation made by Dáil na nÓg under the heading of mental health is that Departments establish and fund an education group to educate second and fifth year students through schools and youth clubs about depression and suicide.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Mary M. White:** The funding provided for the Road Safety Authority for the prevention of road traffic accidents is 30 times greater than the funding available for suicide prevention measures. The issue of road safety also receives much more attention in public debate and television airtime. We must focus more on mental health, reduce the stigma associated with it and hold open discussions and fora to discuss the issue and inform people that help is available. We must invest as much effort in promoting——

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Mary M. White:** I ask the Ministers for Health and Children and Education and Skills to listen to the children of Ireland represented in Dáil na nÓg and place as much emphasis on mental health as on saving lives through road safety campaigns.

**Senator Paschal Donohoe:** I formally propose non-Government motion No. 14 on anti-gay legislation in African states to which Senator Norris referred.

**An Leas-Chathaoirleach:** Is the Senator proposing the motion as an amendment to the Order of Business?

**Senator Paschal Donohoe:** Yes. I also draw to the Leader's attention No. 35, a report by the Sub-committee on the Role of the Oireachtas in European Affairs which was laid before the House yesterday. Senator Mooney spoke about the report at a meeting of the sub-committee which examines the role of the Oireachtas, specifically the Seanad, in European affairs and has proposed a number of additional roles. I ask that the House discuss the report early in the new term.

Senator Buttimer commented on cuts in respite care services, while other colleagues referred to potential inefficiencies in the sector, an issue on which the Government placed considerable emphasis yesterday. The Comptroller and Auditor General published a report on these services four years ago, in which he raised such concerns and made a number of recommendations. Why is the Government only now acknowledging that there may be difficulties? Why was action not taken on foot of the Comptroller and Auditor General's report to avoid days such as yesterday?

Senator O'Toole referred to reductions in public service salaries. One of the reasons for these measures was to avoid reductions in front-line services. I could not get over the Taoiseach's statement yesterday in which he denied that there were cuts in services. I have seen with my own eyes the effect such cuts are having on families. What exactly does the Taoiseach believe people were marching against yesterday? What fears prompted them to march, if not ongoing reductions in front-line services? The families in question do not need the Taoiseach to add to their worry and terror by denying that cuts are taking place.

**Senator Ann Ormonde:** I share Senator Quinn's view that we must keep reform of the Seanad on the agenda. The excellent debate yesterday on the civil partnership legislation was a prime example of the importance of the House. Unlike in the Lower House, many Members of the Seanad made very good contributions to the debate. We must consider Seanad reform in that light and keep it on the agenda in the autumn. I propose that we have a debate on Seanad reform once each month. Without the Seanad, political debate would be much poorer. The Lower House is much more functional than the Seanad and gets on with its work, whereas Senators take the opportunity to tease out various issues.

In the light of our changing vision of the future, we must examine the issue of reform of second level education. We should review the curriculum to identify how best we can introduce technological subjects. While these subjects are not ideal for every student, we must find a means of providing opportunities for those with technological ability to acquire new skills. Often technology subjects are not on the timetable. We need a debate on the reform of second level education in the context of the smart economy, the knowledge economy and skills base. We must not forget, however, that arts subjects are important and will continue to be of service to the country.

**Senator Michael McCarthy:** Recent debates in the House, especially the debate yesterday, have highlighted the unique role of the second Chamber. Notwithstanding differing views on various issues, the House has always debated issues in an honest and open manner and respect has always been shown for everyone's point of view. There is a strong case to be made for promoting such debate and highlighting the fact that the diversity of opinion in the Upper House is not mirrored in the other House. This is one of the strong points of the Seanad.

Much has been said recently about cuts in various services. While we can all argue that specific areas should not be targeted for cutbacks, if yesterday's march against cuts in the disability sector tells us anything, it is that the sector is doing its best with the limited resources available to it. In recent years carers, the unsung heroes of society, have saved the State a fortune. If proof were needed, we saw yesterday how people of all political persuasions and none went outside to listen to the views expressed by those who marched. The marchers were staunch and loyal and we must support them. It is not good enough to engage in an economic exercise on an area such as disability services, while failing to address the shameful risk-taking that occurred in the banking sector and resulted in the near collapse of the economy. Not one single individual has served one day in jail. However, last week we had a double murder in this capital city and all of a sudden the two people murdered were known to the Garda, a phrase I find objectionable. The people who brought the country to the brink of economic collapse are known to everyone, including the Garda.

**Senator Paudie Coffey:** Further to what Senator McCarthy said, today's edition of *The Irish Times* reports that the Minister for Finance has promised action against banks that have provided misleading information to NAMA. He said that those who knowingly gave false information to NAMA could face criminal prosecution. Section 7(2) of the National Asset Management Agency Act states: "A person who intentionally, recklessly or through gross negligence provides false or inaccurate information to NAMA commits an offence." That is quite clear. The clause is wider and does not just cover false information knowingly provided, but also inaccurate information given recklessly or through gross negligence. It now appears that NAMA's October 2009 business plan was based on this inaccurate information that was supplied by the leaders of the banks themselves. We need to know whether that was reckless or through gross negligence and if so, we need to know when there will be prosecutions. People are being jailed for not paying their television licence fees and yet these bankers, who have knowingly given this false information, have, as Senator McCarthy and others said, brought the economy to its knees. We can see the consequences of that in the cuts in respite care, education and pensions. We know the people behind it and we need to see prosecutions soon.

**Senator John Hanafin:** It would be wrong to have the Order of Business without noting the positive results in the economy and the expectation of a 1% growth, the highest in the EU this year. As a clear indication that Government policies are working, we are the first and the fastest-growing of the EU countries. With that in mind, is it not time we started to speak positively of the benefits and opportunities that would present themselves and create an environment in which people have more confidence in our economy, thus creating jobs?

**Senator Nicky McFadden:** I ask the Leader to consider seriously what was discussed yesterday by the people who were out on Kildare Street and Molesworth Street. Senator Hanafin just came in full of bluster and excitement about the 1% growth. However, 450,000 people are unemployed. The unsung heroes, the carers, are providing for people who are less well off than we are. Respite is a necessity and not a luxury. For people to continue to care, they must have respite. People's mental and physical health will suffer if they do not continue to get respite. Respite is for the carer and not for the person with disability. It is crucial that respite is maintained and provided at even greater levels than it is now. Regarding respite for the elderly in Westmeath, I attended a meeting with representatives of the HSE this week and was told by the regional manager that Westmeath had been allocated two respite beds for the south Westmeath area and two respite beds for the Mullingar area. That is an inadequate allocation to care for all the people who need respite. That is not to mention cuts have been made in St. Mary's in Mullingar where the number of beds is being reduced from 190 to 50, Loughloe House

[Senator Nicky McFadden.]

in Athlone is being closed and the services in the Midland Regional Hospital Mullingar have been consistently downgraded.

**Senator Donie Cassidy:** That is not true. I will with pleasure respond.

**An Leas-Chathaoirleach:** Senator McFadden, without interruption. Does the Senator have a question for the Leader?

**Senator Nicky McFadden:** It is true. Some 40 beds were taken out of the system in the Midland Regional Hospital Mullingar. There is a moratorium on nursing appointments, which is why those 40 beds have closed. It is not about blaming the managers, including the Brothers of Charity and the chief executive officers. It is about cuts and taking front-line services out of the system. I resent entirely Fianna Fáil blaming the chief executive officers and saying that—

**An Leas-Chathaoirleach:** Is the Senator seeking a debate on the matter?

**Senator Nicky McFadden:** I am not seeking a debate. I am just responding to what has been said today on services for people with disability.

**Senator Jerry Buttimer:** Well said.

**Senator Nicky McFadden:** It is not about the chief executive officers. It is about taking front-line services away from the people who most need them.

**Senator Fidelma Healy Eames:** I second Senator Donohoe's amendment regarding anti-gay legislation in some African states. I have a very special request for the Leader prior to the summer recess. I know this will be supported by many on this side of the House and perhaps by many on the Government side of the House. We should insist that the Minister of State, Deputy Moloney, comes to this House prior to the summer recess. I spoke to him personally twice yesterday. He assured me that respite would not be cut in Galway. The Leader should consider this carefully. I then spoke to people who met representatives of the HSE in Galway yesterday. Ability West in Galway has been told its services will be cut by €1 million. We also know that funding to the Brothers of Charity has also been cut. They were told as recently as yesterday that they will lose €4 million in services. When put together we have total contradiction and confusion. Only the Minister of State can clarify it and direct the truth. The line must be from the Minister of State to the HSE to the Brothers of Charity or Ability West. It must go down that line. The Minister of State should ask the HSE in Galway to do as follows. Whatever it cuts, it must not cut respite for people with disabilities. We all saw those with disability on the street outside Leinster House yesterday. As Senator McFadden said, respite is for the carer. It is to help the able help the disabled. If we burn out the able person, we are finished. What are we going to do? I have never seen such terrible destitution. We are stringing out our own voiceless people without getting help. The Taoiseach does not have a clue. I received a text this morning. He is totally out of touch.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Fidelma Healy Eames:** My question has been put. He is out of touch already.

**An Leas-Chathaoirleach:** We are not having the debate today.

**Senator Fidelma Healy Eames:** Respite houses have been closed in Limerick, Dublin and at Áras Attracta in Mayo. Those respite services have already been cut.

I support the requests made by others this morning for a debate on effective learning. I do not want this debate until September. It would be ideal when we come back in the new term.

**An Leas-Chathaoirleach:** Does the Senator have a question for the Leader?

**Senator Fidelma Healy Eames:** I have the question; it is coming.

**An Leas-Chathaoirleach:** The Senator is out of time.

*(Interruptions).*

**An Leas-Chathaoirleach:** Senator Healy Eames, please.

**Senator Fidelma Healy Eames:** I want a debate on effective learning in which we can review, as Senator Quinn said, how children and young people can learn with less memory learning and use of notes. We need to consider how they as learners can be resources in themselves. We have much to offer in this.

**Senator Rónán Mullen:** I support what Senator Healy Eames just said. She hit the nail on the head in talking about putting strain on our best people and stressing them out. Yesterday I spoke on the issue of carers. A number of issues are now coming together to increase the pressure on carers. First there is the drive to get more efficient use of our hospitals — getting patients in and out quickly. That means there will be more pressure on carers at the convalescence stage. Where there is a shortage of nursing home beds, priority will be given to people coming out of hospital, thus reducing the available supports to carers in that context. There is also the shortage of respite. There is the coming together of a number of different pressures on carers to which we really must pay close attention. We should pay attention, in particular, to the fact that issues get challenging as time goes on for carers and one has people who are getting progressively older themselves caring for people who are progressively more challenged in their lives. I want to emphasise this issue. We will have a debate about it next week but it is something we cannot afford to lose sight of. As I stated yesterday, the carers are in a sense the most efficient part of our health service and they are the ones on whom we are spending least resources and of whom we are thinking the least. It is wrong that we should take advantage of their generosity and commitment to their families and loved ones, and think we can somehow then park them to the side and not worry about their needs. I hope we will put them front and centre next week and that it will be reflected in our budgetary arrangements.

**Senator Donie Cassidy:** Senators Fitzgerald, O'Toole, Boyle, Coghlan, Leyden, Mooney, Donohue, McCarthy, Coffey, McFadden, Healy Eames and Mullen expressed their full support for carers, and particularly carers who are in urgent need of respite care, and everything to do with the programmes of the HSE and the Brothers of Charity. The Minister for Health and Children, Deputy Harney, is coming back to the House next week. I spoke with the Minister last night on the portfolio for health and she stated she would make herself available. I will be pursuing this. I welcome the Minister of State, Deputy Moloney, calling in all the various heads to give a definitive report of where the spending is taking place and for further clarification on matters that are of considerable interest, that is, front-line services.

Everyone in this House fully supports what the carers are doing, respite care and everyone who is in need of the services carers provide. As I stated, there are 161,000 carers and they are giving a service that is second to none. We must do everything we possibly can to ensure anything that can be done, particularly on funding, is forthcoming and that the wastage in spending must stop immediately. If colleagues have any evidence of that wastage, please use the floor of this House——

**Senator Jerry Buttimer:** What does the Leader mean by wastage?

**Senator Donie Cassidy:** ——to bring it to the attention of the Minister.

**Senator Fidelma Healy Eames:** There is Government wastage.

**Senator Frances Fitzgerald:** The Government should acknowledge this.

**Senator Jerry Buttimer:** The Leader is waxing lyrically.

**An Leas-Chathaoirleach:** The Leader without interruption.

**Senator Frances Fitzgerald:** What does the Leader mean? That is the Government's job.

**Senator Jerry Buttimer:** Define wastage.

**An Leas-Chathaoirleach:** The Leader without interruption.

**Senator Donie Cassidy:** On Westmeath——

**Senator Fidelma Healy Eames:** Is that not the Government's job?

**Senator Donie Cassidy:** ——Senator Healy Eames knew nothing about Westmeath, thankfully.

**Senator Jerry Buttimer:** Thank God, in Senator Cassidy's case.

**Senator Donie Cassidy:** Senator McFadden brought to my attention——

**Senator Jerry Buttimer:** It would be the wax-work museum.

**Senator Donie Cassidy:** The corner boy stuff should be left at the corner.

**Senator Jerry Buttimer:** Senator Cassidy started——

**An Leas-Chathaoirleach:** The Leader without interruption.

**Senator Donie Cassidy:** The hospital in Mullingar was put there by my predecessor, the late M. J. Kennedy, who was Parliamentary Secretary at the time, going back to 1937. I know everything about what is happening in that hospital and I thank all public representatives for their support on all sides of the House.

The highest level of employment in the history of that hospital is right now, at 777 employees. There is a considerable amount being spent. The budget for this year is €58 million. It is down on last year, but it is a significant budget. We all know that 70% plus of that is on wages. We must do anything we can as public representatives to support Mullingar Hospital, of which I am extremely proud. There are the achievements of Mr. Trevor O'Callaghan and his team to have made it the number one hospital in the country, and the number two in the hygiene sector. We all are proud of Mullingar Hospital. Mullingar Hospital will grow and be enhanced and it will be a bigger hospital for specialised services which we all support.

**Senator Nicky McFadden:** There are 40 beds closed.

**Senator Donie Cassidy:** In response to the concerns of my colleague, Senator McFadden, who is always supported by Senator Glynn on Mullingar, there are 41 fewer beds because we are moving to day procedures and attending to far more patients and far more procedures.

There is 1 million more people living in Ireland today than when Fianna Fáil took back Government in 1997——

**Senator Maurice Cummins:** That is not correct. There is not 1 million people more since 1997.

**Senator Donie Cassidy:** ——and there are 700,000 people more working in Ireland today than during the sham of a Government from 1983 to 1987.

**Senator Jerry Buttimer:** Senator Cassidy is showing his type now.

**An Leas-Chathaoirleach:** Senator Buttimer, please can we have the Leader without interruption?

**Senator Paudie Coffey:** Senator Cassidy is waking from his slumber and it is too late.

**Senator Donie Cassidy:** Unfortunately, we who were in this House when Senator Coffey was going to primary school can remember it only too painfully.

*(Interruptions).*

**Senator Paudie Coffey:** The damage is done.

**An Leas-Chathaoirleach:** The Leader without interruption.

**Senator Donie Cassidy:** The proceedings of the House were enhanced yesterday by all the Senators' meaningful contributions. Do not demean them this morning. Support the Leas-Chathaoirleach. He deserves the Senators' support.

Senator Hannigan raised the immigration Bill. Senator Dearey brought this to our attention on many occasions in the House over the past number of days. This Bill has been published and I will update the House on Tuesday on its passage through both Houses.

Senators Hannigan and Boyle spoke of climate change. The Deputy Leader outlined to the House that the Taoiseach has committed €100 million over the next three years — €30 million plus per year — which is to be wholeheartedly welcomed. I certainly join with him in welcoming it.

Senator Coghlan asked about the sitting days for next week. I will be ordering business for Tuesday and Wednesday, and I am awaiting to see how matters progress on the business of both the Dáil and the Seanad today as to whether or not we are sitting on Thursday.

I thank all colleagues. We sat for 28 hours in the past two days. I thank the staff of the House——

**Senator David Norris:** Hear, hear. Well said.

**Senator Donie Cassidy:** ——the Clerk and the Clerk Assistant for their considerable understanding. Particularly, I thank the Whips and the leaders for their support and the Cathaoirleach and Leas-Chathaoirleach. In my long membership of Seanad Éireann — Senator Ross joined me in this yesterday — it was one of the best days to be present for the level of debate and the considerable concern shown by all Seanadóirí in their contributions.

In response to Senators Norris, Donohue and Healy Eames, I will accept the amendment proposed to take No. 36, motion 14, the all-party motion on foreign affairs. Senator Norris has been requesting it here for the past number of weeks.

**Senator David Norris:** Will the Leader be taking it today?

**An Leas-Chathaoirleach:** Let the Leader reply.

**Senator Donie Cassidy:** Senators Norris and O'Reilly asked for a debate on cystic fibrosis. It was debated last night in the Dáil with the Minister present. I certainly have no difficulty in passing on the strong views of colleagues to the Minister about their concerns and their support.

Senators Mooney and Daly also proposed an amendment, No. 36, motion 17, another all-party foreign affairs issue on the sentencing to death by stoning, and I will accept this amendment also.

Senator O'Reilly raised the National Cancer Registry's report on cancer costs and the cost to the State. When anyone is unfortunate enough to be affected by cancer it should be mandatory that the State pay for all of the costs. It is a serious challenge facing us in the future but nobody should be left without treatment because they cannot afford it. I hope that colleagues will bring this to the Minister's attention here next week.

Senators Quinn, Ormonde, McCarthy and Coffey raised Seanad reform and called for a debate on banking. We had a banking debate with the Minister for Finance here on Tuesday evening and late into the night, and later today we have a motion on banking. We have banking issues on two of the three sitting days this week. I have no difficulty in allocating time occasionally as it is requested to keep us updated on the challenges the Government is facing regarding the banking failures.

Senators Quinn and Ormonde raised reform of our education system and teaching languages in the three month break that students get. I certainly agree with Senator Quinn on the joy learning languages could bring to students. We all have seen in our Gaeltacht areas in the summer time the joy that students get from going to learn the Irish language. This is a worthwhile proposal. We will have a debate on the future of education after the summer break and we certainly can bring this to the Minister's attention in that debate.

Senator Buttimer also raised banking. I have outlined what has happened there.

Senator Mary White raised the Dáil na nÓg report 2010 and the achievements of these young people in education, mental health and free cervical cancer screening. I have no difficulty debating it in the House after the summer recess.

**An Leas-Chathaoirleach:** There are two amendments to the Order of Business. Senator Mooney moved an amendment to the Order of Business: "That No. 36, motion 17, be taken without debate before No. 1". The Leader has indicated he will accept this amendment.

Amendment agreed to.

**An Leas-Chathaoirleach:** Senator Donohoe proposed an amendment to the Order of Business: "That No. 36, motion 14, be taken without debate before No. 1". The Leader has indicated he will accept this amendment also.

Amendment agreed to.

Order of Business, as amended, agreed to.

### **Human Rights Issues: Motions**

**Senator Paschal Mooney:** I move:

That Seanad Éireann calls on the Islamic Republic of Iran to spare the life of Sakineh Mohammadi Ashtiani and requests the Minister for Foreign Affairs to convey to the Islamic Republic of Iran the opposition of the Irish people to all forms of capital punishment.

**Senator Mark Dearey:** I second the motion.

Question put and agreed to.

**Senator David Norris:** I move:

That Seanad Éireann, noting the attempts to introduce new or enforce existing anti gay legislation in certain African States, particularly in recent months Uganda and Malawi, condemns all policies and legislation which discriminate against citizens in respect of their sexual orientation, and urges the Government to communicate this attitude to those states involved.

**Senator Donie Cassidy:** I second the motion.

Question put and agreed to.

### **Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2009: Committee Stage (Resumed)**

#### SECTION 16

**Senator David Norris:** I move amendment No. 14:

In page 23, line 39, after “specify.” to insert the following:

“Any recognised religious denomination such as the Unitarian Church which celebrates the marriage of same sex couples may if the incumbent of such of their church buildings is agreeable have it regarded automatically as a proper and appropriate place for the registration of the civil partnership.”.

I welcome the Minister back to the House after a late sitting last night. I am sure I speak for all of us when I say we greatly appreciate that he is taking this serious matter himself and is not delegating it to a junior Minister in his Department because that signifies the importance of the debate.

I will not spend a long time pushing amendments because we have discussed most of the substantive issues. This issue relates to freedom of religion, freedom of conscience and respect for religious identity. In the United Kingdom, the Unitarian Church, in particular, has had its position recognised. The reason I tabled this amendment is that I have been lobbied by prominent members of the Unitarian Church, including Chris Hudson, who was the leading light of the peace train which ran between Dublin and Northern Ireland. He is now the pastor of the Unitarian Church in Belfast, although a Dubliner and a very prominent trade unionist. He believes, and I agree with him, that it would be appropriate for a church, such as the Unitarian Church, which performs religious marriages of same sex-couples, to conduct these marriages. The only such ceremony I attended was the marriage of a very old friend of mine to his partner in that church on St. Stephen’s Green. It would seem extraordinary not to recognise the right of a church to conduct these marriages and to be regarded as an appropriate place to do so.

I say this although I believe completely in the separation of church and state. It would be far better if we had the French system where those, like myself, of a religious disposition could receive the blessing of the church in what is regarded as a sacrament but that the church kept its hands clean of officiating at what is, in fact, very largely a distribution of property and assets and the legal arrangements surrounding that.

It is inappropriate for the church to be involved in the registration process but if it happens in one church or in a series of churches, it should happen in all churches and in all circumstances

[Senator David Norris.]

where these institutions are recognised. I look forward with great interest to the Minister's response.

**Senator Ivana Bacik:** We support this amendment. We had a substantial debate last night on some of the very significant issues in the Bill and on some of the omissions from it, which we believe are important. We do not intend to duplicate any of that debate today. This amendment could be read along with amendment No. 18 which seeks to include the Humanist Association of Ireland in the Civil Registration Act.

**Senator David Norris:** I would support that also.

**Senator Rónán Mullen:** Senator Norris was correct in what he said about the French system. There is much to be said for it. I have always understood the separation of church and state as being about protecting the zones of the state and the church to carry on their business and not to be interfered with. There is much to be said for the French system where there are separate ceremonies for church and state.

However, I disagree with Senator Norris's characterisation of the state marriage as being largely about property and such arrangements. The state has an interest in marriage as an institution and it is very much linked with children, encouraging people to bond in lifelong unions and to found families. That is not just about property and so on. It would be wrong to think the only people interested in the common good in that sense are religious and church bodies. The state has a particular view. As an entity, it acts on behalf of the community and represents its shared vision of the importance of marriage. If there was no such thing as church marriage, although marriage originated as a church ceremony before the State put rules around it, there would be a need for the State to have a vision of marriage as being for the good of society.

On the amendment, I am inclined to think it would be better to avoid any possible misunderstanding that there is a furthering of an undue interconnection between church and State in this zone.

It is not inappropriate to refer to a particular church. We did this in the Charities Bill with regard to mass cards, when we provided that those selling them could only do so in conjunction with a recognised religious authority which was identified as a Catholic religious authority. To avoid prosecution, the onus was placed on retailers to show that they had such a connection. Such a reference can be legitimate, although during that debate I received correspondence from people who felt there were dangers for churches in bringing in the State as a regulator of what churches might or might not do. Of course, in the context of the sale of mass cards, the regulation was introduced to avoid a practice that was being abused and facilitating a fraud upon members of the public who thought they were getting a certain thing when, in fact, they were getting something very different. The common good was served by legislation intervening at that point.

I am not sure if the singling out of the Unitarian Church is best practice, from a drafting point of view. I also have concerns about the use of the word "incumbent". Who is an incumbent in this instance? Is it the person who holds tenure or has immediate responsibility for a church building or parish? If this were to be included in the legislation, could some renegade priest within the Catholic Church or the Church of Ireland claim to be the incumbent of a parish and allow the use of his or her church building for same-sex civil partnerships? Might the church then seek to exercise its prerogative to restore the *status quo ante* and the so-called renegade invoke this legislation in support of what he or she was doing?

While the amendment appeals to certain liberal instincts because it recognises the right of people to provide, according to their ideas and values, for the recognition of same-sex partnerships or otherwise, it is, possibly, problematic, for the reasons I have given.

**Deputy Dermot Ahern:** Section 16 inserts a detailed provision relating to the registration of civil partnership in the Civil Registration Act 2004. The inserted section 59E makes provision for places and times for civil partnership registration. Subsection (1) specifies that if the place is not the office of the registrar, it must, save in limited circumstances of an exception on the grounds of ill health, be approved by the HSE by reference to matters which the Minister for Social Protection may specify.

The effect of the amendment would be to give automatic recognition as a place where civil partnership registration may take place to the churches of certain denominations which celebrate the marriages of same-sex couples. Any organisation may, if it so wishes, apply under the inserted section 59E(1) for the approval by the HSE of its venues as places for the registration of civil partnerships.

With respect to the analogous provisions for civil marriage, the Minister for Health and Children published guidelines in 2007 relating to civil marriage. These expressly provide that “the venue must have no recent or continuing connection with any religion, religious practice or religious persuasion which would be incompatible with the use of the venue for the solemnisation of civil marriages”. I expect similar guidelines to be made with respect to civil partnership registration venues in order that any venue with a recent or continuing connection with a religion or denomination would be unlikely to be approved.

There is also a major difficulty with the amendment’s reference to marriages of same-sex couples. Since same-sex marriage is not legally recognised in Ireland, this renders the amendment unworkable.

I would also like to add a clarification. Approval of a place, whether automatically or by the HSE, is separate and distinct from allowing a celebrant of the given denomination to carry out civil partnership registration. The Bill provides that only a registrar may register a civil partnership.

**Senator David Norris:** The Minister’s response is, as usual, enlightening in its way. He says the use of the word “marriage” invalidates the entire amendment. I had a discussion earlier today with my colleague, Senator O’Toole, who pointed out to me that in amendment No. 15 the word “marriage” was used. I assume that will render that amendment invalid, if the Minister’s argument is to be sustained.

With regard to renegade clergy, I am not sure if such loaded language is appropriate, but I leave it to the House to decide. I have been contacted by a bishop of the Roman Catholic Church, perhaps not one who meets with the entire approval of the established church, but let us put that to one side. He experienced extreme difficulty in having correspondence even acknowledged by the registrar at the time. As a public representative, I had to make an appointment to see the registrar and, more or less, smuggle the bishop into the meeting.

The Unitarian Church is referred to specifically in the amendment because I was so lobbied. We could parse and analyse the amendment to death. I do not expect it to be accepted and anticipated that this would be the Minister’s response.

I am interested in hearing the views of those who express themselves as strong devotees of freedom of conscience, free voting and all the rest. It seems there is a conflict. It might cause difficulties if these so-called renegade priests, bishops, incumbents, rectors, vicars or pastors

[Senator David Norris.]

decided to celebrate marriages for people normally pushed firmly outside the fold. If they wished to use their premises, I would have thought that was a classic example of people voting freely, having a conscience and acting on it. Perhaps I take a more expansive view of freedom of conscience and free voting than some of my colleagues.

**Senator Rónán Mullen:** The problem is with the use of the word — the possessive adjective — “their”. Is it their premises? If it was, one would have to take the view that they were entitled to act accordingly. The State, of course, would still have its view on whether it was causing more problems than it was solving. When we come to discuss freedom of conscience in the context of the provision of services, it will be clear that it is the rights of people who have ownership of and responsibility for certain premises which are at stake.

**Senator David Norris:** I think I can solve the Senator’s grammatical problem. It is governed by the major clause at the beginning of the sentence; therefore, it is the property of the church.

**Senator Rónán Mullen:** I knew I would receive an informed response.

**Senator Geraldine Feeney:** There would not be an issue for the church in any shape or form.

I am interested in hearing the views of those who express themselves as strong devotees of freedom of conscience, free voting and all the rest of it. There appears to be a slight conflict there. It might cause some difficulties if these, so called, renegade priests, bishops, incumbents, rectors, vicars or pastor

Same-sex couples who are going out to celebrate a very special day would not go to a venue that is hostile to how they want to live their life. I feel we are having a debate around an issue that is never likely to arise. I could not envisage people in a same-sex union ever seeking to use a church or go to Ely Place or wherever else it is held as a sacrament to a certain person. I could not see that happen in my wildest dreams.

**Senator David Norris:** Unless the church itself, like the Unitarians, wanted it.

**Senator Geraldine Feeney:** Absolutely, although that is very different. I am amused and amazed at what Senator Mullen is calling a conscience clause. I am elected to Seanad Éireann as a nominee on the labour panel.

**An Leas-Chathaoirleach:** We are not discussing election to the Seanad; we are discussing amendment No. 14.

**Senator Geraldine Feeney:** We are. The point I want to make is that ICTU, which represents the majority of public workers in this country, is totally supportive of the Bill in its entirety.

**An Leas-Chathaoirleach:** That has nothing to do with this amendment, which is specific.

**Senator Eugene Regan:** It is for the next amendment.

**Senator Geraldine Feeney:** I am speaking to the amendment. I will come in again on a further amendment Senator Mullen has put forward. However, we are wasting time. The people I know who want to celebrate a special day as same-sex couples would never in their wildest dreams be going to a church hall or anywhere like it.

**Deputy Dermot Ahern:** The amendment is a specific one which endeavours to give an automatic recognition to a place of a particular religion. I made the point in regard to marriages and same-sex couples. As I said previously, section 59E makes clear that this is a positive

request from a church to be recognised as such. I made the point earlier that if the guidelines in regard to marriage venues as per the Civil Registration Act 2004 and the regulations made thereunder by the Minister for Health and Children, and now the Minister for Social Protection, are to be replicated and the same terms as relate to marriages are to be replicated in regard to civil partnerships, then the venue must have no recent or continuing connection with any religion, religious practice or religious persuasion which would be incompatible with the use of the venue for the solemnisation of civil marriages. If they are to extend the logic and practice as per those guidelines, it would be unlikely that these churches would be approved as a venue unless it came under the very limited circumstances.

Generally in this regard, there has been some misunderstanding about churches being forced to use their property against their wishes. Section 59 clearly indicates that the only property that can be used other than the registrar's office, if an application is made to the HSE—

**Senator David Norris:** Will the Minister direct us to that section of the Bill?

**Deputy Dermot Ahern:** Yes, it is at page 23. Section 59E states: "A civil partnership may be registered only at a place and time chosen by the parties to the civil partnership with the agreement of the registrar and, if the place chosen is not the office of a registrar [the other place] shall be determined by the Executive by reference to the matters that the Minister may specify." I have excluded one of the limited exceptions in reading out that section. In other words, this has to happen on application by the organisation, whether it is a church or otherwise, to have its premises used. Therefore, there is no forcing of any church to have its property used against its wishes.

**Senator David Norris:** I would not want to do that.

**Deputy Dermot Ahern:** Similarly, there have been suggestions that celebrants of marriages under religion would be forced to be part of the civil registration process.

**Senator David Norris:** That would be intolerable.

**Deputy Dermot Ahern:** No celebrant empowered to conduct a marriage ceremony existing under the Civil Registration Act may register a civil partnership unless he or she is a registrar in the employment of the HSE. There is absolutely no possibility that any celebrant who is not a registrar could be required against his or her wishes to register a civil partnership. I can put it no clearer than that.

**An Leas-Chathaoirleach:** Is the amendment being pressed?

**Senator David Norris:** I want to make a final comment. I believe the Minister is slightly over-simplifying certain matters but I will leave that aside. Why would it be incompatible and what would the nature of the incompatibility be? If the congregation, the officiating priest and the parties to the marriage were all in agreement, in what sense could it be incompatible? Is there something about the nature of a church, the Unitarian Church in particular or the fact this man was willing in conscience to celebrate the union that makes it incompatible? I see no incompatibility whatever — I just do not understand it.

As I understand it and although I think it regrettable, in a religious service of marriage the partners, having been married, usually retire to the vestry to sign the register, and that is part of the legal confirmation of the existence of the marriage. Therefore, it does exist in that sense and the church, as the building, is held to be perfectly compatible. I do not see any reason that, for example, a Unitarian minister in the St. Stephen's Green church should not apply to be regarded as a registrar for this purpose. The Minister is indicating this would not be granted. I

[Senator David Norris.]

believe that if this did happen, the Unitarian Church would probably take the matter to court. I would certainly support it in this and I believe many people of right mind, as I would say, would also support it, including some quite surprising people.

**Senator Rónán Mullen:** What Senator Feeney had to say was very interesting. It is an argument I have heard before. It is probably an argument——

**An Leas-Chathaoirleach:** We are not discussing what Senator Feeney said. We are dealing with amendment No. 14.

**Senator Rónán Mullen:** It relates to the next amendment.

**An Leas-Chathaoirleach:** We are not discussing the next amendment. The Senator should speak on amendment No. 14.

**Senator Rónán Mullen:** I seek clarification from the Minister. He has just said, and also said yesterday, that there would be no circumstances in which a church premises would be required by law to conduct a civil partnership ceremony, nor would any religious official. As one who has been thinking closely about this issue and has tabled certain amendments, I would never have made that claim or expressed that concern. Strangely, I do not know of anyone else who has. It would be very useful if the Minister could indicate the sources of the particular claim that the legislation might act in this way. I am sure there are such sources and it would be no harm if they were put on the record. Who exactly has been claiming that for the purposes of a civil partnership registration ceremony, in particular, sacred spaces, so to speak, might be required to be used? I would be interested to know who has been making that claim; it was certainly not myself.

**Senator David Norris:** The Senator could read the newspapers or the debates of the House.

**Deputy Dermot Ahern:** We have had written representations from various people in this regard.

**Senator Rónán Mullen:** Will the Minister put some of those on record? I do not believe they represent any official bodies. Would that be fair to say?

**Deputy Dermot Ahern:** They are letters to the Department, as they always would be. If anyone wants to receive them, they can get them under FOI.

With regard to Senator Norris's point, the change in regard to the venues for registration of civil marriages was done a number of years ago and it was opened up to allow other premises to be used. Those regulations were framed in such a way that there would be a certain aura around the ceremony of civil marriage so it would not be in the centre circle of a football stadium, for example. It would be on reasonably honourable premises fit for the celebration of a marriage.

If we pass this legislation, civil partnership registrations will become part of this process and the legislation states it must be in the office of the registrar, unless it is under the suggested exception of a place approved by the HSE. It is then up to the HSE to determine what is a suitable venue. It is not my area of responsibility and I will not have to make a decision on it. I expect the executive to replicate the guidelines for civil marriages in the case of civil partnerships, where it is indicated there should be no recent or continuing connection with any religion or religious practice. There may be a different view on the issue. I expect anybody who queries the matter will have the right to appeal the decision to a higher authority.

**Senator David Norris:** To answer a question I see forming on the lips of the Leas-Chathaoirleach, I will not be pressing the amendment. I will comment on the idea of the sacred aura surrounding these various places. One always respects the choices of individuals and I may have been misled by newspaper reports but I clearly recall reading that civil marriages have been performed in public houses and fields.

**Senator Rónán Mullen:** They have been performed on top of Croagh Patrick.

**Senator David Norris:** Yes. On one occasion a ceremony took place in a fairy fort in the south of the country. The interpretation is pretty wide and it would be rather a pity if it did not include a willing church that wished to be included. I expect that they will apply. I note the Minister's urbane response to the matter and I will not push the amendment because it is silly to push these amendments to a vote when I already know what will be the outcome.

**Senator Labhrás Ó Murchú:** Senator Norris has opened up an interesting point, although it may be peripheral to the amendment. If same-sex partners want a religious ceremony, I do not see why they should not have it. We have indicated it is a matter for each church. I agree with Senator Norris in making the point on the registration of a ceremony that if it were possible to include somebody in a church who wanted to be part of a ceremony, it could be registered on the day. We should have had more debate on this, although it may be peripheral to the amendment. There is a bigger and broader issue to be considered.

It is wrong to assume people who are entering a gay partnership would not want to go to a church hall. The only issue involved is that it should be a matter for the owners of the hall. I am certain there are some churches and religious bodies who would want to accommodate that particular type of ceremony. It would be wrong to assume that once the legislation is enacted, some people would not want to go down that road. It is a big assumption on our part.

Amendment, by leave, withdrawn.

Sections 16 to 21, inclusive, agreed to.

## SECTION 22

**Senator Rónán Mullen:** I move amendment No. 15:

In page 29, lines 6 to 12, to delete paragraph (b) and substitute the following:

“(b) by inserting the following subsections after subsection (9):

“(9A) A registrar who, without reasonable cause, fails or refuses to give a civil partnership registration form to one of the parties to an intended civil partnership in respect of which he or she has received a notification under section 59B(1)(a), or a copy of an exemption order under section 59B(2), commits an offence.

(9B) For the purpose of subsections (4), (9), (9A) and (9C) of this section, a registrar shall be deemed to have reasonable cause where—

(a) The registrar's refusal or failure to act is based on a conscientious objection to the registration of the marriage or civil partnership grounded in a sincerely held religious or ethical belief, and

(b) The objection is not based on any of the discriminatory grounds identified in section 3, subsection (2), paragraphs (a), (c), (e), (f), (g), (h), (i) of the Equal Status Act, 2000, and

[Senator Rónán Mullen.]

(c) The registrar has given notice in writing to his or her Superintendent Registrar of the said objection and its grounds within one week of appointment as registrar or at least 1 month prior to any refusal or failure to act in reliance on the said objection;

Unless the Superintendent Registrar, having taken all reasonable steps in the management, control and administration of the Civil Registration Service to ensure that the registrar's objection is respected and accommodated, concludes that it is necessary in all the circumstances of a given case for the registrar to register a marriage or civil partnership or give a marriage or civil partnership registration form to one of the parties to an intended marriage or civil partnership in order to avoid undue delay in the provision of the said registration services.

(9C) A registrar who, with reasonable cause, fails or refuses to register a marriage or civil partnership or to give a marriage or civil partnership registration form shall not be taken to discriminate against a person for the purposes of the Equal Status Act 2000.”.”.

We come to an issue that is of major concern to many people of goodwill. This is one of three amendments which I have proposed, the purpose of which is to protect freedom of conscience in various issues. This amendment concerns the role of a civil registrar. The law currently provides that a registrar who, without reasonable cause, fails or refuses to provide a marriage registration form or conduct a civil marriage commits an offence. We are aware that in Northern Ireland a person who would commit such an offence might lose their job but in this jurisdiction, under the law as it stands, people are subject to the full rigours of the law and prosecution.

Following on from that logic, this legislation seeks to amend the Civil Registration Act 2004 by providing for similar outcomes for a registrar who, without reasonable cause, fails or refuses to give a civil partnership registration form to one of the parties to an intended civil partnership in respect of which he or she has received a notification under section 59B(1)(a) or a copy of an exemption order under section 59B(2). In such cases, that person commits an offence.

I am starting from the perspective that there is a balance of rights to be struck in this case. The State has the right to implement a model of civil partnership if that is the will of the majority in the Oireachtas, and at the behest of the Government such a model of civil partnership is created and goes through the Oireachtas. I disagree with substantial parts of this legislation, which perpetuates new forms of injustice and discrimination. Even if I am wrong in that, as a democrat I am quite happy to accept the decision of the Oireachtas as to what our laws on marriage, family and same-sex partnership will be, subject to the Constitution.

A completely separate issue arises because in accepting the majority decision on this — at least the majority of the Oireachtas — a separate question arises for people who in good conscience and not just for religious reasons have difficulties with civil partnership for same-sex couples. There are people who have a profound religious objection to public State recognition of same-sex partnerships, and this does not make them homophobic, as has been claimed in some quarters. In many cases they are people with no problem with people's right to a private life and who would have supported the decriminalisation of homosexual acts between men in 1993.

Such people may subscribe to a different moral view and would not like to be implicated in any way in the facilitation of a contrary moral position repugnant to their own. The question is whether the State has a duty or right to impose this view. I will confine my comments to the position of a State official as separate arguments will be made on the discrete amendments

proposed regarding religious or community institutions with a different ethos, or individuals involved in the provision of services. Does the State have the right to oblige such an official to do his or her job in all circumstances, regardless of how repugnant to his or her conscience carrying out his or her job might prove to be? If this matter was the subject of an opinion poll — the trouble with such polls is that the outcome always depends on how one frames the question — most people would agree that there were circumstances in which provision should be made for individual conscience, even in the case of those employed by the State. In the context of the fraught issue of abortion, it would be interesting to examine the laws that obtain in other countries in order to consider whether and how people in the employ of the State might be facilitated in some way in circumstances where they were asked to do something that ran contrary to their own deep personal sense of right and wrong, justice, what constituted good conduct, etc. It is important to bear this in mind.

Much of the debate in the past 24 to 36 hours has tended to denigrate the expression of conscience. I was particularly disappointed by the comments made by Senator Harris who seems to be of the opinion that conscientious objection emanates from some form of twisted religious tradition, according to which people do not think for themselves, hold no moral views of their own, are infantilised by a greater religious authority that tells them what to think and do and are not, in their own right, moral agents who possess a well thought out approach to life.

**Acting Chairman (Senator Fiona O'Malley):** I ask the Senator to confine his comments to the amendment. We have a long list of speakers and many other amendments with which we must deal. I ask all Members to be brief and concise in their contributions in order that we might have a to and fro debate during which we can deal with the substance of the matter. I ask the Senator for his co-operation.

**Senator Rónán Mullen:** I will return to the issue of the balance that must be struck. The reason I asked the Minister about who had been claiming that religious officials or premises might be required under this legislation for the carrying out of civil partnership ceremonies was that I had not heard that argument being made by any creditable or reputable sources. As far as I am aware, none of the official church bodies which have commented on this matter raised this issue, although I am open to correction in that regard. However, if they did raise it, the comments gained little traction in the public debate. Just as last evening the Minister asked me to clarify my intentions, I have been asking him to clarify for the avoidance of doubt that he is not choosing to answer questions he has not been asked to avoid replying to those questions which have been posed.

**Acting Chairman (Senator Fiona O'Malley):** The Senator should ask a direct question.

**Senator Rónán Mullen:** As stated, the issue that arises relates to the balance which must be struck between the State's right to get the job done in the context of implementing a model of civil partnership and the need to recognise that people may sometimes have a conscientious objection in respect of the matter under discussion. The manner in which I have approached this has been to take the existing legislation which makes provision for registrars who, without reasonable cause, fail in certain ways. It is this failure which provides the circumstances in which a registrar may commit an offence. In amendment No. 15 I provide a definition of what constitutes reasonable cause.

In reply to any possible objections from the Minister or others to the effect that there is already in place legislation which caters for the civil registration of marriages and provides that it is an offence for a civil registrar to fail to comply, I am defining reasonable cause in such a way that it may apply not only to a person who has a conscientious objection in the context of

[Senator Rónán Mullen.]

a civil partnership but also to those who may harbour such objections in general as a result of their particular beliefs about marriage and its importance to society. The reason I have framed the amendment in this way is it is important to stress that it is not just for religious reasons, *per se*, that many have strong feelings about the importance of marriage to society and, therefore, concerns about facilitating marriages, in the context of divorce, or relationships, in the context of civil partnership.

It is in the context of a person's intellectually arrived at sense of the common good in many cases that he or she might harbour a conscientious objection. I am reserving my position on whether I would harbour such an objection in that situation. It does not necessarily follow that because a person might be a practising Catholic, Muslim or member of the Church of Ireland he or she would have a problem, *per se*, with the provisions of the legislation. It is the job of the House to legislate prospectively. Senator Feeney stated gay couples would not want to visit Ely Place and the Minister has stated no representations have been made to him to date by any of the bodies representing public officials.

**Senator David Norris:** The building in Ely Place to which Senator Feeney referred is a very fine house. It belonged to my great grandfather's cousin.

**Senator Rónán Mullen:** I hope Senator Norris is not obliged to pay an admission fee when he visits it. The least those who are responsible for it could do is recognise the Senator's noble antecedents.

**Acting Chairman (Senator Fiona O'Malley):** Senator Mullen should speak to the amendment.

**Senator Rónán Mullen:** Our job is to legislate prospectively for what might happen in the future. It is also our job to legislate for the tiny minority who might not dare to express their views to either their trade unions or representative bodies or who might have a difficulty in expressing these views in the light of the overwhelming media consensus on this issue.

What is interesting about liberalism and facilitating freedom of conscience is that, in some ways, the smaller the group involved the greater the care that we must take not to trample on individuals who might possess an alternative point of view.

**Senator David Norris:** As exemplified, perhaps, by the Iona Institute.

**Senator Rónán Mullen:** I would answer that heckle if there was any quality to it.

**Acting Chairman (Senator Fiona O'Malley):** The Senator should not seek to answer it. We are engaging in a debate on the amendment.

**Senator Rónán Mullen:** However, as there was no quality to it. I will not be distracted.

**Acting Chairman (Senator Fiona O'Malley):** The Senator has made the point about a person's objections not necessarily being based on religious grounds on two occasions.

**Senator Rónán Mullen:** I am glad the Acting Chairman has been listening to my contribution.

**Acting Chairman (Senator Fiona O'Malley):** I have indulged the Senator who is entitled to make his comments, but he is trying my patience to a degree.

**Senator Rónán Mullen:** I do not intend to do so.

**Acting Chairman (Senator Fiona O'Malley):** Good. Shall we proceed with the debate?

**Senator Rónán Mullen:** However, in the best tradition of the barrister before the court, I will not be diverted from setting out, fully and properly, the background to and context of the amendment—

**Acting Chairman (Senator Fiona O'Malley):** I have no intention of diverting the Senator.

**Senator Rónán Mullen:** —even if it takes a good while longer for me to do so. The Acting Chairman has been warned. There is important material with which we must deal.

**Acting Chairman (Senator Fiona O'Malley):** I accept that. However, I ask the Senator to be brief and concise in his comments.

**Senator Rónán Mullen:** Brevity is a recipe for legislation that is not well thought out.

**Acting Chairman (Senator Fiona O'Malley):** The word “concise” is appropriate.

**Senator Rónán Mullen:** It is sometimes necessary to go into the detail.

**Acting Chairman (Senator Fiona O'Malley):** I ask the Senator to proceed in a concise manner.

**Senator Rónán Mullen:** I cannot argue against the need to be concise.

The issue relates to the balance which needs to be struck. The amendment proposes to strike that balance by defining what should constitute reasonable cause. The first requirement is that the refusal or failure to act should be based on a conscientious objection to the registration of the marriage or civil partnership and that such an objection must be grounded in a sincerely held religious or ethical belief. That is the first test they must satisfy.

The second test a registrar must satisfy is that his or her objection cannot be based on any of a range of discriminatory grounds provided for in the Equal Status Act. These grounds include discriminating on grounds of race or membership of the Traveller community. A registrar can harbour a conscientious objection based on grounds relating to marital status or sexual orientation is because there are legitimate and fundamental differences between people's viewpoints on these issues. If ours is to be a genuinely pluralist society, we must take account of this fact. The third hurdle the conscientious objector will have to meet is that he or she will have to give “notice in writing to his or her Superintendent Registrar of the said objection and its grounds within one week of [his or her] appointment as registrar or at least 1 month prior to any refusal or failure to act in reliance on the said objection”. In addition, such a person cannot avail of the conscientious objection “Unless the Superintendent Registrar, having taken all reasonable steps ... to ensure that the registrar's objection is respected and accommodated, concludes” it is not necessary “in all the circumstances of a given case for the registrar” to carry out the job anyway. In other words, the objector will not be facilitated if that would lead to “undue delay in the provision of the said registration services”.

The last part of amendment No. 15 ensures not only that an objector will not be reached by the criminal law under the 2004 Act but also that a person in such circumstances, having been facilitated by the superintendent registrar, will not be reached by the provisions of the Equal Status Act 2000 either. This part of the amendment has been included for the sake of completeness.

This amendment proposes to put in place a set of hurdles. This provision will be confined to circumstances in which the person can be facilitated without causing undue delay, in which the person has flagged his or her objection in due time, in which the objection is based on “a

[Senator Rónán Mullen.]

sincerely held religious or ethical belief”, and in which that position is not based on any of a range of prohibited grounds of discrimination.

It is important that we make this change. Yesterday, Senator Dan Boyle pooh-poohed the concept of conscience. At the core of this proposal is an understanding of the value to any civilised society of respect for conscience. Senator Boyle quoted from “Hamlet” the line “Thus conscience does make cowards of us all”. It has been a long time since I heard in this House a quote so taken out of context. It is taken from Hamlet’s soliloquy in which he contemplates taking his own life.

**Senator David Norris:** Really? One would never have guessed.

**Senator Rónán Mullen:** It is the same soliloquy in which Hamlet says: “To sleep, perchance to dream”.

**Senator David Norris:** We are about to do that.

**Senator Rónán Mullen:** It continues:

Ay, there’s the rub,  
For in that sleep of death what dreams may come,  
When we have shuffled off this mortal coil.

**Acting Chairman (Senator Fiona O’Malley):** I hope there is a point to this quotation and that it is relevant.

**Senator Rónán Mullen:** It continues:

And makes us rather bear those ills we have  
Than fly to others that we know not of.

**Senator Eugene Regan:** I like this soliloquy.

**Senator Rónán Mullen:** It is in that context——

**Acting Chairman (Senator Fiona O’Malley):** I hope we are coming to the end of the Senator’s soliloquy.

**Senators:** Hear, hear.

**Senator Rónán Mullen:** I would love to give the Chair some reassurance on that point. It is in the context of that soliloquy that Hamlet says “conscience does make cowards of us all”. Shakespeare is suggesting that our awareness of the consequences of what we do is what makes “cowards of us all”. We become cowards when we realise what the possible outcomes of what we do may be. That is why Senator Boyle’s quotation is highly relevant, albeit unintentionally. If we, as a Legislature, fail to make proper provision for people of conscience, who may no longer have the majority view in our society——

**Senator Joe O’Toole:** On a point of order, it is a convention of the House that Members speak through the Chair.

**Senator Rónán Mullen:** I was just straightening——

**Senator Joe O’Toole:** No.

**Senator Rónán Mullen:** My back muscles were temporarily out of kilter.

**Senator Joe O’Toole:** The Senator seemed to be speaking to the audience behind him.

**Acting Chairman (Senator Fiona O’Malley):** Senator Mullen’s points have been well made.

**Senator Rónán Mullen:** It is for people who have a different moral position to assess, in their own hearts and minds, where their truth is. That is why Senator Boyle’s quotation was a most unhelpful one. It was also unhelpful of Senator McDonald to say yesterday that a conscience opt-out would be a form of “bigotry”.

**Senator Lisa McDonald:** I said it would be “dressed up bigotry”.

**Senator Rónán Mullen:** I accept that amendment.

**Senator Eugene Regan:** It is not an amendment; it is a clarification.

**Deputy Dermot Ahern:** That is what she said.

**Senator Rónán Mullen:** I have said I will accept her amendment.

**Deputy Dermot Ahern:** It was a memorable phrase.

**Senator Rónán Mullen:** It does not improve the situation one iota.

**Senator Lisa McDonald:** I am not amending what I said; I am reminding the Senator that the term I used was “dressed up bigotry”.

**Senator Rónán Mullen:** I accept the Senator’s correction.

**Deputy Dermot Ahern:** It stuck in my mind in the context of this debate.

**Senator Rónán Mullen:** It does not improve her position one iota.

**Senator Joe O’Toole:** I would be more inclined to worry about Senator Mullen’s position.

**Senator David Norris:** Bravo.

**Senator Rónán Mullen:** I assure Senator O’Toole I am happy with my position.

**Acting Chairman (Senator Fiona O’Malley):** Senator Mullen has laid out his amendment. Perhaps it is time to open out the debate.

**Senator Rónán Mullen:** No, this is important.

**Senator Eugene Regan:** If the Senator says so.

**Senator Rónán Mullen:** Senator McDonald said that such a provision would be a form of “dressed up bigotry”. At the same time she claimed, without any sense of irony or contradiction that “tolerance is about [allowing others] to make choices” with which one might not agree. There has been a lack of refined thinking in this forum about the meaning of conscience and its precise limitations. The Chair will be delighted to hear I am withholding my response to Senator Harris’s regrettable comments until the debate on a later amendment. Instead, I will put on the record the contents of a letter I received from two people who——

**Acting Chairman (Senator Fiona O'Malley):** I will not allow that unless the letter is relevant to amendment No. 15.

**Senator Rónán Mullen:** It is entirely relevant.

**Acting Chairman (Senator Fiona O'Malley):** The Senator has been speaking for 20 minutes. No one else has been able to make a contribution.

**Senator Rónán Mullen:** There is no time limit.

**Acting Chairman (Senator Fiona O'Malley):** I know there is not.

**Senator Rónán Mullen:** I ask the Chair not to try to——

**Acting Chairman (Senator Fiona O'Malley):** The Senator must observe relevance to the amendment.

**Senator Rónán Mullen:** I assure the Chair that this is relevant.

**Senator Geraldine Feeney:** In the Senator's opinion.

**Senator Rónán Mullen:** The letter in question, which was written by Mr. Patrick Ryan and Mr. David Nelson, states:

We respectfully request that before passing this bill you consider a number of possibly unintended consequences, and accept amendments being proposed to rectify them.

**Senator David Norris:** On a point of order, it is a tradition in this House — it may be one of the rules of the House — that people outside the House should not be named because they are not in a position to defend themselves. The Senator has done this most unscrupulously. I would like to know whether he has permission to name these people and to quote from their letter. Even if he has such permission, it is outside the tradition of this House and the rulings of the Chair for people to be named in this fashion.

**Acting Chairman (Senator Fiona O'Malley):** It is as if butter would not melt in the Senator's mouth. Has he ever broken that rule?

**Senator David Norris:** Only with the greatest of refinement.

**Acting Chairman (Senator Fiona O'Malley):** The Senator is correct to say it is not customary to mention people's names.

**Senator Rónán Mullen:** I would be grateful if their names were removed from the record. However, I propose to put on the record the contents of their letter, in which their concerns are expressed. That is what I am paid to do as a legislator. The letter continues:

The right of conscientious objection is a matter for each individual in a matter which he considers serious enough to exercise his conscience. An example is a conscientious objection to the killing of animals in blood sports but not to their killing in abattoirs, without any inconsistency to his general moral position. The Minister's contention that a registrar might use such a conscientious objection clause to discriminate on the basis of colour, fat or thin, young or old is insulting to a registrar's sense of moral proportion. This attitude would trivialise same sex unions and regard them as matters of little moral concern.

**Acting Chairman (Senator Fiona O'Malley):** I am going to ask the Senator to pause there. This letter is not relevant. He can quote letters from five other people who have corresponded with him

**Senator Rónán Mullen:** Excuse me, a Chathaoirligh Ghníomhach. It is relevant.

**Acting Chairman (Senator Fiona O'Malley):** I do not see its relevance to the amendment before the House.

**Senator Rónán Mullen:** The Chair should listen to the next paragraph of the letter.

**Acting Chairman (Senator Fiona O'Malley):** The Senator should cut it short.

**Senator Rónán Mullen:** It states:

With regard to the punishment proposed to registrars [How is that not relevant?] for refusing in conscience to carry out same sex unions we consider this to be totally against the right of conscience particularly as same sex unions involve not trivial considerations of conscience but a very serious one.

I think that is relevant. The letter continues:

A specific provision could be included in the bill supporting the right of conscience objection on the part of registrars specifically and only in respect of same sex unions. We would also like to protect the rights of religious organisations.

I will hold off on that because it is not relevant. I have read the relevant part of the letter. I would like to mention something else that is relevant. The Preamble to the UN Declaration of Human Rights states:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Article 1 of the declaration states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 18 states:

Everyone has the right——

**Senator Ivana Bacik:** On a point of order, how is this relevant to amendment No. 15? The Senator has quoted extensively——

**Acting Chairman (Senator Fiona O'Malley):** I was about to——

**Senator Ivana Bacik:** This is just a filibuster.

**Acting Chairman (Senator Fiona O'Malley):** Yes, it is.

**Senator Dominic Hannigan:** It is making a mockery of the House.

**Senator Ivana Bacik:** Many other Members wish to speak concisely on this amendment.

**Acting Chairman (Senator Fiona O'Malley):** Yes.

**Senator Ivana Bacik:** Many of us on both sides of the House feel strongly about this amendment.

**Senator David Norris:** Absolutely.

**Senator Ivana Bacik:** If we are to be fair, we should give others a chance to speak on it. Senator Mullen is filibustering now.

**Acting Chairman (Senator Fiona O'Malley):** I take Senator Bacik's point. Senator Mullen has spoken for in excess——

**Senator Labhrás Ó Murchú:** On a point of order——

**Acting Chairman (Senator Fiona O'Malley):** Just a moment, please. The Chair is speaking. Senator Mullen has spoken for in excess of 23 minutes. This is a debating forum. I have consistently asked him to try to be concise in his contributions. He rightly said that as there is no time limit on Committee Stage, I cannot curtail his speaking time. I am asking him to have consideration for the other Members of this House, who are equally important as legislators as he is.

**Senator Rónán Mullen:** I have a higher duty——

**Acting Chairman (Senator Fiona O'Malley):** Senator Mullen should allow them to contribute.

**Senator Rónán Mullen:** ——to show consideration to people who might be put in prison as a result of this iniquitous provision.

**Senator Geraldine Feeney:** The Senator should respect the Chair.

**Acting Chairman (Senator Fiona O'Malley):** It is not necessarily in order for the Senator to quote from four or five letters from ten or 20 people. That gives those people direct access to the debate in this Chamber.

**Senator Rónán Mullen:** Yes.

**Acting Chairman (Senator Fiona O'Malley):** There are people elected to this Chamber who have higher authority to be here. I ask the Senator to have consideration.

**Senator Rónán Mullen:** That is a very dangerous and elitist position to adopt, on which I ask the Acting Chairman to reflect. It does not reflect the spirit of this institution that Members in this Chamber somehow have higher privilege than those they represent.

**Acting Chairman (Senator Fiona O'Malley):** People elected to this Chamber have authority to speak and be heard.

**Senator David Norris:** If Senator Mullen does not understand that, he should resign and give back——

**Acting Chairman (Senator Fiona O'Malley):** I will not argue with Senator Mullen.

**Senator Rónán Mullen:** People elected to this Chamber have a right of audience.

**Acting Chairman (Senator Fiona O'Malley):** Senator Ó Murchú wishes to raise a point of order.

**Senator Labhrás Ó Murchú:** On a point of order, I would like the Acting Chairman to help us in this regard because it is evident the debate will continue for some hours and the issue she mentions will impact on the remainder of the debate. As I understand it, Senator Mullen's main point relates to conscience. Everything I have heard from him so far is related; in fairness, he is doing the House a service by providing us with the information.

**Senator Ivana Bacik:** By quoting Hamlet.

**Senator Labhrás Ó Murchú:** If I am wrong about this, the Acting Chairman might tell me because it will impact on the remainder of the debate.

**Acting Chairman (Senator Fiona O'Malley):** One could speak all day on the issue of conscience. Senator Mullen may talk and, as Senator Bacik said, he may filibuster, if he so chooses——

**Senator Rónán Mullen:** That is not what I choose to do.

**Acting Chairman (Senator Fiona O'Malley):** I hope not.

**Senator Rónán Mullen:** What is more, I resent the fact that the Acting Chairman is taking the side of Senator Bacik by going to the heart of my motivation——

**Acting Chairman (Senator Fiona O'Malley):** Senator, please. I am speaking——

**Senator Rónán Mullen:** ——and accusing me of filibustering. In my honest——

**Acting Chairman (Senator Fiona O'Malley):** May I make a point?

**Senator Geraldine Feeney:** Senator Mullen has no respect for the Chair.

**Senator Rónán Mullen:** I have every respect for the Chair. I just wish it was——

**Acting Chairman (Senator Fiona O'Malley):** This is a debating chamber. Senator Mullen, you finally went through the amendment, which is what a Member is asked to do. I now ask you to desist, out of consideration for other Members. This is not the only opportunity you will have to speak on the amendment. It is in the interests of everybody that the opinions of others are heard also. Our responsibility is to allow debate, which means we should hear more than one voice. I ask you to wrap up and give the next speaker, Senator Doherty, an opportunity to make his contribution.

**Senator Rónán Mullen:** I am sorry. What the Acting Chairman said would make sense if there was a time limit. I am prepared to hear in full everybody's opinion. What is at issue is the willingness of the Acting Chairman and certain other Members to hear in full my opinions. This is a serious issue. We are talking about people going to jail. Let us not be so mindless as to pretend that we can dispose of these issues neatly——

**Acting Chairman (Senator Fiona O'Malley):** We need to bring everything else into the debate. We can speak on the subject concisely.

**Senator Rónán Mullen:** ——to allow politicians to return home or their constituencies by 5 p.m.

**Acting Chairman (Senator Fiona O'Malley):** Senator, I ask you to continue with the debate on the amendment.

**Senator Rónán Mullen:** However, that is not my concern. Senators can take a coffee break if they wish and read the blacks later, but I will state what is important and I am not——

**Acting Chairman (Senator Fiona O'Malley):** Senator, you are not being relevant.

**Senator David Norris:** I find this extraordinarily patronising and insulting. It is not appropriate to the House.

**Senator Rónán Mullen:** I am not filibustering.

**Senator Geraldine Feeney:** Senator Mullen, you are being a bully in this Chamber.

**Senator Rónán Mullen:** Really.

**Acting Chairman (Senator Fiona O'Malley):** Senator Feeney, please——

**Senator Geraldine Feeney:** You are outrageous.

**Senator Rónán Mullen:** I am not seeking to filibuster.

**Senator Geraldine Feeney:** Yes, you are.

**Acting Chairman (Senator Fiona O'Malley):** Senator Mullen, please resume your contribution and make it concise and relevant.

**Senator Rónán Mullen:** This is all about a majority oppressing a minority. How appropriate.

**Senator Geraldine Feeney:** You said on RTE that you would delay proceedings and that is exactly what you are doing.

**Acting Chairman (Senator Fiona O'Malley):** Senator Feeney, please.

**Senator Rónán Mullen:** Parties which would not even allow their members a free vote are now seeking to gang up on one Member

**Acting Chairman (Senator Fiona O'Malley):** Senator Mullen, I have asked you to be relevant.

**Senator Rónán Mullen:** ——who has a mandate to go to the heart of the issue.

**Senator Geraldine Feeney:** What my party does with its members is of no relevance to you, a non-party Member.

**Acting Chairman (Senator Fiona O'Malley):** Senator Feeney should speak through the Chair, please.

**Senator Rónán Mullen:** Whether Senator Feeney likes it, I am sticking by Standing Orders. As I said, Article 18 correctly provides that everybody has the right to freedom of thought, conscience and religion. This includes freedom to change religion and belief, either alone or in community with others, and, in public and private, to manifest his or her religion or belief in teaching, practice, worship and observance. In other words, a person does not only exercise conscience in the buildings of whatever religious organisation he or she happens to be a member; he or she may wish to exercise it without being a member of any religious tradition. Conscience is——

**Acting Chairman (Senator Fiona O'Malley):** The Senator is repeating himself.

**Senator Rónán Mullen:** Conscience is about standing up for what one believes in. The Chair will be glad to hear that I will conclude shortly, but before I do I will mention why it is so necessary for us to discuss this issue in detail. The reason is that there have been problems in other jurisdictions. I will not mention New Jersey, but in the United Kingdom, for example, Catholic adoption agencies have been forced to close because they would not accept same-sex couples as prospective adoptive parents. The diocese of San Francisco was forced to alter its pension scheme to recognise the partners of employees.

There is another problem in that the Minister has sought to claim there would be many undesirable and unintended consequences if one were to make the slightest provision for the conscience of a State official. I have been critical of him because he has not been willing to meet critics of the Bill outside this forum. We could have ironed out this problem by showing just how possible it was to write narrow amendments that would not give comfort to bigots, wife-beaters and so on. For example, the Minister stated a court clerk might refuse to issue divorce orders because of a religious belief. He said a fundamentalist Christian garda might refuse to arrest a person who had breached a safety order on the basis that a husband was entitled to chastise his wife. He said a judge might refuse to register a power of attorney in favour of a person's civil partner. In his most Islamophobic moment he said a Muslim — or a Mormon — accident and emergency doctor might refuse to treat a person for alcohol poisoning. He said a social welfare official might refuse to pay carer's allowance to a person's civil partner and that a probate officer might refuse to issue a grant of administration to a deceased person's civil partner. Of course, these are the lines people wrote for the Minister, the convenient rhetorical points which take no account of legal possibilities to arrive at something much more nuanced.

**Acting Chairman (Senator Fiona O'Malley):** Senator Mullen, in accordance with Standing Order 48, your contribution has concluded. I call the next speaker, Senator Doherty.

**Senator Rónán Mullen:** May I have 30 seconds?

**Acting Chairman (Senator Fiona O'Malley):** No.

**Senator Rónán Mullen:** I am sorry. Will the Chair please quote the relevant Standing Order to me?

**Acting Chairman (Senator Fiona O'Malley):** Standing Order 48 states a Senator who persists in irrelevance or repetition in a debate, or who, in the opinion of the Cathaoirleach, is speaking for the purpose of obstructing business, may be directed by the Cathaoirleach to discontinue his speech after the attention of the Seanad and-or the committee has been called to his conduct.

**Senator Rónán Mullen:** Is the Chair saying——

**Acting Chairman (Senator Fiona O'Malley):** I call Senator Doherty.

**Senator Rónán Mullen:** Excuse me. On a point of order, is the Chair ruling that what I have just said is somehow irrelevant?

**Acting Chairman (Senator Fiona O'Malley):** No. What I am bringing to your attention is the fact that you have spoken for in excess of 32 minutes, during which I repeatedly asked you to stop repeating yourself and moving away from the point of the amendment to irrelevancies.

**Senator Rónán Mullen:** Now that I am on a relevant point——

**Acting Chairman (Senator Fiona O'Malley):** I have ruled on the matter. I call Senator Doherty.

**Senator Rónán Mullen:** On a further point of order, will the Chair allow me to speak further on the amendment?

**Acting Chairman (Senator Fiona O'Malley):** You are entitled to speak further on it.

**Senator Rónán Mullen:** On that basis, I will resume my seat.

**Acting Chairman (Senator Fiona O'Malley):** Thank you.

**Senator Pearse Doherty:** I have no problem with Senator Mullen speaking on the amendment for the rest of the day, regardless of how difficult it is to listen to the words coming from his mouth. The amendment goes to the heart of the legislation. The Senator acted the same way yesterday and will continue in the same way today, with support from others, nitpicking and turning the legislation on its head.

Yesterday I stated my party and I supported the Bill because of our commitment to equality. The Bill does not go far enough, but if this amendment were to be accepted, the incremental advances we have achieved in the legislation would be rolled back. We are being asked to carve out an exception for those civil registrars who do not believe in the principle of non-discrimination so far as gays and lesbians are concerned. This would defeat the entire purpose of anti-discrimination laws. The amendment is worded in such a way as to avoid a precedent being set. It would not allow those who have not come to terms with the increasing diversity of Irish society to refuse to serve mixed race couples. Clearly, this is being done for the sake of expediency because there is no logic to the argument that one form of conscientious objection is wrong and another is not, nor is it the case, as Senator Mullen has argued, that there is universal agreement on the issue. Let us not forget that only last year a judge in the state of Louisiana refused to marry an inter-racial couple. No doubt there are still those who believe that Protestants and Catholics should not marry. There are many in the Six Counties who particularly hold that view.

*(Interruptions).*

**Senator Pearse Doherty:** With respect to Senator Mullen, I said I would have no problem listening to him speak on this amendment for the rest of day and I did not interrupt him. It is a reality that people still hold a strong view based on the religious beliefs that Protestants and Catholics should not marry. Many of those who hold that view are in the Six Counties. I ask Members to imagine the reaction of Senator Ó Murchú or Senator Walsh if registrars in the Six Counties were given the right to refuse to carry out ceremonies in such cases. We would lambaste that type of discrimination and it is right that we would do so, but that type of discrimination and what is being proposed here are two sides of the same coin.

The amendment's proposers have evoked the Constitution's guarantees of freedoms — freedom of conscience and free exercise of religion, but the Bill as proposed would do nothing to limit those freedoms. They are, a letter in today's edition of *The Irish Times* notes, freedoms granted to the citizen. A civil registrar acting in the course of his or her duties is acting on behalf the State. Registrars remain free to discriminate, if they must, in their personal lives but nothing in the Constitution entitles them to subject a person who comes to them, seeking a service of this State, to differential treatment based on their own personal morality. As the amendment would undermine the limited degree of equality provided by this Bill, I and my party will oppose it.

Senator Mullen mentioned a list of issues which the Minister gave as examples if we were to apply the conscientious clause across the board. I agree with the Minister in this regard. I will examine how this would apply if we were to expand it to members of the gardaí without talking account of workers in the health service, Muslims or mixed race marriages. I will give the example of a member of the gardaí who was to investigate abuse in a gay relationship and who refused to investigate it because of his or her principled stance on this issue.

**Senator David Norris:** That has happened.

**Senator Pearse Doherty:** It is ridiculous that members of the gardaí who are employed by the State can discriminate in this way. The proposed amendment is disgusting——

**Senator David Norris:** Hear, hear.

**Senator Pearse Doherty:** ——and it should be rejected outright by this House.

**Senator David Norris:** Senator Doherty has put the matter extremely well. He has gone right to the heart of the matter. A registrar acts on behalf of the State, on behalf of the people, and he or she must implement the law. Once the law is passed, that must happen.

Senator Mullen made me feel young again. I thought I was in a kindergarten being instructed laboriously by an inexperienced teacher. I found his analysis of Shakespeare wrong-headed but intriguing. I would have referred rather to Dickens. Uriah Heep comes to my mind immediately.

**Senator Rónán Mullen:** The Senator is not very humble, that is for sure.

**Senator David Norris:** Moving on to the principal points I wish to make, I endorse 100% what Senator Doherty said with great dignity and, unlike myself, never having interrupted, although he was churlishly interrupted.

As I understand it, no single registrar in this State has made any formal objection to this legislation. Therefore, Senator Mullen, having colonised my feelings and having interpreted Shakespeare's mind, now represents the registrars as well. There seems to be a slight touch of megalomania there.

**Acting Chairman (Senator Fiona O'Malley):** I ask the Senator to speak to the amendment.

**Senator David Norris:** I am speaking to the amendment. I am talking about the fact that no registrar and no trade union has raised this matter. Therefore, it seems to be unrealistic.

I agree with the Senator on one point. It would not be at all appropriate for a registrar in these circumstances to go to jail. There are a large number of matters on which it is inappropriate for people to go to jail. I deplore the building of extra jails and I believe the number of them should be reduced. I submitted a proposal to the effect that it is idiotic to put women — or anyone for that matter, but I was thinking of the case of a person who did not pay a television licence — in jail and then the taxpayer then had to pay——

**Acting Chairman (Senator Fiona O'Malley):** That is not relevant to the amendment.

**Senator David Norris:** I want to make this point, and I am coming to it, but I accept the Acting Chairman's ruling, of course.

**Senator Rónán Mullen:** I do not mind if it is not relevant. I am enjoying the Senator.

**Acting Chairman (Senator Fiona O'Malley):** This is not for the Senator's entertainment.

**Senator David Norris:** It would be wrong to penalise the taxpayer by having to pay for the jailing of a registrar, if this were true, who did not abide by this legislation. If a registrar refuses to do this by his or her stated intention of refusing to implement the law, he or she has automatically ruled himself or herself out.

Another point is that the Senator used a nasty way to make a smear, and I did not like it. I do not at all find it appropriate that the celebration of either a marriage or a civil union should be compared, as Senator Mullen has done, to an abortion. I respectfully ask him to withdraw that phrase immediately from the record of the House.

The tests that he gave were sincerity of belief. I have no idea how Senator Mullen or anyone charged with operating these tests would know whether someone's belief is sincerely held. It seems to be an absurd and hypothetical matter.

Senator Mullen and his colleague, and they include, sadly, another Member of the Independent benches who poses as having great concern for the——

**Acting Chairman (Senator Fiona O'Malley):** I ask the Senator to speak to the amendment. He does not need to comment on what people are doing.

**Senator David Norris:** No, I am making a very clear point and then I will sit down.

**Acting Chairman (Senator Fiona O'Malley):** Thank you.

**Senator David Norris:** The very same people insisted on the inclusion in equality legislation of an exemption for the churches so that teachers could potentially be fired. There is no difficulty with the firing of teachers simply because they are gay, but, on the other hand, we cannot ensure a registrar fulfils the job for which he or she was paid.

Can the Acting Chairman tell me how many minutes I spoke and how many minutes Senator Mullen spoke?

**Acting Chairman (Senator Fiona O'Malley):** Time is not normally observed, but I know, and it was less than five minutes.

**Senator David Norris:** Thank you. There is a time limit for this debate. Every time we exceed our time allocation, we take time from other Members.

**Acting Chairman (Senator Fiona O'Malley):** The Senator has concluded.

**Senator Rónán Mullen:** There is no time limit.

**Senator David Norris:** The debate is to conclude by 5.30 p.m.

**Senator Rónán Mullen:** No it is not.

**Senator Pearse Doherty:** It is to adjourn at that time.

**Senator Geraldine Feeney:** I can assure the Acting Chairman that I will be taking fewer than five minutes.

**Acting Chairman (Senator Fiona O'Malley):** The Senator should speak to the amendment.

**Senator Geraldine Feeney:** I will. I do not mean to get on the right side of the Acting Chairman——

**Acting Chairman (Senator Fiona O'Malley):** I am sure the Senator means the wrong side.

**Senator Geraldine Feeney:** I compliment the Acting Chairman on the wonderful way she is chairing the debate. She has been very fair and very firm-handed and I compliment her on that.

**Senator Jerry Buttimer:** The Senator would not be biased.

**Senator Geraldine Feeney:** I would like, as Senator Norris has done, to put on record the importance of the fact that no trade union has sought an opt-out clause. If trade unions are not seeking an opt-out clause and they represent the majority of public sector workers, we should not be even talking about an opt-out clause. The Acting Chairman was not in the Chair at the time but I got confused as to what amendment I was speaking to a few minutes ago and I thought I was speaking to this amendment when I explained I am a nominee of the labour panel, as is Senator Hanafin. We are well aware of the workings of the trade unions——

**Senator Rónán Mullen:** The Senator seems to be in danger of being repetitive. I have no objection.

**Acting Chairman (Senator Fiona O'Malley):** Allow Senator Feeney to continue without interruption.

**Senator Geraldine Feeney:** ——and the respect trade unions attach to the area of equality. I will go further and say I am well aware because I have been contacted by members of trade unions who have asked me to speak on this amendment and to say that if they wanted an opt-out clause, they would have gone through the proper channels and lobbied the Minister for appropriate amendments. They have not done do. I repeat they represent the majority of public sector workers in this country.

The opt-out clause is not emanating from workers, rather it is emanating from a small minority of Independent Senators in this Chamber. I heard Independent Senator Mullen on “Today with Pat Kenny” a number of mornings ago. When Pat Kenny put it to him that he could do nothing to bring down the Bill he agreed, but he threw in a lovely remark with a laugh in his tone when he said, “But we can delay it”. I am sad to be part——

**Senator Rónán Mullen:** On a point of order, Senator Feeney is completely misrepresenting what I said on that programme. I was explaining the position of the Seanad which is that the most we can do is delay legislation.

**Senator Alex White:** That is not a point of order.

**Acting Chairman (Senator Fiona O'Malley):** That is not a point of order. Senator Feeney, resume your contribution. Senator Mullen, sit down.

**Senator Geraldine Feeney:** I thank Senator Alex White.

**Senator Rónán Mullen:** I meant a point of clarification. I got my terminology wrong.

**Senator Alex White:** Read Standing Orders.

**Acting Chairman (Senator Fiona O'Malley):** I thank the Senator but I will Chair the meeting.

**Senator Geraldine Feeney:** We had such wonderful Second Stage speeches here yesterday and everybody got an opportunity to say what they said. Not one person supporting this Bill did not recognise the hard work and craftsmanship which went into bringing the Bill to its

[Senator Geraldine Feeney.]

current form. Everybody said what an important Bill it was. It saddens me that we are now being almost preached and dictated to by people who feel——

**Acting Chairman (Senator Fiona O'Malley):** I ask the Senator to speak to the amendment.

**Senator Geraldine Feeney:** ——that they have a higher moral ground than anybody else. The majority of Senators support the Bill. As we saw from the votes yesterday there were 46 or 48 votes to five.

**Acting Chairman (Senator Fiona O'Malley):** Senator, on the amendment please.

**Senator Geraldine Feeney:** It is hard not to conclude that this amendment, tabled by Senator Mullen and other Independent Senators, is being used as pretext——

**Senator Eugene Regan:** There are Government Senators, not Independent Senators.

**Senator Geraldine Feeney:** ——for opposition to the entire Bill.

**Senator Rónán Mullen:** Shame on you.

**Senator Geraldine Feeney:** They are mainly Independent Senators.

**Senator Eugene Regan:** They are mainly Fianna Fáil Senators.

**Acting Chairman (Senator Fiona O'Malley):** Senator, please.

**Senator Geraldine Feeney:** They are Independent. They are no longer under the Fianna Fáil Whip.

**Acting Chairman (Senator Fiona O'Malley):** Senator Feeney, on the amendment.

**Senator Geraldine Feeney:** The current equality legislation, which we have spoken about often enough in this House, I am glad to say has stood the test of time. There is no evidence to say that a pub, bar or hotel has been disadvantaged in any way by treating all its customers with the same level of respect and dignity. I ask the Senators who have opposing views to the majority of Senators to bear that respect in mind and exercise a little of it.

**Acting Chairman (Senator Fiona O'Malley):** For the record, there are two Independent Senators who sponsored this amendment.

**Senator Eugene Regan:** I agree with Senator Doherty. It is helpful that Senator Mullen spoke at length to this amendment because I found the more he spoke and grasped different arguments and straws to support his argument it so obviously became threadbare. It is hard to know what is the purpose of the exercise. I am trying to examine the basis of why he and other Senators tabled this amendment. It boils down to a hostility towards gay people.

**Senator Rónán Mullen:** That is outrageous. On a point of order, I ask the Senator to withdraw that remark.

**Senator Alex White:** It is not a point of order.

**Acting Chairman (Senator Fiona O'Malley):** That is not a point of order, Senator.

**Senator Rónán Mullen:** I think it is——

**Acting Chairman (Senator Fiona O'Malley):** It must relate to procedure. This is nothing to do with——

**Senator Rónán Mullen:** I ask the Acting Chairman to take advice from——

**Acting Chairman (Senator Fiona O'Malley):** Senator, I am tired of shouting over you. When I am speaking I ask you to allow me to be heard. That is not a point of order.

**Senator Rónán Mullen:** I heard you.

**Acting Chairman (Senator Fiona O'Malley):** I do not think you did because I am sick of being interrupted by you. A point of order relates to procedure. The Senator in possession has merely offered an opinion. I ask the Senator to please be seated. I ask the Senator in possession to resume his contribution.

**Senator Rónán Mullen:** May I ask for a clarification on whether it is appropriate for one of my colleagues to accuse another Member of hostility towards a group in our society?

**Acting Chairman (Senator Fiona O'Malley):** Please be seated.

**Senator Eugene Regan:** I said that because I want to know what is so distasteful about a civil partnership registration that it can give rise to a crisis of conscience. It is one thing for our conscience to guide our behaviour but it is another matter when we seek to impose our extreme views on others. That is what is at the heart of this.

Senator Mullen is a lawyer and I will quote the law to him. There is a case in the United Kingdom, *Islington Borough Council v. Ladele*:

The claimant, a registrar of births, marriages and deaths, was required by the respondent council to conduct civil partnerships between persons of the same sex in accordance with the Civil Partnership Act 2004. She refused on the ground that such unions were contrary to her Christian beliefs, and she was subjected to a disciplinary hearing on the ground that her refusal was contrary to the council's equality and diversity policy. She made a claim to an employment tribunal that she had been discriminated against, directly and indirectly, on the ground of her religion.

The position of the court and the logic adopted there is instructive in this matter. She lost her case. The Employment Appeals Tribunal held:

[T]hat the view that the requirement that all registrars perform civil partnership functions was a proportionate means of achieving a legitimate aim and that the council was entitled to adopt as a legitimate objective an unambiguous commitment to the non-discriminatory provisions of services by all staff and it followed that they were entitled to require all registrars to perform the full range of services. The tribunal held that the claimant could not pick and chose what duties she would perform depending on whether they accorded with her religious views. At least where her personal stance involved discrimination on the grounds of sexual orientation which was inconsistent with the council's non-discriminatory objectives, accordingly the council's refusal to accommodate the claimant's religious belief did not involve indirect discrimination. The tribunal held that the freedom to manifest religious beliefs under Article 9 of the European Convention on Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act, did not apply where it involved discriminating on groups Parliament had provided were unlawful, such as the right of same sex partners to have their partnerships recognised by law.

[Senator Eugene Regan.]

That is jurisprudence which is equally applicable in Ireland.

Senator Mullen has undermined his own case. He said what is at issue is that there is a right to pass legalisation which is necessary “To get the job done”.

**Senator Rónán Mullen:** Correct.

**Senator Eugene Regan:** Parliament is deciding that it is appropriate to have legislation to acknowledge, recognise and have a system of registration of civil partnership. It is a legitimate objective. The question is whether the means to achieve that objective are reasonable and proportionate. That is the decision we are making and in the debate to date we have considered it is legitimate and proportionate to have the means to achieve the objective that people who are in the public employ are obliged to register civil partnership unions. That is the objective and the means to achieve it. It is appropriate that the Bill makes provisions to ensure that it is done. On principle and law the Senator is wrong and I urge that the House reject the amendment.

**Senator Ivana Bacik:** I and my party have a fundamental objection to this amendment and Senator Alex White put our objections very forcefully yesterday in his Second Stage speech. We believe the so-called freedom of conscience clause amounts to a rather obvious attempt to undermine the purpose of the Bill. Senator McDonald correctly described it as dressed up bigotry. It is a fig leaf to cover what would otherwise be blatant prejudice. Other speakers have made the point that it would be a mandate to discriminate under the guise of so-called genuinely held religious or ethical beliefs. Senator Doherty outlined some of the scenarios that might arise if we allowed this precedent to come into effect. Another example that springs to mind is of State officials refusing to register children born to cohabiting couples. The sort of law contemplated in the amendment would be appropriate in a theocracy but not in a republic which holds the separation of church and state to be a fundamental principle. I am glad that the Minister is setting his face against the amendment. Most of us agree that we should leave our views of religion at the door when we legislate.

The registrars have not requested this amendment. Their ears must be burning when they hear others purporting to speak for them. I am reminded of the apocryphal story that de Valera looked into his heart to know what others were thinking. It is all very well to look into one's heart to know what registrars may be thinking but it also belittles and demeans them. Registrars are impeccable public servants——

**Senator David Norris:** Hear, hear.

**Senator Ivana Bacik:** ——and there has been no indication that they are seeking this sort of opt-out clause. As Senator Regan has pointed out, there is no issue.

In regard to the technical import of the amendment and what it purports to amend, Part 7 of the Civil Registration Act 2004, which deals with marriage, allows registered solemnisers from different churches to solemnise marriages. The Bill before us sets out a different means of registering civil partnerships through a new Part 7A to be inserted by section 16 and new sections 59A to 59I. These rules are rather different from those pertaining to the registration of marriage in that only a registrar may register a civil partnership. There is no question of persons other than public registrars employed by the HSE being involved. Under section 59E, the venue would have to be agreed by the registrar if it is other than his or her office.

A number of Senators have spoken about criminalisation of registrars but section 22 simply adds a provision to section 69 of the 2004 Act, which is the general section providing for

offences. The 2004 Act already provides that it is an offence for a registrar to delete or alter information contained in a register or index contrary to the Act or to refuse or fail to register a birth, still birth, marriage or death without reasonable cause. The Bill simply expands this category of offences to include omissions or failures to register civil partnerships. It is entirely appropriate that we would see these sorts of offence and penalties, which are standard for minor offences, set out in section 70 in respect of public officials who are privy to all sorts of sensitive information on individuals who seek to register births, marriages and civil partnerships. No one objected to those offences being included in the 2004 Act and there can be no valid objection to the extension of these offences and penalties to include civil partnerships.

Section 37 of the Employment Equality Act 1998 already provides opt-outs for religious run schools and hospitals. Many of us strenuously object to these opt-outs because they provide a mandate to discriminate against persons who offend an institution's ethos. This principle is wrong and we certainly should not extend it in any way. Catholic run, State funded schools already impose an obligation on teachers to teach Catholic religious doctrine. This should no longer prevail in a secular republic but it is an argument for another day.

This amendment is an attempt to undermine and destabilise the legislation dressed up in the language of freedom of conscience. We should look forward to celebrating the first civil partnership ceremonies conducted by professional registrars in the employment of the State. These red herrings should not be discussed because they simply are not an issue.

**Senator Dominic Hannigan:** I completely agree with Senator Bacik. The amendment raises a number of questions, one of which is the motivation behind it. Having listened at length to certain Senators over the past 24 hours, it is clear from the explanation for this amendment that a different agenda is being pursued.

I commend the Minister on the strength of his argument in regard to public servants. This is not an issue for church or canon law. These are public servants who are employed by the State. They are required to uphold and implement the law and they can have no excuse for not doing so. I am in complete agreement with the Minister and he needs to face down the critics.

The proposed amendment states: "The registrar's refusal or failure to act is based on a conscientious objection to the registration of the marriage or civil partnership grounded in a sincerely held religious or ethical belief". I ask how one can prove that an ethical belief is sincerely held. I have come across many people who claimed to hold sincere held beliefs against homosexuality of same-sex couples. They may regard their beliefs as sincerely held but others would simply regard them as homophobia. While I do not think any registrar is of that ilk, this amendment would put into law the potential to discriminate.

I note Senator Mullen's argument that the legislation perpetuates new forms of injustice and discrimination. I have not received a single submission from the more than 100 registrars employed in this country. The Minister has stated that he has not received correspondence. I am not sure whether any Member has received correspondence from a registrar on this issue.

Clearly, some Senators are looking into their own hearts and seeing things that do not exist. I cannot accept that the amendment is being put forward for any purpose other than to wreck this Bill or to diminish the rights it would afford to same-sex couples.

**Senator David Norris:** Hear, hear.

**Senator Dominic Hannigan:** We certainly will not be supporting it.

**Senator Lisa McDonald:** I totally object to this amendment. It is badly worded, stating: "A registrar who, without reasonable cause, fails or refuses to give a civil partnership registration

[Senator Lisa McDonald.]

form to one of the parties to an intended civil partnership ... commits an offence”, whereas “A registrar who, with reasonable cause, fails or refuses to register a marriage or civil partnership or to give a marriage or civil partnership registration form shall not be taken to discriminate against a person for the purposes of the Equal Status Act 2000.” It attempts to make an exemption under the 2000 Act in respect of civil partnership ceremonies but, as I stated yesterday, that is nothing but dressed up bigotry.

I also stated yesterday that we would create a moral hazard were we to allow officials to pick and choose what they want to do. We would run into chaos. Many people in this country have heartfelt views on Travellers, ageism or even women. They are entitled to these views but they should keep them in their own minds. The process of acting on such thoughts is called discrimination. The State and its Legislature do not allow that.

Senators spoke about Hamlet.

**Acting Chairman (Senator Geraldine Feeney):** The Senator should speak to the amendment.

**Senator Lisa McDonald:** I am speaking to the amendment. I am responding to Senator Mullen’s description of my comments on tolerance as lacking refined thinking. I believe Hamlet also said Hell hath no fury like a woman scorned.

**Senator Rónán Mullen:** While they were not the words of Hamlet, they are certainly true.

**Senator Lisa McDonald:** On the subject of Hamlet, he was not a great family man and appeared to be confused in respect of family principles. As I stated, the proposal is not acceptable in a democracy such as this and we cannot support it.

**Senator Jim Walsh:** I will refrain from engaging in soliloquies and such like. This is a most important issue which goes to the heart of the republic we want to create, namely, one that is inclusive, non-discriminatory and tolerant. As a result of some of the comments made today, the debate today does not reflect the quality of debate yesterday.

**Acting Chairman (Senator Fiona O’Malley):** I ask the Senator to speak to the amendment.

**Senator Jim Walsh:** If I am seeking tolerance in a republic, I must practice restraint. For this reason, I will not respond to the pejorative remarks made by other speakers.

**Acting Chairman (Senator Fiona O’Malley):** The Senator should speak to the amendment.

**Senator Jim Walsh:** I received advice from GLEN that pejorative words such as “bigoted” and “homophobic” would be levelled at us, but we should have the courage to speak our minds on these matters. May I contrast the debate on this issue——

**Acting Chairman (Senator Fiona O’Malley):** The Senator may do so provided it is relevant to the amendment.

**Senator Jim Walsh:** If the Acting Chairman allows me to continue, it will become clear that this matter is closely related to the amendment. I will contrast the debate in the Houses of Parliament in Britain which was held within the past six months with the debate in this House. During the debate in the United Kingdom the former head of the judiciary in England and Wales, Lord Mackay, stated equality laws should not force people to provide goods and services in a way that conflicted with their conscience. Tabling an amendment to the Equality Bill which he subsequently withdrew before a vote could be taken, he argued that current laws should be more flexible to accommodate differing points of view. He cited the example of printers, both

from the point of view of same-sex printers being forced to print matter alien to their views and——

**Senator David Norris:** What is a same-sex printer? I am confused.

**Senator Jim Walsh:** He also noted that the British Government's argument on the law did not provide sufficient flexibility for conscience. The contrast between the debate in the United Kingdom and the views expressed by Senators who disagree with the proposal before us is clear because those arguing against Lord Mackay's amendment agreed that greater flexibility was needed to accommodate conscience.

I direct the following remarks to the Minister. The Minister sponsoring the UK legislation, Baroness Thornton, suggested employers could take practical measures to respect the private views of their staff. She cited specifically the example of a registrar — this is pertinent to this debate — stating that “if an individual registrar does not want to conduct civil partnership ceremonies because of their religious beliefs, a local authority could arrange for a different registrar to conduct the ceremony if there is one available.” Senator Regan referred to the Ladelle case which was also referred to in the debate in the House of Lords when a Lord stated the relevant local authority was not prepared to work in the manner described by Baroness Thornton. This matter should be addressed in the context of labour relations.

While we have been challenged on this matter, we have had the benefit of a meeting with the Minister and his officials, at which we examined this issue. We can see both sides of the argument and do not want people who have prejudiced views to be in a position to use the veil of conscience to engage in discriminatory actions against people who are gay or, for that matter, any minorities. We will discuss later an amendment we have tabled proposing a conscience clause in relation to religious ethos and on which we take a different view from the view we hold in this case. We were reinforced in our belief by the unreasonable attitude taken by a group of people outside the Houses last week who were criticised from all sides. Its intolerant approach, whether directed at Members of the House or minorities, was unacceptable and I have no truck with it.

**Senator Jerry Buttimer:** Well said.

**Senator Jim Walsh:** I propose briefly to discuss one further interesting example.

**Acting Chairman (Senator Fiona O'Malley):** It must be relevant to the amendment.

**Senator Jim Walsh:** It is very relevant. Senator Regan referred to developing jurisprudence on the neighbouring island in respect of the Ladelle case and its Employment Appeals Tribunal. A very interesting case arose in which a person who had strong beliefs on climate change took serious issue with the chief executive of his company and lost his job as a consequence. When the Employment Appeals Tribunal found against him, he took an appeal to the courts which ruled that, as a result of his genuine beliefs on climate change, the plaintiff should be afforded the same protection as that afforded to religious belief in British law. Christian groups have objected to the ruling and I do not make a case for it. I am merely highlighting the developing views on this matter which needs to be examined.

To clarify our position, we believe there are conflicting priorities between freedom of conscience and the absolute entitlement not to be discriminated against. As a consequence, we did not table the amendment and while we will not support it, we will not oppose it because the issue needs to be addressed in a manner that gives reassurance and protection to people of conscience, regardless of whether they provide individual services or work for the State. We will oppose the criminalisation of such persons through the sanctions included in the Bill.

**Senator David Norris:** On a point of clarification, virtually the entire executive and founding members of GLEN are in the Visitors Gallery and they have no notion or knowledge of the statement——

**Acting Chairman (Senator Fiona O'Malley):** There is no point of clarification procedure. I ask the Senator to resume his seat.

**Senator Jerry Buttimer:** I promise to be brief and confine my remarks to the amendment. I concur with Senator Walsh that the amendment goes to the heart of the republic we want to create. If we were to pass it, we would create a homophobic, intolerant and discriminatory state. The fundamental question the amendment raises is what do the proposers have against gay people.

**Senator Rónán Mullen:** Nothing.

**Senator Jerry Buttimer:** Senator Walsh described a previous amendment as addressing the crux of the matter. The Senators have a right to hold a view on this matter, although I disagree with them. Are they seriously arguing that we row back on the advances achieved in recent years on the issue of equality? I did not hear any voices of conscience when funding for the Equality Authority was substantially reduced.

**Senator David Norris:** I spoke out on the issue.

**Senator Jerry Buttimer:** Senator Norris spoke out from a different perspective. Every Member of the House has a conscience. I act in conscience every day and did so throughout the years I taught in a classroom. Was I to stop teaching a student who had failed to secure an A grade in an examination?

**Acting Chairman (Senator Fiona O'Malley):** I ask the Senator to speak to the amendment.

**Senator Jerry Buttimer:** I am discussing the issue of discrimination. The subtext of the amendment appears to be a lack of respect. I am a practising Catholic. While the God in whom I believe does not discriminate, the church of which I am a member does. If we allow freedom of conscience on this issue, will we allow publicans to ignore equality legislation and bar all Travellers from their premises or will we extend it to encompass marriages between black people, Asians and Caucasians? Senator Doherty was right. If this happened in Belfast or Derry there would be a revolution down here and we would be almost unanimous in giving out. Republicanism is about equality. I support the Minister in what he is doing and I heard what he said earlier. How many civil registrars have objected to divorce and then performed marriages involving divorcees? As with Senator Hannigan, I have not heard one complaint from a registrar. The opposite is the case. This amendment questions the public servant who does a very good job. It is about creating exemptions and is about discrimination. I hope we stand firm and do not allow it. The final paragraph of the amendment states: "(9C) A registrar who, with reasonable cause, fails or refuses to register a marriage or civil partnership or to give a marriage or civil partnership registration form shall not be taken to discriminate". What is it if not discrimination?

**Senator Joe O'Toole:** Debates such as this allow people to pick and choose and make their arguments one after another. Lord Mackay may sound like a very innocent Member of the British House of Lords, a dodderly old man etc. I just checked his voting record there. He has been violently and completely anti-gay rights all the time in the British House of Lords. Let us not speak from the point of view of being in favour of gay rights and then use examples of

people who are bitterly opposed to gay rights, which is where Lord Mackay of Clashfern is coming from.

Senator Mullen raised the issue of the UN Universal Declaration of Human Rights. It is important to consider some of the other articles, including Article 16, which states:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

I know Senator Mullen, as a lawyer, will say it mentions men and women and it is implied that it is men marrying women. That is not what the article states, which is as I just put on the record.

**Senator Rónán Mullen:** We had an interesting discussion the other day.

**Acting Chairman (Fiona O'Malley):** Senator O'Toole without interruption.

**Senator Joe O'Toole:** If we are getting our ducks in a row, let us put all the things down there together. I do not want to undermine the force of the Senator's argument, but I thought it lacked some passion and that he was just going through the procedures.

I wish to confirm for the House the position of the trade union movement on the matter. I sat in Government Buildings during many negotiations on national partnership agreements when this issue was put forward and governments were urged by the trade union movement, employers and other groups to move towards having civil partnership. It subsequently became part of the programme for Government. There has been no objection from trade union members about this issue in any way cutting across them. The view of the trade union movement is completely supportive. It might feel the Bill might have gone further, but it supports the Minister in what he is doing.

I believe my colleagues sat down to ascertain how they could undermine the legislation and this is one of the devices they used.

**Senator Rónán Mullen:** No, we did not.

**Senator Joe O'Toole:** I know, but I am entitled to my view as to how I see it. You may not speak for your other six people either. People have different views.

**Acting Chairman (Fiona O'Malley):** I ask Senator O'Toole to address the Chair, please.

**Senator Rónán Mullen:** I have answered that one.

**Senator Joe O'Toole:** People regularly vote against proposals for all sorts of different reasons. They might be bitterly opposed to each other. My interpretation is that people were opposed to the idea of civil partnership and found this particular one. The proposed amendment allows registrars to have a conscientious objection not just to civil partnerships, but also to marriage. In that regard alone it undermines the entire case put by previous speakers in its favour. It means we could go back now and say they may not take that particular point of view.

We have a long history of conscientious objection in this country. I have dealt with the issue myself. I made passing reference last night to the teaching of religion in schools. Very often during the appointments procedure a prospective teacher will be asked if he or she objects to teaching religion in order that he or she is sewn into that particular commitment. Alternatively they might not be asked, but it is part of the school programme although not part of the national programme. People might genuinely lapse or evolve, whichever one prefers, to atheism or agnosticism and find themselves in a position with which they are uncomfortable and might

[Senator Joe O'Toole.]

have a conscientious objection to the teaching of religion. In these cases people tend to take a practical view that it is part of what happens in the school and needs to be taught.

I was a primary school principal and whereas I would not have subscribed to the religious knowledge, I would have insisted as school principal that as we were there *in loco parentis* all children went through the programme and knew their stuff as well as anybody would expect them to do. I did not find that in any way cynical or ironic. It is part of a job. One gets in, does it, gets on with it and moves on. It is no big deal. We should recognise that every day hundreds of teachers teach a religious education programme to which they would be fundamentally opposed, to which they do not subscribe or in which they do not participate. However, they do it because the parents and school management would like it to be done. The teachers take the view that they are paid to do a job and should get on and do it. It is mathematics now and religious education next; get on and do it, if that is the way it is. People might not like that and people like to think it comes from the heart in all cases; it does not. It does in some cases and it does not in others.

In Irish history we have dealt with this before. I will make a particular reference to the Fianna Fáil Party and its founder. I want to make particular reference to the Catholic Church. At one stage Senator Mullen worked with an eminent cardinal and Archbishop of Dublin, who found himself in difficulty at times. His way of dealing with it, as he described to the entire world, was by establishing a mental reservation. He could do what he wanted without committing himself to what he was doing. It was a mental reservation. This has been done by the Catholic Church; it does not seem to cause a problem. I found it problematic. I say to my friends coming from the Catholic background that they might advise any registrars they know to have a difficulty that they can use that little device. It works and exists, I understand. Theology and Canon Law support it. The Pope in Rome does not have a difficulty with it. Who am I to give out about it?

**Senator Rónán Mullen:** The Senator has class; I will give him that.

**Senator Joe O'Toole:** Let us explain to them how we should do it and perhaps Senator Mullen might explain in more detail how it works when he gets to reply later.

I recommend that good friends on the other side should look at the situation of their party's eminent founder, Eamon de Valera, who found himself in a somewhat awkward position in 1927.

**Senator Niall Ó Brolcháin:** There are a few exceptions to that. Eamon de Valera was not my man.

**Senator Joe O'Toole:** Eamon de Valera was the founder member of the larger party on the other side.

**Acting Chairman (Fiona O'Malley):** The Senator should direct his comments through the Chair and keep them relevant.

**Senator Joe O'Toole:** In 1927 he found himself faced with taking an oath of allegiance to the Crown which caused him some concerns. However, he knew if he did not take it he could not get in the door to establish the privilege our friends mentioned earlier. I am explaining this to my Fianna Fáil colleagues as a device they could also use. They could say:

I asked myself what my duty was and anything that was not wrong I was prepared to do. I would not have felt justified in committing perjury or doing anything equivalent to perjury.

The party opposite, the Cosgrave-ites, told the people that this was not an oath at all. I believe that the words “I swear” mean an oath. But the Deputies opposite thought differently. They said it was a formality and that anyone could take it. I asked myself whether in a crisis like that I would be justified in staying outside when this was a mere formality.

Eamon de Valera listened to Fine Gael who convinced him that this was a mere formality and he moved on. He then said: “When I came to take the so-called oath I presented to the officer in charge [an English chap I think]”.

He presented a document to the officer in charge which contained the republican declaration that they did not regard the oath of allegiance as a binding oath. He told him that was their attitude and that they were not prepared to take the oath. He produced a written document in pencil as Gaeilge which contained the statement made to the officer who was supposed to administer the oath and said he was not prepared to take the oath. He just took it. He put down the words, signed up to it and went on to describe it as an empty formula.

I am proposing to my Fianna Fáil colleagues that they see these words as an empty formula. They should not get carried away with it. They should just get down and make it happen. It is an empty formula and is a process well established throughout the history of the Senators’ own party. I will actually support them in getting——

**Senator David Norris:** It is their ex-party.

**Senator Joe O’Toole:** I understand that the three Senators are still members of the Fianna Fáil Party.

**Senator David Norris:** Oh dear.

**Acting Chairman (Senator Cecilia Keaveney):** Can we stick to the amendment please?

**Senator Joe O’Toole:** I just want to make sure that the record is absolutely correct. These are three members of the Fianna Fáil Party who are not taking the Fianna Fáil Whip at the moment.

**Senator Geraldine Feeney:** Would the Senator call them independent Fianna Fáil?

**Senator Joe O’Toole:** They fully understand the processes, procedures and history of their own party and there is a device within that to suit their occasion.

Those of my colleagues who come from a Catholic background and who are worried about that have the mental reservation device. Those from the Fianna Fáil background should listen to the Cosgraveites on this side and get on with it. They should not be upset. They should do what their founder did and simply say that this is an empty formula. Why can they not do that?

The reality is that this amendment is a bottle of smoke. It does not meet any particular needs of any group of which I am aware. It is rare for us to find an issue of pressing concern to a group of people being articulated by their public representatives but which has never been articulated by the group itself. Who are we talking about? Public servants are there to do a job. They sign up, they take the shilling and they follow the flag. They do their job as it is set out for them. In most work places, if people find they have a difficulty in doing some aspects of their job, they find ways around that. People work together and tend not to steamroll each other into doing what they will not do. If somebody has a difficulty then they might be sick on the day they are supposed to do it. They can take a day’s holiday or a day’s pay cut or whatever. We deal with that all the time. We had to meet this morning trying to find a man.

**Senator Eugene Regan:** So that is how it works.

**Senator Joe O'Toole:** There is no difficulty in dealing with the perceived problem. I do not believe it is a real problem. The registrars have never articulated a problem. I can give much more evidence as we go along of the other ways in which we have dealt with this kind of thing before. This is not new. I do not want Members to think this is a major issue of importance. It is a huge argument about nothing. It is an issue that does not concern anybody outside the few Members in here who raised it. They raised it for their own reasons. I have given one of my views. I am happy to be contradicted on it, but I still hold my view.

As parliamentarians, we must recognise where this legislation is going. Were this amendment to be accepted, it would undermine the spirit and the operation of the legislation. It would also create moral hazard because it would allow, encourage and reward people for not doing their jobs. It would force extra work on other people who would have to pick up the slack from those who claim to have a conscientious objection. If this lead to a situation where somebody was jailed for these acts, then that would be ridiculous. There are certainly better ways of dealing with it, but that is not to be for or against anything. It is a kind of a scare tactic that was raised to add a bit of credence to an argument that was pretty threadbare. It was long and interesting, but it added little to the overall argument. I have not found a scintilla of argument or evidence put forward in the last two or three hours that would change my view on this amendment. We should just dispose of it and vote on it shortly. I do not think I am entitled to put the question under Standing Orders, but somebody can.

**Acting Chairman (Senator Cecilia Keaveney):** Everybody should be as brief as possible so the vote can be called quickly.

**Senator Labhrás Ó Murchú:** On the Order of Business this morning, the Leader complimented the Seanad on the standard of debate which we had in the House yesterday. Several Senators spoke exactly along the same lines. While I did not speak, I certainly agreed. The Minister made exactly the same point. He said that in his 26 or 27 years here, the discussion he had on Second Stage, which he may have slightly corrected on Committee Stage——

**Acting Chairman (Senator Cecilia Keaveney):** We are speaking about the amendment now, so try to confine your comments to that.

**Senator Labhrás Ó Murchú:** I appreciated what he said and I have huge admiration for the man. I am not saying that in a patronising way. I genuinely have great admiration for him, especially due to his accessibility to us when we wanted to meet him and his officials.

**Acting Chairman (Senator Cecilia Keaveney):** We are on the amendment now.

**Senator Labhrás Ó Murchú:** I have listened to a lecture from Senator O'Toole as to what we should do, having been put out of Fianna Fáil. I did not hear any interjection, and I congratulate the Senator on what he said. I may discuss the formula with him. I notice that when those of us who hold a certain view get up, we are told it is not relevant. In fact, it will show itself to be relevant when I am finished. I just wonder why the interjection comes so quickly when it has not come when other Senators were speaking.

**Acting Chairman (Senator Cecilia Keaveney):** I have taken over the Chair from somebody else, so I do not know what interruptions occurred until now.

**Senator Labhrás Ó Murchú:** If you wish, I will not make the contribution. If that is what you want, I will sit down because I just get the feeling——

**Acting Chairman (Senator Cecilia Keaveney):** There is no point in getting into a huff about it at this stage.

**Senator Labhrás Ó Murchú:** It is alright. I will not make the point that I was prepared to make.

**Acting Chairman (Senator Cecilia Keaveney):** I am not trying to stop anybody from speaking, but they must speak to the amendment.

**Senator Labhrás Ó Murchú:** It would be nice if we got exactly the same innings as everybody else. If you feel that we do not deserve that, I will sit down.

**Acting Chairman (Senator Cecilia Keaveney):** When Senator O'Toole was moving away from the point, I asked him to speak to the amendment. You started complimenting the Minister, but we want to talk about the amendment. It has been going on for quite some time.

**Senator Labhrás Ó Murchú:** I understand that, but I have sat here for the last two hours and I have listened. The clock has nothing to do with my views.

**Acting Chairman (Senator Cecilia Keaveney):** No, but if you want to speak to the amendment, there is no problem with that. However, you are not speaking to the amendment.

**Senator Labhrás Ó Murchú:** I had not even started to make my views.

**Acting Chairman (Senator Cecilia Keaveney):** That is the point.

**Senator Jim Walsh:** On a point of order, if the House is not prepared to listen to reasoned views from Members, but prepared to allow pejorative views that are personal, then I suggest you close down the debate and you move to pass the Bill.

**Acting Chairman (Senator Cecilia Keaveney):** Senator, resume your seat.

**Senator Jim Walsh:** If that is the attitude of the House, then I suggest you do that.

**Senator David Norris:** Is Senator Walsh proposing a vote on the amendment? I support his position on this.

**Acting Chairman (Senator Cecilia Keaveney):** Senator Norris, you have not been called. Senator Ó Murchú, you were asked to speak to this particular amendment. All I have heard is a commentary about the Minister. If you can speak to the amendment, there is no problem. When other people did not speak to the amendment, I pulled them up. I am not that long in the Chair and I cannot say what happened before that, so I am not casting aspersions on anybody.

**Senator Labhrás Ó Murchú:** I have heard so many comments in the last few hours which had absolutely nothing to do with the amendment but dealt with us as individuals who had a separate view. Are you saying to us that we cannot go back on those views and explain our opposition to the amendment?

**Acting Chairman (Senator Cecilia Keaveney):** You can speak on anything that is relevant to the amendment.

**Senator Labhrás Ó Murchú:** Exactly. I would like to continue and if you feel that you are not able to abide what I am doing, I will sit down. It would be for the good of this House to have fair comment across the board.

What the Minister said was correct. There has been an exceptionally good debate in this House. Several other Senators made exactly the same point. My name is not to this amendment, but I fully uphold the right of Senator Mullen and Senator Quinn to put down that amendment. I also uphold the right of every Senator to oppose that amendment. My view on it has been informed by the debate that I have heard here. This has been one of the most learned debates ever in this House. I compliment all those who have brought professional expertise with them to the House and who have made it known to us. That is precisely what we are doing.

For those outside the House looking in, those we represent, the Seanad has been done a service today by the opposing views being put in such a generous and open-minded way. That all relates to the amendment because it is important I put it into context.

Like Senator O'Toole, I have been a lifelong trade unionist but I do not accept it is vital that the trade union movement must make a comment or interact with us, as legislators, to have a view. Whether one is Independent or a member of a party, one is still entitled to have a view. That is in response to a comment made.

Whether it is 46 votes to five or 46 votes to one, the numerical strength of the vote has nothing to do with democracy because if we follow that concept, someone may presume that on the basis that only a minority is putting forward a point of view, it should not put it forward at all. If we follow that concept, it is a negation of democracy itself.

We have some new converts to brevity today, and so be it. I wish to make a point, on which Senator Norris touched. My hearing is not as acute as it should be and I did not have the earphone on my ear.

**Senator David Norris:** I do not believe I referred to anything the Senator has with hearing.

**Acting Chairman (Senator Cecilia Keaveney):** The Senator does not need to interrupt.

**Senator Labhrás Ó Murchú:** I did not say that. I was coming to Senator O'Toole. I did not know whether to include him in the following point. The only point I have made on this issue at all Stages was in regard to the imprisonment of a registrar for six months. I made a contribution on the Order of Business on this issue and I have been misquoted. I have made this point three times. I said I do not want to find myself in a situation of having to stand up in the Seanad in defence of a prisoner of conscience under this particular section in legislation, of which I will have been seen to be part. I was anxious to pre-empt what might be said subsequently and deal only with that focused issue.

I make that same point again. I do not believe imprisonment is necessary as a deterrent in this case. We are using a sledge-hammer in the wrong way and it is undermining much of the goodwill and debate which has taken place heretofore.

I refer to edges of the debate when it gets iffy or flippant. That is in order and I am not raising questions about that. We should not all stand on a butter box on issues such as that because I am sure we have all fallen into that trap at times. However, in the course of that iffy part of the debate, I always feel disappointed that when we are discussing a specific issue, a blanket is thrown over us all as if, in this case, we are opposed to gays and lesbians.

I ask Members to read the record of the House. When we were allowed to make statements, I made very definitive, strong and supportive statements. I will not use words because, at times, Senator Norris feels people are being patronising even when we repeat perhaps some of what

he has said. When I made points in a ten-minute statement, I laid out precisely my view on gays and lesbians. That is what this amendment is about.

**Acting Chairman (Senator Cecilia Keaveney):** It is more specific than that.

**Senator Labhrás Ó Murchú:** For someone, in the course of the debate on the amendment, to in some way throw a blanket over us all as if we were homophobic or whatever is wrong because that does not help the debate.

**Senator Rónán Mullen:** Hear, hear.

**Senator Labhrás Ó Murchú:** However, we are entitled, when considering the rights of same-sex couples, to discuss the impact of those rights on the rights of other people. We will discuss this in the context of other amendments.

For the rest of the debate, we should leave aside that blanket cover as if, in some way, we were anti-gay and anti-lesbian. I am not, never have been and never will be. I am supportive of them having their rights. Why should they not have rights? I have made this point before. This should not be used as an obstacle to developing the debate in order that we can find out precisely what is inherent in the legislation.

I genuinely learned much from Senator Mullen and I listened to him with great interest. I heard him refer to different sources but I did not hear any repetition in what he put forward. I accept that perhaps it was somewhat long in the context of the time but unless there is an order to indicate the time allowed, then we will have a difficulty in the future.

For years I have sat in this House when we were discussing Bills and I listened to what I did not think was, in any way, what we might consider rational debate. People used other words and terms. I listened to those debates but not once in my 13 years in the House did I make any reference to personalise that or, in some way, demonise the point being put forward. How often have we heard that being put forward in the debate on this amendment? For the remainder of the debate on the amendments, I genuinely hope we can all feel free to put forward our views on each amendment without personalising or demonising anyone else in doing so.

**Acting Chairman (Senator Cecilia Keaveney):** That is all we are asking. We are asking for comments on the amendments.

**Senator Labhrás Ó Murchú:** I find it an unusual concept for someone to say to me that if one feels something in one's heart, one should leave it there. I find that strange. I do not believe anyone in this House would subscribe to that concept. It strikes me as not setting the right tone for this debate.

**Senator David Norris:** Who said that?

**Senator Ivana Bacik:** No one said that.

**Senator Niall Ó Brolcháin:** I wish to speak to the amendment.

**Senator Eugene Regan:** That would be a change.

**Senator Niall Ó Brolcháin:** I question whether this amendment deals with the issue. I am not quite clear what it is about. The amendment may have had some favour in the 1950s but it is extremely out of date and misinformed.

The notion that someone who works as a registrar on behalf of the State to provide a service would have a difficulty providing that service is strange. A registrar who, as a result of his or

[Senator Niall Ó Brolcháin.]

her conscience, is able to opt out of doing the basic job he or she is employed to do, which is to bring two people together in a partnership, should not be working as a registrar.

As Senator O'Toole pointed out, under this amendment, if a registrar had a difficulty with a particular heterosexual couple, he or she could opt out under the conscience clause. Why would someone work as a registrar if he or she would not do the job they have signed up to?

The law is the guidebook on how the registrar works. This is what a registrar is employed to do. I do not understand where this conscience clause comes into it. I made the important point yesterday that conscience certainly comes into spirituality and religion but it does not come into law. Law and conscience do not go together. We live in a civil society. We represent all the people.

*Sitting suspended at 2 p.m. and resumed at 2.30 p.m.*

**Senator Niall Ó Brolcháin:** This is not a worthy amendment and I hope it will not be approved by anyone other than its two proposers. It does not have a place in legislation. The idea that people can opt out of doing their job on the basis of conscience is not acceptable. We all carry prejudices and religious beliefs with us. Everyone who does a job has views unrelated to that job. The amendment is not related to the job of registrar. Conscience is a matter outside civil society. It is not a matter of law but of religion or spirituality. To insert conscience clauses in legislation would be regressive rather than progressive.

**Deputy Dermot Ahern:** I have listened very carefully to all of the arguments made. I thank Senator Mullen for making my argument by listing the various issues that show clearly how a freedom of conscience clause in legislation would allow public servants to take an à la carte approach to legislation passed by the Oireachtas on behalf of the people. The general public deserves to know that if we pass legislation on its behalf, it will be implemented without fear or favour on an equal basis. If we were to implement a freedom of conscience clause in relation to any of the exemptions I mentioned previously in the other House and that Senator Mullen has listed on my behalf, I could foresee future Members speaking on the Order of Business in the Dáil or Seanad and objecting to the fact that public servants were not implementing legislation passed by the Oireachtas. How could one run a country and how could the public service be expected to run a country if individuals were allowed to adopt a view contrary to the stated intention of the representatives of the people? That is the essence of democracy.

We have heard much about republicanism, including self-professed republicanism. We seem to refer frequently to our neighbouring island. I have not looked to see how our neighbouring island deals with this issue, as one would not be comparing like with like. We have a Constitution and an independent Judiciary, the members of which make their own decisions. Of course, we are subject to EU laws, but the Constitution is supreme on these issues. We have passed legislation to ensure equal treatment of the general public and it has stood the test of time.

I respect the views expressed by Senator Ó Murchú. He indicated that he would find it difficult to have it on his conscience if someone was sent to prison as a result of this legislation. I believe he was a Member of this House when it passed the Civil Registration Act 2004, but he may correct me if I am wrong. Section 17(4) of that Act states clearly that a “registrar shall have and perform ... functions conferred on him or her by or under this Act”. The word “shall” is used, not “may”. Section 70 contains the penalties for offences under the Act and there is provision for officials to be relieved of their duties if they do not perform the functions conferred on them. It states a person guilty of an offence shall be liable on summary conviction to six months imprisonment or a fine, or on indictment up to five years imprisonment. What we

are doing in this instance is adding, as we are doing in a number of other areas, the issue of civil partnership to this legislation and the Civil Registration Act 2004.

When the issue of conscientious objection was originally raised, my officials made inquiries in this regard. Everything that has come back, anecdotally and otherwise, shows that registrars have no problem with and are looking forward to the implementation of this legislation. That begs the question: where is this coming from? I cannot answer that question.

I was asked what representations the Department or I had received on the use of church property. I can say there were representations from religious representatives who made out, incorrectly, that they would be forced to use their church property. We did not receive representations from any of the people supposedly affected by a freedom of conscience clause.

As a matter of public policy, there is no reason in any democratic society, when legislation is passed, circumstances would be allowed to obtain where it could not be implemented. I suggest to any legislator who says we should do this that it would leave the State open to a potential claim for substantial compensation on the basis that people who had not received the service to which they were entitled under the legislation would have an open and shut case for compensation because the law had not been implemented without fear or favour and on an equal basis. For public policy and also practical reasons, if we pass legislation, the least we can expect is that it will be implemented.

My officials have been dealing with this legislation for the past few months. They may very well have a conscientious objection to dealing with it, as officials in the Seanad may have with this or any other legislation. However, as elected Members, we cannot allow a situation where such persons, whether they have an issue, which is fair enough, will not do their jobs because that is what they have been appointed to do, as public servants.

Others have made the arguments and I fully agree with them. To be fair to Senator Walsh, I must acknowledge that at my meeting with him and his two colleagues they at least understood the argument I was making on behalf of the Government.

**Senator Rónán Mullen:** They did better than me.

**Deputy Dermot Ahern:** That is the benefit of being a member of a political party.

**Senator Rónán Mullen:** The Minister showed favouritism.

**Deputy Dermot Ahern:** That is something, of which Senators Walsh, Ó Murchú and Hanafin were well aware until yesterday. It is one of the reasons they find it very difficult to do what they are doing.

**Senator Rónán Mullen:** I will sign up for a skiing trip with the Minister in order that I can have his ear sometime.

**Deputy Dermot Ahern:** I listen to local radio and hear and understand what the Senator says about me.

**Senator Rónán Mullen:** Nothing was personalised.

**Deputy Dermot Ahern:** The Houses are the primary location at which the debate and the argument on these issues should take place, not the peddling, which I hope did not come from the Senator——

**Senator Rónán Mullen:** We would have fun on LFMF.

**Deputy Dermot Ahern:** I hope it was not Senator Mullen, whom Senator McDonald referred to as having said the Minister or somebody had been “got at”.

**Senator Rónán Mullen:** That might have been me.

**Deputy Dermot Ahern:** I was not got at by either side on this legislation. I do what I regard as my duty as an elected representative. I will deal primarily in this and the other House with the argumentation on issues I bring forward as a Minister. I will not apologise to anyone for not engaging on the public airwaves or otherwise.

**Senator Rónán Mullen:** The Minister is a public representative.

**Deputy Dermot Ahern:** As I said, I have not met any of the groups which were lobbying on this legislation other than the Oireachtas Members of my own political party. I engaged fully with my party, as Senator Walsh has indicated on many occasions.

**An Leas-Chathaoirleach:** We need to get back to the amendment.

**Deputy Dermot Ahern:** I do not accept there should be a free vote on the issue. I heard what was said about what Fine Gael had done. Of course, there may be people within a political party who hold a certain view that may not be in line with the majority view. Again, that is the democratic system that has worked very well for this country and I do not think we should change it. While I do not want to be pejorative in this regard, I wonder, when the very people who potentially would be affected by the amendment are not the ones calling for this change——

**Senator Rónán Mullen:** I will address that issue.

**Deputy Dermot Ahern:** ——why is it being suggested?

On the overall issue, it makes no sense in the running of a democratic state if a law is democratically passed through the Legislature for people to be allowed, in effect, to adopt an *à la carte* approach to its implementation. One would not be able to run a country or any of its public services, particularly given the society we now have, if that were to be the case. Twenty years ago this was a mono-ethnic, mono-cultural and virtually mono-religious society. Today, it is multicultural, multi-ethnic and multi-religious and includes those with no religion. That is why we, as legislators, cannot legislate for one concept of morality; we have to legislate for the common good as best we can. We will not always succeed because there will be people who will be adversely affected by the legislation we bring forward. However, when the vast majority of the elected Members of both Houses agree with the principles laid down in this legislation, I do not support the effort made to chip away at the principle of treating people with fairness and equality and implementing what is contained in the Constitution. It is our Constitution, not a British constitution. It does not concern what the British do in this regard; it dictates that we should treat everyone equally before the law. In this regard, it also gives special recognition to the family and marriage. It is that balance, whether we like it, that we must, as legislators, adhere to.

**Senator Liam Twomey:** I look at this issue from the point of view of my profession. As doctors, nurses or other allied health professionals, we could not begin to have issues of conscience. There are ethical questions such as abortion which are major for health care professionals. We should be very careful, as the Minister pointed out, in how we interpret “conscience”. It could make life absolutely impossible and people could take views which would have

more to do with prejudice, which can be major or minor, than genuine ethical concerns about how they do their jobs.

**Senator Rónán Mullen:** By way of an opening response, I would never intentionally engage in a filibuster, as suggested earlier.

**Senator Niall Ó Brocháin:** The Senator could have fooled us.

**Senator Rónán Mullen:** Long-winded on occasions I may be——

**Senator Donie Cassidy:** Absolutely.

**Senator Rónán Mullen:** ——but I do not lack respect for the procedures of the House. One of the Senators who contributed earlier mentioned to me that on a previous occasion he had spoken for two hours on an amendment, which it was generous to acknowledge. There are circumstances where people feel the need to air points.

**Senator Donie Cassidy:** Not in modern times.

**Senator Rónán Mullen:** There is much philosophy here. I apologise if I got people's backs up or if they got the impression I am trying to filibuster. I am not doing so but unlike what I take from Senator Joe O'Toole's comments, I believe there is a profound issue of genuine liberalism at stake here.

I said earlier that——

**An Leas-Chathaoirleach:** There is no need for the Senator to say again what he has said already. There is no great need to be repetitive.

**Senator Niall Ó Brocháin:** What has this to do with the amendment?

**Senator Rónán Mullen:** I must be allowed to comment on certain remarks made about me earlier. I do not mind people seeking to ridicule, taking me on in arguments or suggesting that my amendments might have unintended consequences or might facilitate bad people in society. I am a big boy and am able to argue my case. I take issue with being accused of dressed up bigotry. In one case Senator McDonald suggested I might have issues with women but I would be happy to supply her with references from some of the exes.

**Senator Dan Boyle:** Why are they exes so?

**Senator Rónán Mullen:** Senator Norris compared me to Uriah Heep, and Senator Regan basically suggested homophobia is behind the amendment. That hurts and is unfair. The Labour Party suggested there were hidden agendas and the Minister made half a suggestion to that effect. There is no hidden agenda and the proposed amendment is not designed to set this entire Bill at naught. I have problems with aspects of the Bill but my problems with the civil partnership model being proposed in the Bill pale into insignificance with the concern I have for the protection of conscience in our society. It is a genuine concern and I would be grateful if people would attack me on the argument and not on my bona fides.

I do not normally talk about my personal life but I subscribe to a Christian world view, which suggests we should be ready to give our lives for each other. Whether a person is homosexual, a sister, brother or distant relative does not come into it. That is the standard I try to live by. There is no hatred or fear of homosexual persons in my heart and I do not believe it is in the heart of any of the others who have tabled amendments. It would be too bad if people trying

[Senator Rónán Mullen.]

to legislate for the common good were constantly having their motivation scrutinised and being accused of some quite ugly motivation when such motivation is absent.

I ask those people in the House who brought up the suggestions — they know who they are — to reflect genuinely and dispassionately on what they have said and consider whether they might withdraw them either on the record or privately to me. I would appreciate it if people would not second-guess the motivations of others. There is no hatred, distrust or dislike of homosexual persons in my heart but there are legitimate differences of moral opinion in our society, which is what I am trying to protect.

The Minister indicated I made his argument by going through the various categories, which I will not repeat. He gave examples such as bank officials refusing to open a joint account, doctors refusing to share information with a civil partner, Revenue officials refusing to consider civil partners as a couple or funeral directors refusing to handle a burial ceremony according to the deceased. If the Minister or Senator Pearse Doherty had considered my amendment, they would see it gave no comfort to any of those persons.

The reason this amendment is necessary is precisely because Ireland is becoming a multi-cultural society. Once upon a time people did not need to think about their consciences because they did what the church or the law indicated. We all accept that it is now wonderful that we are getting to a society where people think for themselves and will decide for or against what they hear from churches and other bodies.

I gave the example of the abortion Act in Britain which specifically provides for a conscientious objection to participation in treatment. I am glad Senator Twomey brought that up because it at least establishes the principle that it is sometimes necessary in a just and pluralistic society to allow people who have a genuine problem in their conscience to continue to function as State officials in certain positions while being allowed to go their own way and live out their ethos and morality. It is a delicate issue calling for a balance.

My argument to the Minister, which I did not hear him address in any detail or at all, is that my amendment offers that balance. It would not in any way give comfort to a racist or other motivation. It starts from the premise that there are different points of view in our society with regard to sexuality and recognition of same-sex partnerships. It offers some comfort to those who may have a conscientious objection by saying that provided it does not impact on the State, they can be accommodated. That is different from giving *carte blanche* to racists or homophobes to blithely claim a conscientious objection and gum up the works. That is impossible under my amendment and I would have been grateful if instead of attacking me personally, other Seanadóirí would have teased out what my amendment proposes. By all means they can attack any unintended consequences found.

It cannot be argued, as Senator Doherty and others have tried, that if conscientious objection is allowed in one case, the floodgates will be opened. It is our job as a Legislature to set out the circumstances in which we will allow for exceptions. In that regard I want to be very clear on the subject. Considering the existing equality legislation, it is replete with exceptions and anti-discrimination provisions have exceptions included designed to achieve the common good. I will not go through all of them but, for example, treating a person who has not attained the age of 18 more or less favourably than another shall not be regarded as discrimination. There are even provisions for discrimination in the treatment of a person on gender grounds with regard to services of an aesthetic, cosmetic or similar nature.

We all know about section 30 of the Employment Equality Act, which the Supreme Court said was necessary for employment equality legislation to be constitutional. That exception allows religious-run schools or hospitals to make decisions, where necessary, to prevent the

undermining of their ethos. We have admitted the principle of conscientious objection into our law. Not only that, the Constitution has stood by it and indicated it is necessary.

It makes a mockery of legislative debate if the first time someone comes up with an exception that is carefully crafted, he or she is accused of ulterior motives. That is not in the best spirit of legislative debate.

**Deputy Dermot Ahern:** Will the Senator give way for a moment?

**Senator Rónán Mullen:** Of course.

**Deputy Dermot Ahern:** The Senator has instanced a number of cases where there are exceptions. There is no exception to the circumstance where a public servant, in the performance of statutory duty as laid down by legislation, is allowed to decide based on freedom of conscience. It is nowhere in existing legislation.

**Senator Alex White:** That is completely true.

**Senator Rónán Mullen:** It is true and I do not believe I said anything to gainsay that fact. In other cases, such as the British abortion Act, it has been deemed necessary to have such a provision.

**Senator Donie Cassidy:** We are talking about the Irish context.

**Senator Rónán Mullen:** There could very well be a public employee seeking to invoke such a provision. It is the first area in which British law might be relevant. The second issue was brought up by Senator Regan and is very telling. He mentioned the Islington borough council case, which as far as I know involved an evangelical Christian who did not want to be involved in the provision of civil partnership. In that case Senator Regan agrees with the eventual decision, which I understand was against that person.

It is very well for the Minister to say there has never been anyone who brought up this concern or that the trade unions have not yet expressed it. That may be true. In light of the reaction to that expression of concern by me, does the Minister think people would feel courageous enough to raise that concern? We can consider the reaction when I raised the possibility that someone might have that concern.

We must legislate prospectively because we are becoming a multicultural society. There may be a lady or gentleman who will mirror that British issue and indicate a conscience problem. I do not have any problem with the fact that our current equal status legislation, for example, prohibits discrimination on sexual orientation grounds. I have never opposed that idea. By legislating for the new model of civil partnership, new issues are being brought to light requiring us to look at the workings and implications of existing legislation and this Bill in particular.

The principle I am standing up for today is not necessarily a principle on which I would intend to rely. The fact that I worked for the church in the past is being allowed to muddy the debate because people are focusing on the idea that the exception comes from a particular quarter. The principle I am defending is the idea that a person with whom I may disagree—

**An Leas-Chathaoirleach:** The Senator is making a Second Stage speech.

**Senator Rónán Mullen:** Genuinely, I am not.

**An Leas-Chathaoirleach:** The Senator spoke for half an hour before this and has been on his feet for another ten minutes. The Senator should stick to the amendments.

**Senator Rónán Mullen:** I shall try. I assure Senators I am not in any sense trying to filibuster. A number of profound issues arise.

**Senator Donie Cassidy:** The Senator is making a Second Stage speech.

**Senator Rónán Mullen:** Senator O'Toole respectfully suggested that the amendment is tantamount to a bottle of smoke and that there is no real mischief which it seeks to remedy. It is my view that the amendment seeks to pre-empt a possible mischief that might arise. I offer the amendment in sincerity to the House and on the basis that we are moving into a multicultural society within which we must begin to contemplate issues of conscience. It is precisely as a result of the multicultural nature of our society that in the future people will hold views or whatever that will differ from the prevailing morality. That morality will probably be very secularised in nature.

On the issue of sexual orientation and same-sex relationships, I am of the view that society does not have a settled opinion. For the foreseeable future, there will be a majority and a minority in respect of this matter. There are two roads which can be taken from the point. One can decide to impose the morality of the majority and state that anyone who dares to differ therefrom should not work in the Civil Service. On the other hand, one can try to tack with the changing circumstances that prevail to discover whether there is a means by which people of a different ethos can be accommodated. We must also ask whether we can allow people who hold a different ethos to function as respected members of society or as employees of the State without coercing them in some way and without frustrating the State's ability to get the job done.

**Senator Lisa McDonald:** On a point of order, did the Senator not make this argument already?

**An Leas-Chathaoirleach:** Yes, he did.

**Senator Lisa McDonald:** The Senator is citing case law. As he is well aware, apart from anything else, hard cases make bad law. I am of the view that Senator Mullen is being repetitive.

**An Leas-Chathaoirleach:** The Senator is being repetitive.

**Senator Lisa McDonald:** The Chair should put the question.

**An Leas-Chathaoirleach:** I ask Senator Mullen to make his point to the Minister. There is no need for him to travel all over Europe to underpin his argument.

**Senator Rónán Mullen:** It is difficult for people to understand that there are some issues which are of profound importance to some members of society. Senators Ó Murchú and Walsh and I have received a great deal of correspondence in respect of this matter. Much of it was sent by people who do not understand from where we are coming and just as much came from those who are of the view that this is a civilisational issue that deserves careful attention, especially as it goes to the heart of the question whether we will allow freedom of opinion and conscience in our society.

Alexander Solzhenitsyn, who lived much of his life under a regime based on the denial of the authentic rights of conscience, once stated that those who clearly recognise the voice of their own conscience usually recognise also the voice of justice. I mention this because conscience is being denigrated in this debate as something that will allow narrow-minded people to be awkward. The history of conscience and conscientious objection is much more about people, such as Martin Luther King Jr., who stood against laws because of principles they ultimately believed

to represent the common good. I sincerely believe that the common good is best served by allowing people with different values to function to the greatest extent possible, subject to the overriding need of the State to get the job done.

It is in that context that I ask Senator Regan, in particular, to at least consider that I may hold such a view without being a homophobic person. This really matters to me. To be accused of being homophobic when what one is trying to do is secure the common good for everyone in society is not acceptable. Nothing I am proposing would prevent civil partnership from working, particularly as it would be subject to the overriding ability of the civil registrar or superintendent to avoid delay.

Senator Alex White stated that my proposal emanates from a theocratic position. As I understand it, under a theocracy church leaders make the laws of the land. I am no theocrat. That is why I refer to religious and ethical concerns. We do not have a right to question from where people obtain their views and values. Nor do we have a right to assume that the only reason a person has a certain moral view is because some guy wearing a mitre has done his or her thinking for him or her. That is not the truth. The truth is that people form their own consciences according to the authorities they most respect and on the basis of the arguments they find most convincing. Let us forget notions of theocracy and say rather that there are people in our society who harbour different moral views. Let us try to facilitate these people to the greatest extent possible without frustrating our ability to get the job done. As I stated earlier, let us try to legislate prospectively.

We should not worry about the fact that the registrars have not, for whatever reason, been lobbying the Minister. The tenor of this debate is one good reason they would not do so, particularly in the context of the reaction they would receive. I am not criticising the Minister in this regard but the general tone of the debate has not been good.

**Senator Donie Cassidy:** What the Senator has just said is both appalling and unfair.

**Senator Rónán Mullen:** I do not believe that is the case.

**An Leas-Chathaoirleach:** Senator Mullen should confine himself to the amendment. If he does not do so, I will put the amendment.

**Senator Rónán Mullen:** I am about to conclude.

**Senator Dan Boyle:** It is a ten-minute conclusion.

**Senator Rónán Mullen:** Senator O'Toole raised the issue of conscience and the way in which Éamon de Valera dealt with it. In his book, *The Begrudger's Guide to Irish Politics*, Breandán Ó hEithir characterised that whole incident in a chapter entitled——

**An Leas-Chathaoirleach:** This has absolutely nothing to do with the amendment. The Senator should confine his remarks to the amendment.

**Senator Rónán Mullen:** I solemnly swear——

**An Leas-Chathaoirleach:** The amendment relates solely to registrars.

**Senator Fiona O'Malley:** If this Chamber were a stage, Senator Mullen would be determined to remain on it.

**Senator Geraldine Feeney:** The Senator is repeating what everyone has said. We already know what has been said.

**An Leas-Chathaoirleach:** Senator Mullen, without interruption. The Senator should confine himself to the amendment.

**Senator Rónán Mullen:** We are approaching a stage where there are people in this House who will not even allow one to respond in respect of comments that have been made in respect of one.

**An Leas-Chathaoirleach:** Senator Mullen has had plenty of time to respond. He has been on his feet for 15 minutes and he spoke earlier for more than 30 minutes.

**Senator Rónán Mullen:** In a private conversation I had earlier with one of the officials, I indicated that people's stress levels increase when matters of this nature are dealt with in an overly heavy-handed way. Almost everything I have said in the past 15 minutes has been relevant. I remained on point but I accept that I may not have been as concise in my arguments as could have been the case. However, that is the nature of the beast. If one is determined to set one's face against detailed, reasoned argument, then one is on the road to dictatorship because one has given up one's ability to value such an argument.

**Senator Geraldine Feeney:** The only dictator here is Senator Mullen.

**An Cathaoirleach:** Senator Mullen, without interruption. The Senator should confine his remarks to the amendment.

**Senator Rónán Mullen:** I do not ask colleagues to accept my arguments in an unthinking way. I merely request that they consider and reply to them without denigrating me and others.

In concluding, I ask the Minister to inform me how, in view of its tight scope, the amendment before the House could possibly offer *carte blanche* to the people on the list to which he referred. There is not a single item on that list which could be contemplated in the conscientious objection clause as I have drafted it. Why is it not the prerogative of the Oireachtas, as the State Legislature, to contemplate our new society and the issues which arise in respect of it? In view of the exemptions contained in the equality legislation, why should we not, in a tightly drawn way, facilitate one group in society — which may possibly be small or which may not, as yet, have manifested itself — without treating its members as bigots and while also ensuring the State can get the job done at the same time?

**Senator Dan Boyle:** Will the Leas-Chathaoirleach confirm that the Order of Business states that all Stages must conclude at 5.30 p.m.?

**An Leas-Chathaoirleach:** The Order of Business does not state that. It says that the proceedings shall be adjourned not later than 5.30 p.m. The debate is, therefore, open ended.

**Senator Dan Boyle:** We are dealing with No. 15 of 77 amendments. I had not intended to contribute to the debate on Committee Stage. What I had feared would happen, namely, the making of circular arguments, has come to pass.

**An Leas-Chathaoirleach:** The Senator should confine his remarks to the amendment.

**Senator Dan Boyle:** I am speaking about the process and I will address the amendment. This is the only occasion on which I have contributed to the debate on Committee Stage.

**An Leas-Chathaoirleach:** I am aware of that. However, we must confine ourselves to discussing the amendment.

**Senator Dan Boyle:** Certain other Members have spoken for 30 minutes at a time.

**An Leas-Chathaoirleach:** Changing the Order of Business is a matter for the Leader.

**Senator Dan Boyle:** As far as I and my party are concerned, if a motion is tabled to the effect that the question should be put, then that motion must be given active consideration. We cannot continue with this process for hours, days or weeks.

On amendment No. 15, the practicalities involved have been well argued by the Minister. I do not doubt the sincerity of those who moved the amendment. I am of the view that they genuinely believe in the veracity of the argument they are making. I wish to address the effect of that argument. There seems to be an implication that there are people with conscience and people without conscience. That might be too broad a generalisation but that it exists at all is offensive. Even in its narrowest sense, the implication is that there are those who possess a more developed sense or higher form of conscience and that this is better than the form of conscience possessed by others. That is offensive. The further implication is that there are people who want to apply their sense of conscience specifically to people with a certain lifestyle and sexual inclination and that this would salve their conscience, regardless of the effects on other members of the community. As the Minister said, the further implication is that public servants could address their public service roles in an *à la carte* manner without having to apply the law, as passed by this and the other House, directly and even-handedly. That is offensive, regardless of the sincerity with which the argument is made, how genuine those who believe in the argument are, how the argument is heard or represented. I suggest my speech will be well short of the average length of the contributions made on Committee Stage.

**Senator Liam Twomey:** Well short.

**Senator Dan Boyle:** The record of the House on Committee Stage will be grossly unrepresentative of the nature of the contributions made on Second Stage. I am confident, however, that we will win the eventual vote at the end of these proceedings which should finish this week. Any attempt to prolong the process or engage in the type of—

**An Leas-Chathaoirleach:** That has nothing to do with the amendment. It is a matter for the Leader of the House. We are on amendment No. 15.

**Senator Dan Boyle:** It is directly related to the amendment.

**An Leas-Chathaoirleach:** It is not.

**Senator Dan Boyle:** I will explain how it is related. We are addressing amendment No. 15, the debate on which has taken up most of the time of the House on Committee Stage.

**An Leas-Chathaoirleach:** Some 77 amendments have been proposed to the Bill which has over 200 sections. I ask the Senator to confine his remarks to amendment No. 15.

**Senator Dan Boyle:** I am addressing it particularly. I remind the Chair of the brevity of this contribution and that is the only time I will come in on the amendment. The disproportionate amount of time we have spent on it — we have spent more time on it than on any other — has eaten into the amount of time we will have to discuss the other amendments. If we were to list all of the remaining sections and amendments that have yet to be discussed, we would not reach the allocated time of 5.30 p.m. During the rest of this debate and in the light of the overwhelming willingness of the Members of this House to have the legislation passed we will need to give serious consideration to how we should make progress with this Bill.

**An Leas-Chathaoirleach:** That is a matter for the Members who may wish to speak.

**Senator Alex White:** I have a great deal of sympathy for what Senator Boyle said. Perhaps we will have to approach the issue in another fashion. On the amendment, I said on Second Stage that I thought the proposal to introduce a conscience clause was a contrivance.

**Senator Ivana Bacik:** Hear, hear.

**Senator Alex White:** I have not spoken this morning and will not detain my colleagues for very long. Nothing I have heard in the last three hours has persuaded me that what I said on Second Stage was wrong. This proposal is a complete contrivance because it is based on the perception that classes of people may require to exercise an objection. The point made by the Minister in his intervention ten or 15 minutes ago was bang on. We should consider his clear statement that “nowhere in existing legislation” have we provided for public officials to opt out from implementing the laws passed by these Houses. The point made by him in his timely intervention on our codes and laws is absolutely the case for very persuasive and compelling legal, constitutional and democratic reasons. Of course, it is true.

I accept the genuineness of what Senator Ó Murchú said about people having their views. He may not have meant it to come across as slightly patronising when he said he was prepared to let people have their views. However, there is a corollary to the holding of that position. One cannot say, “I do not mind if people are gay, or want to live in a particular way,” unless one is also prepared to include in law a means by which such persons can vindicate their right to live in such a manner; for example, with whoever they like. I heard an interview with Senator Mullen — I think it was on radio — in which he was pressed on this issue which has come up time and again in terms of motivation. He said he believed people who were homosexual absolutely had a right to their dignity.

**Senator Rónán Mullen:** I said they had their dignity.

**Senator Alex White:** He has said they have their dignity, as if that is something that requires to be conceded to them by him.

**Senator Rónán Mullen:** No. It is because people have been calling my motivation into question.

**Senator Alex White:** I will not be interrupted.

**An Leas-Chathaoirleach:** Senator White to continue without interruption on the amendment.

**Senator Rónán Mullen:** I ask Senator White not to misrepresent what I said.

**Senator Alex White:** I will not be interrupted.

**Senator Rónán Mullen:** The Senator is trying to demonise me.

**Senator Alex White:** There is no question——

**Senator Rónán Mullen:** He ought to be ashamed of himself.

**Senator Alex White:** ——of being prepared to concede——

**Senator Rónán Mullen:** He is just like his colleagues.

**Senator Alex White:** ——that people have their dignity——

**An Leas-Chathaoirleach:** Senator Mullen should allow Senator White to address the amendment.

**Senator Alex White:** —without being prepared to include in law a means and a method by which their rights can be vindicated. That is the point I would like to make genuinely to Senator Ó Murchú. It is at the heart of this debate. One cannot have one without the other. In a democracy one cannot say in all fairness and honesty that it is fine for people to be gay and to want to live with somebody of the same sex without also providing for laws that allow that to occur. Senator McDonald made the same point eloquently earlier in this debate. That contradiction is at the heart of this proposal.

**Senator Rónán Mullen:** The Senator should read the amendment.

**Senator Alex White:** I will refer to the wording of the amendment. One of the provisions in the amendment is very telling. It refers to protecting registrars who raise an objection, as long as it “is not based on any of the discriminatory grounds identified in section 3, subsection (2), paragraphs (a), (c), (e), (f), (g), (h), (i) of the Equal Status Act, 2000”. That is the section of the Act that lists the prohibited grounds, including sexual orientation. How could the objection of a mythical registrar to registering a civil partnership not offend against the law that states there should be no discrimination against people of a particular sexual orientation? What else would the objection be based on? It could not be made on any other ground. Such an objection would constitute a direct form of discrimination. If I am wrong in that regard, I suggest it would certainly constitute indirect discrimination. How could it be otherwise?

As Senator McDonald said, this proposal would be a charter for discrimination. It does not stand up in any respect. This bogus notion is supposedly being proposed to accommodate those who hold a different moral position. In a democracy one debates what the laws governing state services should be, but one cannot play out the controversy every time the State delivers that service. The controversy should take place in Parliament and public when one is deciding what the solution is. One draws up a law on that basis. That law cannot be implemented, or not implemented as the case may be, on the basis of the views of a person providing the service. That is not how democracy works. One plays out the issues in public and Parliament and then one makes one’s decision. I think Senator Mullen understands this. I do not intend to stray into the area of questioning people’s motivation. Senator Mullen is intelligent enough to understand precisely what I am saying. I will set out the central contradiction. Perhaps “flaw” is too marginal or benign a word. The central dishonesty—

**Senator Rónán Mullen:** Come on.

**Senator Alex White:** —is that it can be nothing other than an attempt to attack, undermine and set aside the basic objective of the legislation. It should be opposed absolutely. I thank the Minister for being so clear in his opposition to this provision which we should reject. If it is order to do so, I ask the Leas-Chathaoirleach to put the question now.

**Deputy Dermot Ahern:** I want to intervene on the same basis as Senator White. Before I do so, I genuinely do not believe Senator Mullen is homophobic. I accept that completely.

**Senator Rónán Mullen:** I thank the Minister.

**Deputy Dermot Ahern:** To a certain extent, this is a battle in which Senators are engaged on the issue of freedom of conscience, but there is a bigger battle to be fought on what are probably more difficult ethical issues that will come down the line in years to come.

**Senator Rónán Mullen:** That is partly true. There is a principle at stake.

**Deputy Dermot Ahern:** In his last intervention the Senator clearly indicated that he had foreseen that there would be difficulties in this respect. Most people would accept there might be issues coming down the line, in respect of which freedom of conscience may very well be examined. However, we are dealing with the issue of civil partnership which we all accept is a reality. The Senator's amendment would for the first time set a precedent, whereby a public servant could discriminate on the grounds of sexual orientation. That is specifically stated in the amendment. Section 3(2)(d) of the Equal Status Act 2000 includes what is known as "the sexual orientation ground". The Senator has gone even further, saying a refusal or objection on the grounds of sexual orientation or marital status would not be deemed to be discrimination.

**Senator Rónán Mullen:** Correct.

**Deputy Dermot Ahern:** I disagree with the Senator because clearly that would set up the possibility that a public servant could opt in or out as he or she so wished. I made the point that one could not run a country on that basis, that on issues such as this, particularly to do with sexual orientation or marital status, people would have the right to opt in or out as they so wished.

**An Leas-Chathaoirleach:** I am satisfied the amendment has been debated adequately in the House.

**Senator Rónán Mullen:** An issue was raised that needs a response.

**An Leas-Chathaoirleach:** Is the amendment being pressed?

**Senator Rónán Mullen:** May I respond briefly?

*(Interruptions).*

**Senator Rónán Mullen:** It would not be to the credit of the House——

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

Amendment declared lost.

**Senator Rónán Mullen:** On a point of order——

**An Leas-Chathaoirleach:** Is section 22 agreed to?

**Senator Rónán Mullen:** I am pressing the amendment.

**An Leas-Chathaoirleach:** I put the question. The Senator is too late.

**Senator Rónán Mullen:** I was raising a point of order and not whispering.

**An Leas-Chathaoirleach:** After I have put the question, I cannot take a point of order.

**Senator Rónán Mullen:** I asked to raise a point of order before the Leas-Chathaoirleach put the question.

**An Leas-Chathaoirleach:** I put the question and it was dealt with.

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

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

*Senators Feargal Quinn, Rónán Mullen and Shane Ross rose.*

**An Cathaoirleach:** As fewer than five Members have risen I declare the question carried. The Senators dissenting will be recorded in the Journal of Proceedings of the Seanad.

Question declared carried.

## SECTION 23

Question proposed: “That section 23 stand part of the Bill.”

**An Leas-Chathaoirleach:** This section is opposed by Senators Hanafin, Ó Murchú and Walsh. I call Senator Walsh.

**Senator Jim Walsh:** I will be reasonably brief. I note from the explanatory memorandum that section 23 imposes a fine of €2,000 or imprisonment of up to six months on a registrar who is in breach in regard to registration. I do not know whether it goes further than applying to registrars.

There are three parts to the conscience issue. There are religious bodies, with which we will deal later as we have tabled an amendment in regard to them, registrars or the employees of the State and service providers. In regard to service providers, if I had a premises such as a hotel which provided a service and I was approached by a couple who wished to celebrate their civil partnership in it, I would have no difficulty allowing them to have their celebration there and I would gladly take their money. Balancing the anti-discrimination side with freedom of conscience is an important issue in this respect.

While I am taken with what has been said earlier, if an employee of the State in particular does not comply with the legislation, surely there is provision under industrial relations procedures to deal with that. I have concerns about criminalising such non-compliance in cases where people could have a very genuine conscientious objection. We must try to see if we can allow for that. I could not find a way as to how we might allow for it without there being a feeling of some form of discrimination. It was for that reason we thought that not criminalising it might be a better approach.

**Senator John Hanafin:** I agree with what Senator Walsh said. I am very conscious of the allowance that is made in the UK for nurses who, on conscientious grounds, will not perform or be involved in the performance of an abortion. How can we have a situation where we would criminalise people for genuinely conscientiously held reasons? It appears to be excessive and very wrong. The issue goes beyond the fine or term of imprisonment of six months. It is at the core of what Senator Labhrás Ó Murchú eloquently spoke on during the Order of Business on an occasion. The section imposes penal laws on people who have genuinely held beliefs. Such actions will not promote the liberal agenda. For the remainder of the debate it would be useful if people spoke on what we believed rather than what they think we believe.

**Senator Labhrás Ó Murchú:** I made my views on this issue known before the Bill was brought before the House and I still feel the same way. There are Senators in the House who may not necessarily take the same view as we do on some issues and who may have certain reservations about the Bill which I hope can be revisited. Criminalising somebody in this way would serve no purpose. It generally has a counter effect. In this case we would be as well off not to include such a provision in the Bill.

**Senator Joe O’Toole:** I am happy to take the opportunity to speak to the amendment which goes to the core of some of the arguments made, some of which have been disgraceful. It is pure scaremongering; the arguments made have no basis in fact or law. I went to the trouble of checking after I heard what Members had to say yesterday. The amendment would change the 2004 Act which deals with the issue of criminalisation. Under the Act, on summary conviction, a person is liable to a fine of up to €2,000 or a term of imprisonment of up to six months for deleting, altering or procuring the deletion or alteration of information on the register, keeping or procuring information on the register on a computer and changing it. There is a list of wrongdoings and actions specifically taken to corrupt the process of registration, in other words, there is a wilful act in breach of the law which covers all such eventualities.

The section being opposed adds a new offence and I would like the House to listen carefully. It deals with a registrar who refuses to registers a civil partnership. I would like Senator Walsh to listen to this. It reads: “A registrar who without reasonable cause either fails or refuses to give a civil partnership form shall be guilty of an offence”. Somebody has to say, therefore, that there was not reasonable cause. There can be a range of responses to the offence, but if one takes it that the range will have to be reflected in the judgment of the court — this would be the least serious of a series of offences — this is not something that should worry decent people; it is not something about which we need to worry. It does not mean somebody who fails to give a civil partnership form will be criminalised and thrown into jail. A person will first have to be asked why he or she did something. Perhaps that is why Senator Walsh asked why there was no provision for a human resources approach. There is. The first question to be asked is: “Why did you do it?” Somebody will then have to decide that there was not reasonable cause. This does mean somebody will be thrown into jail or fined €2,000. One could argue the provision is excessive, an argument to which I am prepared to listen but not agree with, as I can see the point of it. However, it is wrong to give the impression that somebody who fails to act on the basis of conscience or any other will suddenly winds up in jail. That is not the case.

**Senator Liam Twomey:** I do not want to be controversial in my remarks, but there is something inherently wrong with this debate when we compare the celebration of a same-sex union with a person’s objection to carrying out an abortion. When a person who puts them on the same level says he is not homophobic, there is an inherent contradiction. Much of the debate on the Bill has skewed completely from what it seems to be about. There is a need, therefore, for the Senators who oppose the Bill to tighten their arguments on what their objections are and not use emotive language while debating the issues involved and not make such a direct link. They should make their points on the ethos of a church or religious institution but stay away from making such comparisons.

**Senator Ivana Bacik:** We support section 23 which is very straightforward. The arguments in favour of it have been made. Senator Alex White has made the same point. The sanctions are included in section 20 of the 2004 Act and section 23 simply extends them to cover civil partnership registration and the work of a registrar in that regard. It is appropriate that we do this. I do not think we will ever see anyone being prosecuted or penalised for breaching the provisions of the section which has been in place since 2004 and there was no objection to it at the time. This is a red herring, a non-issue and an attempt to destabilise and undermine the Bill. It is time we moved on because the Bill has the broad support of the overwhelming majority of Senators.

**Senator Alex White:** Hear, hear.

**Senator Shane Ross:** I agree with the Bill and will be voting in favour of it. That does not mean we have to agree with every single point, part or section of it. I disagree with virtually

everything that has been said about this clause on both sides of the House. An offender under the section can go jail and be fined an enormous amount of money. I have just read it and may be open to correction. The person concerned is being put in the category of a criminal, which is completely different from the offence which he or she has supposedly committed. The other offenders under the 2004 Act are all active who commit offences such a fraud which is obviously something which not only has to be discouraged but also punished. I understand in this case, based on what Senator O'Toole said, that when a person "without reasonable cause" — a very subjective judgment — fails to do something, he or she is committing an offence. It is when someone fails to do something which is part of his or her job that he or she is committing an offence. The idea that for not doing one's job for whatever reason — I do not want to discuss the issue of conscience because I do believe there is a case to be made for conscientious objection which is impossible to define — a person can be put into jail is utterly wrong. There should even be such a possibility——

**Senator Ivana Bacik:** On a point of order, it is already included in the 2004 Act.

**Senator Shane Ross:** I do not care about that. It was wrong then and it is wrong now. That is the point. Just because it is included does not make it right. The Senator knows this perfectly well.

**Senator Alex White:** Propose an amendment.

**Senator Shane Ross:** It is obvious that this is an inappropriate punishment. The appropriate punishment in this case is simple: people should be dismissed from their jobs — end of the story. I do not know if people in the private sector are put in jail when they do not do their job. It only happens when they commit an offence such as theft, show disloyalty or do something which is against the law. We are creating a new offence of not doing one's job which is utterly wrong. We hear a lot about others possibly being sent to jail, but that this will happen to people in the public service is unacceptable. To be told it is unlikely to happen is totally unconvincing. I agree it is unlikely to happen, but to suggest people should be locked up for not doing their job is extreme. On this issue only I am prepared to vote against the Government. I appeal to the Minister to consider amending this provision in a reasonable way because it is not convincing to say it is impossible for this to happen. It is possible; it is the law. Judges can make completely different decisions for different reasons. The idea that someone in the public service should go to jail because he or she has said, for whatever reason, that he or she will not do his or her job is utterly wrong. Let us fire them or leave them to be subject to the normal process of employment law. Let us not send him or her to jail.

**Senator Rónán Mullen:** By opposing section 23 I hope to achieve a similar goal to my previous amendment. Whereas I had attempted to define "reasonable cause" so as to leave the offence in place while giving a person room to avoid being deemed to have committed an offence, I oppose the section because the severe punishments it sets out are inappropriate in the context of registration of civil partnership. As far as I am aware, if an official fails to comply with the law in the North, he or she may lose his or her job but would not be liable for criminal prosecution.

Senator O'Toole argued there is no basis in fact or law for what is being claimed. I demur at the use of the word "disgraceful" to describe not only the issue but also by implication the motivation of the people who put forward the amendment. I dissent from such an approach to the argument. Senator O'Toole is incorrect to claim there is no basis in fact or law for what is being claimed by the proponents of this amendment. There is the possibility of an offence which covers a range of transgressions. Nothing in the legislation excludes a possible offence

[Senator Rónán Mullen.]

in this context from the most severe of the penalties. The Senator may have an arguable case that there is no basis in fact on the grounds that this area has not seen many prosecutions, although he appeared to be looking into the crystal ball when he suggested there never would be a basis in fact.

**Senator Joe O’Toole:** No, I am not. It is not there.

**Senator Rónán Mullen:** He is certainly wrong to say there is no basis in law because the law clearly provides for this possibility. It is no argument to say “trust us”, which is the essence of Senator Bacik’s intervention. We are here to legislate for situations that may not have occurred in the past but which might occur in the future. We must have an eye for the changing trends in society and possible future examples of intolerance on the secular side, just as there was in the past intolerance on the religious side. This is why we have to think out the future. To paraphrase G.K. Chesterton, let us not be so open minded that we let our brains fall out. We must predict what is going to happen.

The opponents of this section do not have to meet a high threshold. They merely have to show that, for the avoidance of doubt, it would be preferable to exclude the possibility that a person would face such severe sanctions for a transgression of this nature. To my mind, they have discharged that obligation persuasively and I will support them.

**Senator David Norris:** I was about to make a point that I have discussed with Senator O’Toole but I think he is the better person to make it.

**Senator Eugene Regan:** Senator Ross is totally wrong. This is not a simple question of someone not doing his or her job. The offence is unlawful discrimination and, worse still, it would be committed by a public servant acting in an official capacity. This is why sanctions are needed to prevent such discrimination.

Senator Mullen used the term “reasonable cause”, which is contained in the Act. If I understand him correctly, he is saying sexual orientation is reasonable cause to discriminate where the registration involves a gay or lesbian couple. This brings us back to the hostility against gay and lesbian couples which, as far as I can see, is inherent in this and other amendments.

**Senator David Norris:** Hear, hear. Well said.

**Senator Lisa McDonald:** I support this section. It is appropriate that jail is the ultimate sanction in our penal code. A person who threatens to kill somebody can be imprisoned for life but he or she would more commonly receive a suspended sentence or two years in jail. That is an example of the sliding scale and the evidentiary process. When a public official makes a mistake or discriminates against another individual in the course of his or her duties, he or she will be subjected to the rigours and fair process of the disciplinary system. In a worst case scenario, where the discrimination is so blatant and terrible that it warrants jail, that would have to be considered in the final analysis. Generally speaking, however, that road has never been followed.

I do not agree with Senator Ross’s assertion that people cannot go to jail for not doing their jobs. At issue here is an official who performs a public duty by marrying same-sex couples. It is not sufficient that discriminatory practices would merely result in the perpetrator losing his or her job and continuing these practices in a new position until, perhaps, the penny drops that he or she requires a conversion on the road to Damascus.

If one has a problem with same-sex couples getting married, one should not be a registrar but one should not discriminate.

**Senator David Norris:** Hear, hear.

**Senator Lisa McDonald:** In other jurisdictions around the world where minorities have suffered, tough legislation was needed to stop discrimination. Before the Equal Status Act came into force, Travellers were refused service in many bars. Now, however, they can go into bars and they behave themselves. I appreciate there are times when everything is not okay but if the sanction was not available we would never have taken that quantum leap. We must move away from the word “tolerance” and begin to accept all minorities in society.

We are debating a phantom minority which does not exist. We say minorities need to be protected because we are naval gazing or wondering what will happen in the future. We will deal with the future when it comes but, right now, we are dealing with a minority whose rights have been trampled on for decades and who were criminals in this country 16 years ago. We need to move on with this legislation and put the section to a vote. I accept Senator Walsh’s bona fides in opposing the section but it is my right to disagree with him. We need to move on to vindicate the rights of the minority we are here to protect.

**Senator Geraldine Feeney:** Like Senator McDonald, I do not agree with the opposition to the section. It is just a red herring or a pretext for the wider opposition to the Bill. Public officials, by their very nature, are good people who carry out their duties to the highest standard. Those who work in the public service do not and, I hope, would not seek the freedom to ignore State policy. This Bill is going to become State policy. If they had that freedom, the machinery of the State would grind to a halt and we would become a banana republic.

Job descriptions change from time to time. We have all taken on added responsibilities or covered new areas at some point in our working lives. ICTU or another source would have sought an amendment or protocol to the Bill if there were any such concerns about persons performing their duties. I agree with Senator McDonald that a person who is not capable, on the basis of conscience or otherwise, of treating everyone equally and with dignity and respect should not be a registrar.

**Senator Feargal Quinn:** I have not spoken much on this topic. This issue has been simplified and speakers have not recognised that some people have real problems with the section. It has been argued that job descriptions change from time to time. When this occurs, people are disciplined or, as Senator McDonald stated, disciplinary procedures are pursued.

4 o'clock If someone does not obey the outcome of a disciplinary procedure, he or she is usually sacked. Senator Ross is correct on that point. This matter is different, however, because we are creating law which will last. I am concerned about the use of terms such as “it is highly unlikely” or “generally speaking”. Relying on improbabilities or generalities does not make good law.

If we do not remove the section, a person who commits an offence because of a change in his or her job description could go to jail. While I accept that such a scenario is highly unlikely, I am not in favour of making laws which rely on generalities or improbables. As Senator Ross noted, the solution is to dismiss those who do not do the job they are supposed to do.

**Senator John Hanafin:** I concur with Senator Quinn. If a scenario is highly unlikely or does not feature on the agenda, why is it provided for in the Bill? It seems the purpose of the section is to be penal in the sense of penal law, in other words, vindictive. The approach appears to be one that those who do not agree with our view will be made to pay for it.

It appears I am not allowed to use an example unless it is *pari passu*. This does not happen at times but it accentuates the point. I ask the Minister to address two points. If it is acceptable in the United Kingdom for a nurse to be allowed to decline to perform her duty as prescribed

[Senator John Hanafin.]

by law, why is a similar scenario — a decision taken in conscience and not necessarily provided for in the Act — not acceptable? I have requested a schedule of cost for the legislation and ask the Minister to provide such a schedule to show the cost of the Bill over the next three to five years.

**Senator Labhrás Ó Murchú:** Apart from his preamble on the motives of people who hold a contrary view to his own, Senator O’Toole hit on something for which I felt like cheering him. On examination, however, I believe he is incorrect because having discussed this point with the Minister, we left the meeting believing there was a possibility that someone would go to jail in this context. I will be pleased if it transpires that I am wrong and Senator O’Toole is able to show this is not the case because this is the only aspect of the Bill on which I have spoken, whether on the Order of Business or at other times. I continue to make the same point on this section. If, as most people argue, the scenario provided for is unlikely, it is not necessary to include it in the legislation. Senator Hanafin went further and asked why the section is included in the Bill. If it does not serve a purpose and we are not trying to send out some type of message and wish to continue to implement legislation in the right spirit, it would be better not to have a provision of this nature in the Bill.

**Senator Jim Walsh:** I know lay people who are much more religious than I am and hold conscientious views on matters which they believe infringe on their beliefs and the teachings of their religion. I can envisage such persons being caught by this provision. I assumed — perhaps I was wrong — that the words “without reasonable cause” would not cover such persons. Perhaps the Minister will clarify this matter, on which there have been discussions among officialdom. If a person found himself or herself in the circumstances described, will it be possible to accommodate him or her to ensure he or she is not criminalised? I do not mind if a person is suspended for a week or transferred to another Department.

I do not disagree with anything Senator McDonald said about discrimination. What we are trying to do is reconcile two competing priorities, namely, the need to ensure people are not discriminated against and the need to accommodate genuine freedom of conscience. I know the latter is difficult to determine. If the Minister is able to give me any comfort on this matter, I would take a different view on opposing the section.

**An Leas-Chathaoirleach:** Senator Mullen is indicating.

**Senator Joe O’Toole:** The Senator has spoken since I last spoke. I would like to respond to his comments as he challenged my views.

We need to examine what is happening here because it is a little like the invasion of Afghanistan when the Russians stated they were invited into the country. The group of people the amendment is rushing to protect does not want our protection. The individuals in question are doing their job, are aware of the issue given that it has been widely reported in the newspapers yet not one of them has said he or she needs our protection. Some of us are determined to give it to them in any case. We are rushing to help people who do not want to know. The last thing they want to see is a group of politicians rushing at them, as it were.

We need to consider this issue in real world terms. Important issues have been raised by a number of speakers, including Senator Quinn. To assist Senator Mullen and others, I will read again what is written in the section. It will apply to a registrar “who, without reasonable cause, fails or refuses to give a civil partnership registration form to one of the parties”. What happens before one reaches this point is the human relations aspect of the process to which Senator Walsh referred. If someone working in an office indicates to his or her boss that he or she is

not prepared to carry out civil partnership functions or weddings, the boss then has a job to do, namely, find a local arrangement, transfer, sack or suspend the person or find another solution. We must bear in mind that a crime has not been committed and a human resources procedure is followed before one proceeds further. When someone refuses to carry out a function it must be dealt with locally. Sacking the person, as some Senators have suggested, could be much more costly than the maximum fine of €2,000 provided for in the section. The action taken will depend on the local arrangements in place. At that point, the civil registrar may simply refuse to carry out his or her function.

Why do we need the provisions of the section? It is not only a matter of scale, as a number of speakers suggested, but also one of aggravating circumstances. In many cases, a gay couple will not have a great deal of self-confidence in dealing with public matters of this nature. Not only could they be deprived of the civil partnership registration form, there could be aggravating circumstances, for instance, they could be led to believe that it is not possible for them to enter into a partnership or a form could be lost. The scale provided for is necessary to address such aggravating circumstances.

The issue is not one of a person refusing to hand over a piece of paper or sign a form but one of discrimination. I ask Senator Mullen or another opponent of the Bill to put a price on discrimination. At what point does a continuing contravention of the law by discriminating against a person fail to be important? If someone continues to hold an unlawful position, should we back off? While I do not envisage such a scenario, I am being forced to bring the hypothetical case to its conclusion. If there are aggravating circumstances, we must be able to measure them in terms of the response of the law. We are depriving a citizen of a legal right — rights we are putting in place with this legislation. Someone is being discriminated against. Someone is being deprived of his or her rights. Someone is not applying the law we are passing. Someone may not have dealt with this or agreed with any arrangement that was made previous to this in his or her office, whatever HR arrangements were there. This is all the background stuff. Things do not happen like that. As there is always a story behind a story, how would we get to it?

The other issue is moral hazard. The idea that we could put into legislation that someone can refuse to do an aspect of his or her job is inviting situations where people go forward. I am not talking about people with a conscientious objection; that may well be the case. I find it difficult to deal with that issue, but I am not talking about that. A parish priest described someone some time ago by saying “It’s not that he had lost his religion; he was just too lazy to get up to go to Mass.” I am talking about someone who is too lazy to do his or her job and claims to have a moral objection. That is a moral hazard. It would open issues which would make it impossible to control because someone could claim to have a conscientious objection. Someone who is lazy might not have any trouble telling lies or — I remind Senator Mullen about this — might have a mental reservation about it one way or another.

The serious point is that this is not something that happens like a bang. This is something that builds up. If someone working in an office or elsewhere, including in teaching, claims to have a difficulty about something or other, the boss needs to deal with it. If it cannot be dealt with, action needs to be taken. If action is not taken, it moves to a next step. If it is a minor thing that someone has refused to do his or her job, action should be taken about that.

**Senator Jim Walsh:** If they do not, they can end up in prison. That is the point.

**Senator Joe O’Toole:** We need to allow for aggravating circumstances. I will not hear anyone say that the refusal is simply refusing to hand out a form. I want to hear it said that this is discrimination and deprivation of a legal right we are putting in place. We need equality before

[Senator Joe O'Toole.]

the law. It is important we respond to it in that way. I do not want to and I do not believe I will ever see anyone go to jail as a result of this. However, I want people to know that we, in this House, value the rights of our citizens and will ensure they will be delivered for them. That is why it goes up that sliding scale. It is not as if someone makes a mistake and finishes up in jail. There are many steps in between.

**Senator David Norris:** Senator O'Toole has very adequately dealt with a number of points. I believe Senator Mullen indicated very honestly that this is, to a certain extent, a device for reopening the discussion that has been held already on——

**Senator Rónán Mullen:** I did not say that.

**Senator David Norris:** He said something very close to it.

**Senator Rónán Mullen:** No, a million miles away. I shall explain in a minute.

**Senator David Norris:** Something very close to that was said. I shall leave it at that.

The Minister has largely dealt with these problems. Taking into account that this is a device for reopening the discussion of the subject matter of amendment No. 15 and because the wording of that amendment also includes marriage, it opens up the floodgates of Islamophobia, etc. There may well be cranks who would not give a civil partnership to people who are Muslim. That is a much greater possibility than the possibility of someone going to jail. I do not believe that anyone would go to jail. I think it is highly unlikely that this clause will ever need to be invoked in terms of the provision of service. I have just returned from the barber's shop. I have read reports in the newspapers that some people believe that hairdressers would be forced do weddings and civil partnerships. I asked in the barber's shop whether there would be any objection and everyone there fell around the floor laughing. It is so bloody absurd.

This is not a victimless crime. It is not just someone claiming he or she does not want to shuffle a piece of paper around. Senators should imagine themselves in the situation of people who want to apply for a civil partnership, which they will be perfectly entitled to do under the law of this land, hopefully, after this evening, and are bluntly told: "No. Get lost. We're not doing it." What will their feelings be? This is a really poisonous situation.

Senator Hanafin and several others have deliberately dragged in the idea of abortion. I now call on them publicly to clarify that and to make it absolutely clear that they are not equating in the slightest sense or in any way the performing of a civil ceremony for same-sex couples with the performing of an abortion. That must be clarified. It is so easy to throw around the word "abortion", which gets many people very steamed up. I want that issue to be clarified urgently.

I hope we will not have a repetition of what happened last night when on a series of amendments with exactly the same wording we were put through the necessity to vote.

**An Leas-Chathaoirleach:** That has nothing to do with the amendment.

**Senator David Norris:** The Cathaoirleach asked the people who called for the vote to stand up. People, who had never contributed once to the debate, came into the House and stood up to get the vote.

**An Leas-Chathaoirleach:** Senator Norris——

**Senator David Norris:** That is acceptable on one occasion, but not for the same amendment endlessly.

**An Leas-Chathaoirleach:** Senator Norris, that has nothing to do with this amendment.

**Senator David Norris:** I ask the Leas-Chathaoirleach to keep moving on and get the job done.

Progress reported; Committee to sit again.

### **Business of Seanad**

**Senator Donie Cassidy:** We have listened attentively now for more than 18 hours. There is repetition and filibuster in my opinion.

**Senator David Norris:** Hear, hear.

**Senator Donie Cassidy:** I propose an amendment to the Order of Business. I propose that Committee Stage of the Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2009 shall conclude at 4.30 p.m.; that there shall be a sos from 4.30 p.m. until 5 p.m.; and that Report and Final Stages shall conclude not later than 6 p.m.

**Senator Rónán Mullen:** Outrageous. It is an attack on democracy.

**Senator Eugene Regan:** I understand the Leader's motivations. I do not like the notion of guillotining any debate.

**Senator Donie Cassidy:** I have never guillotined before.

**Senator Eugene Regan:** This has become an exercise in absurdity. It has been suggested that this has been a wonderful debate. However, I think it has been awful, meaningless and futile. There has been repetition and arguments advanced which have not been explained, do not relate to amendments proposed and are entirely repetitive. We need to do something to curtail the debate and bring it to finality.

**Senator David Norris:** I would be very reluctant to support a guillotine. However, it should be possible to take out all the repetitive amendments and deal only with any contentious ones. I do not like to stifle debate. It is imperative that we get on with this. Let us consider the good faith or bad faith of some of the people on the other side. Senators Mullen and Quinn have opposed 64 sections of the Bill.

**Senator Rónán Mullen:** So what?

**Senator David Norris:** They are perfectly entitled to do so, but that——

**An Leas-Chathaoirleach:** That has nothing to do with the proposed change to the Order of Business.

**Senator David Norris:** ——does not suggest they want to get the Bill passed. The amendments they have tabled would stand the entire principle of the legislation on its head.

**An Leas-Chathaoirleach:** I ask Senator Norris to resume his seat. I call Senator Bacik.

**Senator David Norris:** Let us go ahead and discuss the essential issues and let us finish the job.

**Senator Ivana Bacik:** No one wants to stifle debate, including those of us in the Labour Party. We have genuine amendments tabled on which I was looking forward to engaging with the Minister. I believe we had a constructive debate on the very important amendments on children's rights last night and on what we see as a major flaw in the Bill, the lack of recognition for children. However, we have not had genuine debate in the past four hours, but an attempt to disrupt and filibuster the passing of this important legislation——

**Senator David Norris:** Exactly.

**Senator Rónán Mullen:** That is not true.

**Senator Ivana Bacik:** —— on which the vast majority of Members of the House are agreed. That is what we have seen today.

**Senator Rónán Mullen:** This is a new low. I had planned to express regret that Senator Regan repeated the calumny that some of these amendments came from hostility to gay or lesbian couples. I am surprised that he could not get the basic point that there is a world of distinction between having opposition, hostility or disregard to gay and lesbian couples and having a moral view on public recognition for same-sex relationships——

**Senator Eugene Regan:** The Senator has not explained it.

**Senator Rónán Mullen:** ——and going further to have a moral view that other people are entitled to their moral view. It does not surprise me that he has spoken in support of the guillotine, particularly given that the leader of his party wants to abolish the Seanad. The Leader is contributing to the contempt in which the Seanad is held by so many members of the public.

*(Interruptions).*

**Senator Rónán Mullen:** When he does not like the arguments he is hearing, he seeks to close down the debate. The Labour Party and Fine Gael will be complicit with his attempt to close down the debate in the Senate.

**Senator Alex White:** That is some persecution complex.

**Senator Rónán Mullen:** It is a disgrace.

**Senator John Hanafin:** I am very disappointed that we are where we are. I think that some of the contributions could have been more concise——

**Senator Ivana Bacik:** That is an understatement.

**Senator John Hanafin:** ——but I am still disappointed there has to be a guillotine. We could have moved very quickly through some of the other sections. I accept that this is the reality. However, I wanted to mention that there is a possible constitutional difficulty in section 173.

**An Leas-Chathaoirleach:** We are not dealing with that. I cannot let you in on it.

**Senator John Hanafin:** I accept that, but the point is that I cannot get to speak about what I think is a constitutional difficulty for the right of existing children——

**An Leas-Chathaoirleach:** We are dealing with the change to the Order of Business. I call Senator Walsh.

**Senator John Hanafin:** I accept that, but we will not get to it.

**Senator Jim Walsh:** The reply from the Minister would certainly determine my views on this section. Would it be possible to re-enter amendments Nos. 32 and 59 on Report Stage if we finish with Committee Stage? I think amendment No.32 may have constitutional implications. It engages my mind about disadvantaging the family.

**An Leas-Chathaoirleach:** The only thing before me is a change to the Order of Business and there are many people who want to contribute. The only thing I can do is put the question. Is the change to the Order of Business agreed? Agreed.

### **Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2009: Committee Stage (Resumed)**

#### SECTION 23.

Question again proposed: “That section 23 stand part of the Bill.”

**Minister for Justice and Law Reform (Deputy Dermot Ahern):** I said at the end of Second Stage that I thought it had been an excellent debate, and it was. Unfortunately, as I predicted, the way in which Committee Stage has been dealt with has not done the Senate any service. I do not have to point the fingers in that respect.

I am implacably opposed to the deletion of this section for the simple reason that to do so would be discriminatory. It is purporting to create a situation whereby a registrar fails or refuses to give a form and does not suffer any sanction other than the disciplinary procedures that might be normal for any public servant.

Senator Hanafin and others asked why we should have a criminal sanction if it is not used. The criminal sanction has already been on the Statute Book since 2004 in respect of other offences and whether it has been used or not, the fact that it is there is a clear statement by the Oireachtas to those people who might, without reasonable cause, fail to do something they are required to do. It is clearly a dereliction of their duty and the Oireachtas should send out a strong signal that this is not something that can only be dealt with by a disciplinary tribunal or whatever. It must be dealt with if it is a very serious offence. As Senator Ross said, this is not a victimless crime.

Section 69 of the 2004 Act lists the offences a registrar might commit by not acting in accordance with the Act. It also includes a non-registrar, in other words, an ordinary person. A person who gives to the registrar particulars or information which he or she knows to be false or misleading is guilty of an offence. All of those offences are punishable, on summary conviction under section 70, by up to six months and a fine of up to €2,000, while there are much more serious penalties for conviction on indictment. All of those section 69 offences are punishable by that criminal sanction. What is being proposed here is clearly discriminatory in respect of a failure to give a form concerning civil partnership. The people who are proposing the deletion of this section are effectively proposing that in that instance, there should be no criminal sanction. I disagree because it is clearly discriminatory.

The term “without reasonable cause” is there as a defence if the person has good reason not to fulfil what he is required to do under the section. It is entirely up to that person to prove it in a defence of any prosecution that takes place. Therefore, there is an “out” in that respect. However, what is proposed is discriminatory because it is making a difference in the sanction purely and simply because it refers to a civil partnership registration.

**Senator Labhrás Ó Murchú:** We always welcome the Minister's response. It is quite clear there are different views on this Bill and the Minister has to provide us with a focused view that we believe will enable us to endorse the legislation that is being brought forward. I spoke three times today and I do not think any of my contributions exceeded three minutes. I kept things very brief because I had hoped that throughout the debate, we would be able to categorise each argument, each point of view and each question for clarification.

If there was filibustering here — it has been suggested there was — there could be reasons for it, but I will not point fingers at any person. However, everyone will agree there were more people in favour of the Bill in its totality than those opposed to elements of it. For that reason, there will be many more voices being put forward.

**An Cathaoirleach:** We are on section 23.

**Senator Labhrás Ó Murchú:** I do not think we could have a guillotine this evening only for the fact there is near unanimity within the House. It is a black mark on us and I know the Leader will be very hurt about this because he has a very proud record. It means that instead of using Standing Orders to control the debate, we now find a big question mark in the public arena that because there were only a few who wanted to question this legislation, the only message that goes out is that for the first time in the life of this Seanad, we brought in a guillotine because we had near unanimity to do that. As a democrat, I am sorry to say that.

I accept the ruling and when the Bill is passed, I will accept that. However, we should make up our minds that whatever happens in the future, we may still come back and express our views. If others do not agree with those views, which we expect to happen, we should still be entitled to put them and those opposed should do likewise. It is sad day for me personally and I am sorry it has ended in that manner.

**Senator Rónán Mullen:** I believe there was a dangerous ambiguity.

**Senator Donie Cassidy:** I had proposed that we adjourn from 4.30 p.m. to 5 p.m.

**An Cathaoirleach:** I am in the Chair and I am watching the clock and it is not 4.30 p.m.

**Senator Donie Cassidy:** I apologise to the Cathaoirleach.

**An Cathaoirleach:** There is to be a sos at 4.30 p.m. I am obliged to call the next speaker when there is time available.

**Senator Donie Cassidy:** Okay.

**Senator Rónán Mullen:** There was a dangerous ambiguity in what the Minister said a few moments ago. He said there is no need to point the finger in regard to filibustering. I have already said that I certainly was not filibustering but I make no apologies——

*(Interruptions).*

**Senator Rónán Mullen:** When Senator Regan said that——

**An Cathaoirleach:** As it is now 4.30 p.m. I am required to put the following question in accordance with the amended order of the Seanad of this day: "That section 23 is hereby agreed to in committee, that in respect of each of the sections undisposed of, that the section is hereby agreed to in committee, that the Schedule and the Title are hereby agreed to in committee, and that Bill is accordingly reported to the House without amendment."

Question put and agreed to.

*Sitting suspended at 4.30 p.m. and resumed at 5 p.m.*

### **Civil Partnership and Certain Rights and Obligations of Cohabitants Bill 2009: Report Stage**

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

**Senator Jim Walsh:** I move amendment No. 1:

In page 49, to delete lines 21 to 26 and substitute the following:

“the estate shall be distributed in equal shares to the surviving civil partner and each of the children of the deceased civil partner”.

This amendment, tabled by Senators John Hanafin, Labhrás Ó Murchú and me, refers to section 73 and deals with intestacy. Section 73 inserts a new section after section 67 of the Succession Act 1965. The newly inserted subsection 67A(1) of the Succession Act will deal with a situation where a person dies intestate leaving a civil partner and no issue. It provides that the civil partner will take the entire estate. I recognise there is an element of equity in this provision and I do not have difficulty with it.

However, I have concerns about the newly inserted subsection 67A(2) and our amendment would change it. It states that if an intestate dies leaving a civil partner and children the surviving civil partner is entitled to two thirds of the estate and the remaining shall be distributed among the children.

I have had some slight discussion with the Minister on this matter. I ask Senators to picture a scenario where a husband dies, leaving his estate to his wife. He also leaves three children. The new family unit is a mother and three children. The mother subsequently enters into a civil partnership with another woman. Should she die, her children's inheritance would be confined to a small proportion of their parents' estate. We think this is inequitable.

We fully accept that the surviving civil partner is entitled to a proportion of the estate. However, the children of the deceased civil partner are not adequately catered for in the Bill, although I understand there is provision for them to go to court and seek a redistribution of the estate. Our preference is that the estate be divided in equal share to the surviving civil partner and each of the children of the deceased civil partner. In the example I gave, the civil partner would then get 25% of the estate and not two thirds, and each of the children would get 25% and not one third of one third, or approximately 10%. We think that is fairer and it is the motivation behind the amendment.

A second issue arises from this. The widow and her three children would be regarded, constitutionally, as a family unit. Once she enters a civil partnership that unit no longer exists. It looks to me as if there could be a constitutional issue here. The provisions of the Bill do not adequately address the surviving members of her family, her three children.

There are two issues to consider. One is the possible infringement of the constitutional regard for the family. The other is the more important issue of fairness to the children of the deceased member of a civil partnership. A surviving civil partner might well be self sufficient or quite wealthy whereas the children might have only a small proportion of their parents' estate.

**Senator Rónán Mullen:** I second the amendment.

**Senator Liam Twomey:** I ask the Minister to clarify the following matter. If the father of three children died and the children were left in the care of their stepmother, who was their father's second wife, the Succession Act would affect them similarly to the children in Senator Walsh's example. They would be entitled to a share of one third of their father's estate and their stepmother would be entitled to two thirds. The legislation would also have to be changed if the equity called for in the amendment were to apply to them. All succession legislation regarding how families work would need to be changed. I ask the Minister to clarify my query.

**Senator Ivana Bacik:** I oppose this amendment. On Committee Stage, Labour Senators tabled two other amendments to section 73, which we felt would have clarified the section. One of our amendments would have been to delete the phrase, "subject to subsections (3) to (7)" in subsection 67A(2)(a). The Law Society of Ireland had recommended that those words should be deleted to avoid litigation and uncertainty and to make it clear that the surviving civil partner would take two thirds of the estate of the intestate civil partner who had died. This would have put them on par with the surviving spouse of a marriage. We felt that would have been an improvement to the legislation. Unfortunately, due to the filibustering and obstruction that went on earlier, we did not have an opportunity to put that but——

**Senator Rónán Mullen:** What of the Senator's collusion in the guillotine?

**An Cathaoirleach:** I will not tolerate any interruption.

**Senator Ivana Bacik:** I certainly could not support any dilution of the existing wording of section 73. This proposed amendment would dilute the rights of the surviving civil partner if it were passed. I oppose the amendment and say to the Minister it is a shame we did not have a chance to debate the amendments we had put down, which would have strengthened the position of the surviving civil partner.

**Senator Lisa McDonald:** I oppose the amendment for the simple reason that, as Senator Twomey said, we would have to examine the Succession Act in order to amend this matter. However, as a practitioner, I have seen many instances where the two thirds, one third rule on intestacy has put many people living in their family homes in jeopardy. I accept there is a point to the amendment but the only way around it is to write a will, a matter that has been quite readily advertised lately. Other than that, there is an issue we need to consider in the tenet of the amendment but I do not believe we can accept it on this occasion.

**Senator Fiona O'Malley:** Senator McDonald made a point that I wished to make, namely, there is an onus on us publicly to encourage people to make wills because much of the certainty that is lost in this area is because people have not left wills.

I oppose the amendment, the effect of which would be not to allow people to be treated equally. This would not at all be in accordance with equality before the law and, therefore, it should be opposed.

**Senator Rónán Mullen:** There is an air of unreality about our trying to contemplate a question such as this, which may have constitutional implications, in circumstances where a guillotine has been imposed. I want to put on record that Senator Bacik, the Fine Gael leadership and others have shown exactly what they think of free speech. When it is offensive to their ears, they close down the debate.

**An Cathaoirleach:** We are on amendment No. 1.

**Senator Ivana Bacik:** That has nothing to do with this.

**Senator David Norris:** It is a most offensive remark and I want it withdrawn.

**Senator Ivana Bacik:** It is certainly not relevant to this amendment.

**An Cathaoirleach:** Order, please. Senator Mullen should continue.

**Senator Jerry Buttimer:** Where is all his preaching about tolerance now?

**Senator Rónán Mullen:** The Senators are the only ones who have shown no tolerance for——

**Senator Jerry Buttimer:** I have listened to the Senator all day.

**An Cathaoirleach:** I ask Senator Mullen to abide by the rules of the House. We are on Report Stage, amendment No. 1, which was moved by Senator Walsh.

**Senator Rónán Mullen:** On the amendment, it is somewhat relevant to say that we simply do not have the time we need to scrutinise this issue thoroughly.

**Senator Ivana Bacik:** Thanks to the Senator.

**Senator Rónán Mullen:** That is not the fault of the people who sought to scrutinise this legislation earlier today. Back in 1998, county committees on agriculture were debated until 5 a.m. in this House, which speaks for itself.

**An Cathaoirleach:** That is not relevant to the amendments.

**Senator Rónán Mullen:** On the amendment, rules are being provided on intestacy to the effect that a civil partner would take two thirds of the estate over and above any issue of the person. When one considers that the Constitution supports the institution of marriage on which the family is founded, it seems that respect for the family should survive the death of a spouse. If, in the event of the death of a spouse, a person enters civil partnership — perhaps the Minister can correct me on this — it would seem bizarre that the rights of a subsequent civil partner could trump the issue of the marriage.

As the fellow would say, I have had no more than a glansory curse at this because of the guillotine but it does seem to raise constitutional issues. I do not see how we can in any credible way uphold the ability of the Seanad to discuss an issue as profound as this in circumstances where there is such a ridiculous guillotine.

**Senator Frances Fitzgerald:** This amendment has the merit that it refers to the children of the deceased civil partner. We have said that one of the gaps in the legislation is the fact children are not dealt with. However, the overall thrust of the amendment is to denigrate and discriminate further against those who are in civil partnership and to put them in a less advantageous position. For that reason, I do not believe it should be supported.

**Deputy Dermot Ahern:** Amendment No. 1 would have the effect of substantially altering the rules of distribution on intestacy for civil partners where the deceased had a child or children. The civil partner would be entitled to the same share of the deceased's estate as each child of the deceased if this amendment was to be accepted. Section 73 states that if an intestate dies leaving a civil partner and issue, the civil partner shall be entitled to two thirds of the estate and the remainder shall be distributed among the issue, which equates to the issue in

[Deputy Dermot Ahern.]

regard to a heterosexual family situation. This amendment, therefore, would substantially erode the rights of the deceased civil partner.

For example, in the case of an adult and three children, the adult civil partner would be entitled to two thirds of the estate and the remaining one third would be equally distributed among the children. However, under this proposal, the civil partner would only get one quarter of the estate and the children would each get one quarter. Such a distribution would be novel and would substantially erode the rights of a deceased civil partner.

We had some debate where it was suggested there was nothing in the Bill to look after children, which was not correct. Unfortunately, this was because of the type of debate we had, although I know there were Members even on my party's side who were genuinely worried about the issue of children. There are several mechanisms contained in the Bill to protect the position of children explicitly, particularly children of a former heterosexual couple now in a civil partnership arrangement. There is ample further provision to allow civil partners to make greater provision for their children should they wish to do so. Section 73 protects a child's position by allowing that the child can apply for enhanced provision from the estate of a deceased civil partner-parent on intestacy up to a maximum of the amount that the child would have received had the parent died intestate with no spouse or no civil partner.

It is also always available to the civil partner, as some Senators have suggested, to make a will providing a greater share or, indeed, no share of the estate to these children. Section 83 inserts a new section in the Succession Act which allows a civil partner in an ante civil partnership registration contract to renounce his or her legal right in the estate of the civil partner. Thus, a civil partner who wishes to make extensive provision for his or her children can arrange for such a contract to be made in advance of registering a civil partnership and can then make a will giving that enhanced provision to their children.

The rules on intestacy replicate those in regard to heterosexual couples save that — this is the protection for children of a prior arrangement — under the new section 67A:

The Court may, on the application by or on behalf of a child of an intestate who dies leaving a civil partner and one or more children, order that provision be made for that child out of the intestate's estate only [this is the important part] if the court is of the opinion that it would be unjust not to make the order, after considering all the circumstances, including—

- (a) the extent to which the intestate has made provision for that child...
- (b) the age and reasonable financial requirements of that child,
- (c) the intestate's financial situation, and
- (d) the intestate's obligations to the civil partner.

I cannot accept the amendment, which would lead to a diminution of the rights of the civil partner on intestacy. It would lead to discrimination in the way they are treated *vis-à-vis* heterosexual couples.

**Senator Jim Walsh:** I thank the Minister for his reply. His latter comment accords with Senator Twomey's comment that because our amendment would not mirror the marriage arrangement, it is in some way "diminishing" or eroding the rights of the surviving partner. I thought that until the civil partnership Bill is enacted, there are no rights prescribed in law and we are prescribing these rights today.

People have said this would discriminate against the civil partner and I appreciate the point made by Senator Twomey with regard to a step-parent etc. but we are discriminating against children. That is a matter of genuine concern to me and others who signed their name to the amendment. We must be particularly careful about the issue.

I am also mindful that the inheritance generated and distributed may well have been accumulated through the efforts of the father of a child who because of a premature death will not have a say because he left the inheritance to his wife. There are fairly fundamental issues in this going beyond just the rights of the civil partner. I note the reply to me and comments made by other people concern the rights of the adult and not the rights of children. This is a child-centred amendment and it should be considered. I also note the Minister did not make any reference to any constitutional implications in his reply.

**An Cathaoirleach:** I am using my discretion to allow the Minister give a brief reply to explain a point without anybody else coming back in.

**Deputy Dermot Ahern:** This applies equally to children of a deceased partner as well as children of a prior marriage so there is no discrimination of the children involved. For that reason it is a pro-children measure and seeks to protect children in circumstances where they may not gain any provision in a position of intestacy. We believe it will stand up to constitutional examination because it is endeavouring to deal with a position where there may be children of a prior marriage as part of the civil partnership arrangement.

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

Amendment declared lost.

**An Cathaoirleach:** Amendment No. 2 arises from Committee proceedings and is related to amendment No. 3. The amendments may be discussed together by agreement. Is that agreed? Agreed.

**Senator Labhrás Ó Murchú:** I move amendment No. 2:

In page 56, between lines 19 and 20, to insert the following:

“(4) The Act of 2000 is amended by inserting:

“Nothing in this Act, or in the Acts amended by this Act, shall prohibit a religious, educational, social or community organisation, which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values, from refusing to provide property, goods or services that assist or promote the solemnisation or celebration of any civil partnership or marriage, or provide counselling or other services that directly facilitate the perpetuation of any civil partnership or marriage, where such refusal is reasonably necessary to prevent the undermining of the religious ethos of the institution.”.”.

As Members know, we have always been very conscious of the ethos of the churches and religious organisations. We have generally endeavoured in legislation to accommodate the issue and one of the reasons the Minister has not included churches is precisely for that reason. He wishes to avoid any misunderstanding and he is right in that respect.

[Senator Labhrás Ó Murchú.]

The same provision should have been extended to church property and religious organisations with a particular religious ethos and policy. This is different than people in private circumstances refusing to provide services. The mere fact that we have made a distinction for churches in this and other legislation shows we are particularly conscious of that need.

The Minister may have to some extent extended the view on the issue by indicating that if we are talking about a hall, it would also be used for other community purposes. Very often those other community purposes are related to church activities and therefore have a particular ethos attached. For that reason I ask the Minister to reconsider the issue, upon which I have had exceptionally strong views.

Somebody said he or she could not imagine a gay couple wishing to use the property of a church or religious organisation if there was an existing antipathy. That may be so but I would be sorry if people had to feel such a way in the context of antipathy or otherwise. Interestingly, commenting on what Senator Norris said earlier I asked that we tease out the possibility that where a religious organisation or church wishes to provide a service, and if the service included the registration of the ceremony, I would see reason in that case to debate the matter. For the same reason, if a difficulty is provided for the ethos and policy of a church, it is not enough to say a gay couple is most unlikely to use it.

Senator Feargal Quinn in another context stated that it is not good legislation to say a possibility does not arise. It should not be like that and in this case it is more than a legal issue that is involved. There is an element of symbolism that is important in this case also. The Minister might find it possible to extend the same view as has informed the legislation in regard to the church itself; if that could be extended to church property or religious organisations with a particular policy or position, it would be helpful in the acceptance of this legislation.

**Senator Jim Walsh:** I second the amendment. We take no credit for the drafting of the amendment, which we used because we were taken by the content coming from Christian church leaders who circulated it to all. It covers not only civil partnership but also marriage, or divorced marriage, which might be against the ethos of the church. That would exclude them from the issues.

Article 44.2.1<sup>o</sup> of our Constitution states “Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen”. Our amendment is specifically and exclusively directed at church bodies and organisations.

I noticed the Minister dismissed some of my earlier comments regarding comparisons with Britain. I hope he will follow through on that ethos and thinking by looking at the common law system we inherited from the British and look to introduce Napoleonic code structures into the system.

In Britain Catholic adoption agencies had to accept the equal status Act and terminated their service as a consequence. In the US, Connecticut and Vermont have provisions for a conscience clause and it takes in churches in regard to civil marriage in Vermont. The legal provisions indicate:

The civil marriage laws shall not be construed to affect the ability of a society to determine the admission of its members as provided in section 4464 of this title... and shall not require a society that has been established and is operating for charitable and educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the society's free

exercise of religion, as guaranteed by the First Amendment to the Constitution of United States.

In respect of public accommodations it is stated:

Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodation, advantages, facilities, goods, or privileges to an individual if such request for such services [were to contravene their ethos] . . .

That is what we are trying to achieve in the amendment.

I listened carefully to the debate. We were challenged in respect of ensuring we did not discriminate against people or minorities, on the one hand, while ensuring people's freedom of conscience would be protected, on the other. In this instance, the church does discriminate. In other very liberal states, however, provision is made for that type of exercise by the church of its own ethos. That is our strongly held, conscientious view on this matter.

**Senator Eugene Regan:** I do not support the amendments, particularly as they constitute another effort at discrimination. Amendment No. 2 deals with church property, while amendment No. 3 in the name of Senator Mullen goes further in the context of individuals being allowed to discriminate. The amendments are designed to derogate from the normal equal status and equality provisions contained in existing legislation in order to allow for discrimination on grounds of sexual orientation. That is why I oppose them. Like many of the other amendments tabled, they seek to undermine objective behind the Bill.

The Minister outlined the arrangements — information in this regard is also set out in the explanatory memorandum to the legislation — whereby church property or other property is used for the solemnisation or celebration of civil partnership or marriage. In that context, I do not believe amendment No. 2 is necessary. It comes down to a choice with regard to where civil registration is to occur and whether there is solemnisation or celebration of civil unions.

On amendment No. 3, in circumstances where one provides or supplies goods or services, there are protected grounds set down in existing legislation which prevent discrimination. Where buildings owned by religious bodies are rented out for non-religious purposes to the public generally or to a section of the public, the provisions to which I refer apply. Said provisions prohibit discrimination on the nine grounds set out in the relevant Acts. The Bill before the House adds civil partnership status to the protected grounds by replacing marital status with an extended civil status ground.

Where a church or religious institution operates in a commercial environment such as that relating to the leasing or renting of properties, it is bound by the Equal Status Act in respect of the supply of goods and services. I do not see why that should be changed. In addition, I do not understand how it could conceivably undermine the ethos of a church or religious institution — the matter to which amendment No. 3 in the name of Senator Mullen relates.

I do not see a basis for these amendments, other than that they seek to maintain in our society discrimination on the grounds of sexual orientation. I urge, therefore, that they be rejected.

**Senator Rónán Mullen:** Senator Regan seems to be unaware — I know that this is not actually the case — of the many exceptions in our equality legislation which are designed to achieve the common good and protect people from capricious or unfair proceedings. Amendment No. 3 is the only amendment I have tabled on Report Stage. The rather delicate fig leaf of parliamentary scrutiny which obtained was ripped away by the decision to guillotine the debate on the Bill.

Amendment No. 3 would not undermine the objective behind the Bill in any way. It would, however, temper the effect of the Bill in some areas. While I wish those who will benefit from the legislation the very best — I am genuinely delighted for them — we should spare a thought for those whose freedoms will be curtailed by its enactment. As a result of what has happened here today, the Bill will leave the House tainted.

Amendment No. 3 is very much based on the existing section 37 of the Employment Equality Act 2000. It is interesting to note that the courts stated employment equality legislation would not have been constitutional were it not for the inclusion therein of section 37 which allows religious-run institutions to make employment decisions, where necessary, in order to prevent the undermining of their ethos. If that is the delicate balance required as a result of the provisions in the Constitution relating to freedom of conscience and religion, it should follow that the Bill before us which creates a new potential scenario because of the inclusion of civil status among the prohibited grounds of discrimination could lead to a curtailment of the freedom of religious institutions to act and operate fully on the basis of their ethos.

As with one of the amendments we discussed during the truncated Committee Stage debate, I have sought carefully to delimit the circumstances involved. It is not a question of allowing discrimination, rather it is a question of providing that certain situations shall not constitute discrimination. I have confined the amendment but enough scope is retained in order that “A religious institution or an educational, social or community organisation which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values” would not be taken to discriminate on the marital or civil status grounds or on the sexual orientation ground if it does not provide goods and services. I have further curtailed the provision by requiring that these entities would only enjoy such an exemption where it related to matters directly related to the occasion of such a solemnisation or registration or where it involved relationship counselling or adoption services. It would, therefore, be a clearly delimited ethos protection provision.

The reason I have brought forward this provision is, as stated on Committee Stage, there are different views and values within our society and the ethos of the religious institutions which have contributed so much to the life of this country for a long period differs from what is becoming the prevailing secular ethos. The question arises as to whether we should condemn them for this or whether we should find a way to accommodate them in order that the freedoms people enjoy will be balanced. That is what the amendment involves. It is not about discriminating against any section of the community, rather it is about following in the tradition of allowing certain exemptions to equality legislation. Such exemptions can be found at many locations for those who wish to seek them out.

Under the Bill before the House, there is a possibility that people’s right to live and act according to their ethos could be crushed. The protection offered under the proposal I have brought forward would come in two parts. The first relates to religious institutions and the second to private individuals, sole proprietors or small businesses. It cannot be stated amendment No. 3 relates to State officials, rather it relates to private providers of goods and services.

Does the Minister want such people to be obliged to lie? If a photographer would rather not spend the day taking pictures at a civil partnership ceremony with which he or she has a moral problem, do we want him or her to lie about his or her reasons for not offering his or her services? Does the Minister wish it to be the case that it should be fair dinkum for the Equality Authority to pursue such individuals? Do we want people to be obliged to lie and say they are busy in order that they do not have to supply their services? If we want to be mature and accept that our society really does believe in pluralism — after today's use of the guillotine I would be surprised if many actually did believe in it — we should try to find a way to accommodate the aspirations of others, even if we deplore them. Even if one deplores the aspirations or religious objections of others — I do not deplore them but there are others present who do — it does not follow that one should seek to crush them or discourage people from harbouring them, as was the case with religion in Soviet Russia.

Amendment No. 3 contains a narrow exemption which recognises that some have conscientious objections in this regard. The amendment would limit people's right to go their own way in respect of the circumstances directly relating to the occasion of a solemnisation or registration. I would include a celebration in this regard because I do not want the Minister to raise the stock point relating to a sacred space. I am not interested in that matter and have never made the argument in respect of it. I am referring to parish halls, church halls, halls owned by the Knights of Columbanus and so on. I am not espousing my own views on this matter. I regard myself as a pragmatic person and I am not necessarily sure what decision I would take in the circumstances to which I refer. As a legislator, however, I wish to legislate for people whose views I do not believe should be regarded as being second class.

That is all I have to say on the matter. I recognise that no matter what I say, I will be treated to the same answer as previously.

**Senator Ivana Bacik:** We have already spent more than four hours today engaged in a sort of farcical debate, with so much obstruction etc.

**An Cathaoirleach:** I ask the Senator to speak about the amendment.

**Senator Ivana Bacik:** I will refer to a related point, which is the non-issue of the hypothetical homophobic registrar who might at some point wish not to register a civil partnership. These amendments go well beyond the point we have already debated. Senator Mullen has suggested they are narrowly drafted — far from it. This measure would involve an enormous new exemption to the equality legislation. I agree with him that there are existing exemptions to the equality legislation. We should not add to them by providing for a further mandate or charter to discriminate. Amendments Nos. 2 and 3 would allow religious-run community centres and the owners of hotels and small businesses to discriminate not only against civil partners but also against people entering a marriage if it for some reason offended the religious ethos or views of the proprietor of the business or the manager of the community centre. If a previously divorced couple are remarrying and wish to have their reception in a hotel, the hotel owner will be permitted to refuse them under this measure without being subject to the equal status legislation. It is clear that these amendments would provide for extra discrimination by the back door. They would drive a coach and horses through the new civil partnership legislation and the existing equality legislation. We live in a republic. This is not a theocracy. The only justification for introducing amendments of this nature would be a theocratic one, to the effect that laws should derive in some way from the Christian churches, which were behind the drafting of some of these amendments, apparently.

**Senator Rónán Mullen:** I should say, for the avoidance of doubt, that they were not behind my amendments.

**Senator Ivana Bacik:** Senator Walsh has acknowledged the help he received from a church leader in drafting his amendments.

**Senator Rónán Mullen:** We do not know who helped the Senator to write her amendments.

**An Cathaoirleach:** I will ask Members to leave if they continue to interrupt. I cannot allow it.

**Senator Ivana Bacik:** I have acknowledged the work of Dr. Fergus Ryan on another amendment. Many of us believe the Catholic Church in this country already has too much power.

**Senator Jim Walsh:** On a point of information, the assistance I received did not come from the Catholic Church.

**Senator Ivana Bacik:** I am not suggesting that it was the Catholic Church.

**Senator Jim Walsh:** It was a Protestant church.

**An Cathaoirleach:** I remind the House that many Members have already had an opportunity to speak and other Members will get such an opportunity.

**Senator Ivana Bacik:** I will conclude by saying we will strongly oppose these amendments because we believe their acceptance would compound existing discrimination and undermine greatly the civil partnership legislation and the equality legislation.

**Senator Liam Twomey:** Many Members of the House understand the ethos of this country's churches and their members. These amendments seem to reflect the ethos of the churches in managing their affairs and the ethos of individuals in dealing with civil partnership unions. It is true that churches, like individuals, have rights. The people who are involved in civil partnerships have rights as well. The need to balance the rights of both groups is probably one of the reasons we have reflected on this legislation for so long. A forensic and detailed debate on this issue would have been very useful. I regret to say we have not had such a debate today, however. Senator Mullen has criticised Fine Gael Senators in this respect. When he gets an opportunity to read the transcript of the Committee Stage debate, he will see that it verged on the farcical. It did not deal with the core issues at all. It has destroyed the previous quality of the debate on this legislation.

**Senator Rónán Mullen:** That is ridiculous. What about the two hours Senator Regan took to deal with an amendment?

**Senator Liam Twomey:** That is the way I look at it. I would have loved to have heard a high quality debate on issues of this nature, such as the ethos of the churches in our society as it becomes more secular.

**Senator Rónán Mullen:** We were not even allowed five minutes for such a debate.

**Senator Liam Twomey:** If the Senator had been better at doing the debate, he would have had plenty of time to discuss the matter.

**Senator Rónán Mullen:** I refused to be completely intimidated.

**Senator Liam Twomey:** His approach of smirking down the back has done nothing for the three Members who have resigned the Fianna Fáil Whip or those who co-signed his amendments. He has made a farce of this debate.

**An Cathaoirleach:** I ask Senator Twomey to confine his remarks to the amendments.

**Senator Liam Twomey:** He tries to claim he upholds the standards of this House, but he has done huge damage to the quality of the debate in this House this afternoon.

**Senator Rónán Mullen:** That is a shameful remark. At least I was here.

**Senator Liam Twomey:** The Senator can examine the record. I was sitting here. I have sat through many debates in this House. I must say I was disappointed with the Committee Stage debate.

**Senator Rónán Mullen:** The Senator was not here.

**Senator Liam Twomey:** I respect some of the views that were expressed by other Senators who made good contributions. I respect them even if they do not necessarily share my point of view. That is the way it is. I would have loved a deeper debate on this issue. I would have loved to have heard the views of others who oppose certain aspects of this legislation. They might have suggested ways of overcoming those difficulties. We did not have time for that, unfortunately.

**Senator Rónán Mullen:** The Senator supported the guillotine.

**Senator Liam Twomey:** It is regrettable.

**Senator David Norris:** I am deeply appalled by these amendments. I am ashamed that Senators saw fit to table them on an Order Paper of this House. They have disgraced this Chamber. I accept that they have a fully democratic right to do so. I support that right. I retain a feeling of shame that my fellow citizens and Members of this House have behaved in such a way. If I heard Senator Walsh correctly, it appears that the wording of one of his amendments was supplied by a church.

**Senator Jim Walsh:** I was assisted by a Christian church.

**Senator David Norris:** I sincerely hope it was not a church with which I have any association.

**Senator Jim Walsh:** I do not know what religion the Senator is.

**Senator David Norris:** I consider it really appalling. I want to examine what the amendment actually means. I listened to Senator Quinn speak movingly about isolation and loneliness etc. I challenge him in that regard. Amendment No. 3 in his name proposes that people may be excluded by a “community organisation”. It seems that we are not to be part of community organisations at particular times.

**Senator Rónán Mullen:** No.

**Senator David Norris:** I ask the Senator to let me speak, if he does not mind.

**Senator Rónán Mullen:** The Senator is totally misrepresenting the amendment.

**Senator David Norris:** He has curtailed debate in this House quite enough.

**Senator Rónán Mullen:** The Senator voted for the guillotine.

**An Cathaoirleach:** I ask that Senator Norris be allowed to speak on the amendment without interruption.

**Senator David Norris:** Amendment No. 2 proposes that these organisations be allowed to refuse to “provide counselling”. The Senators want to prevent the provision of counselling. One of the worst aspects of the amendment is its reference to refusing to provide “services that directly facilitate the perpetuation” of the relationship. This measure has been proposed by the Senators who were talking about commitment and marriage. How dare they? Do they not feel ashamed? I should point out that some of these buildings may have been paid for by taxpayers’ money.

**Senator Frances Fitzgerald:** Yes.

**Senator David Norris:** The Senators in question, in the interests of a completely unelected body, presume to dictate how such facilities should be used. I do not care if the church that assisted with the compilation of this amendment is my church, although I would like to know if it is. If that is the case, I will contact the Archbishop of Dublin, Dr. Neill, tonight. I doubt he had anything to do with it because I know he is an honourable man.

I wish to speak on the rest of this disgusting tissue. It seeks to allow “any private individual, sole proprietor or small business” to refuse to provide goods and services. Are we to protect a shop that refuses to sell wedding trinkets or a bouquet of flowers? I cannot believe that gentle people I have respected for so long — Senators Ó Murchú and Quinn — have signed their names to such a proposal. If either of them is surprised, or expresses shock, that the gay community might feel antipathy towards a church, I suggest to them that the antipathy is coming entirely the other way, if it is the case that these proposals were drawn up by a church. I cannot believe that having heard the strong expression of my genuine feelings yesterday, Senator Quinn signed his name to this shocking piece of attempted or purported legislation.

**Senator Ivana Bacik:** Hear, hear.

**Senator Fiona O’Malley:** These amendments are not worthy of support due to their discriminatory nature, as outlined by Senator Regan. Senator Norris has highlighted how shameful they are and what it would mean if they were accepted. Senator Bacik alluded to the manner in which those who have proposed these amendments have sought comfort by referring to exemptions in other legislation. I agree with her that we should be providing for fewer exemptions rather than more. The last thing we should do is provide for more exemptions. When we draft legislation, we should always seek to provide for equality. The more exemptions we have, the less equal is the legislation. I do not think I share the same understanding of the word “discrimination” as others who have spoken about it, including Senator Mullen. He does not seem to think that exempting and listing people counts as discrimination. I agree with Senator Norris that when one examines what is being proposed, one would expect people to be ashamed to put their names to it. What we have lost sight of is a sense of the purpose of this legislation which is to provide a legal basis for people in a loving relationship——

**Senators:** Hear, hear.

**Senator Fiona O'Malley:** —and provide comfort for that. We are bogged down now in all kinds of nonsense. As Senator Bacik said——

**An Cathaoirleach:** Speak to the amendment.

**Senator Fiona O'Malley:** I am speaking to the amendment. Senator Bacik said the situation was entirely hypothetical because no credited existing registrar has objected to this.

**Senator Rónán Mullen:** The Senator would prefer to think the law can be used to go after people.

**Senator Fiona O'Malley:** I had intended to speak on section 23 but decided there was no point. The most objectionable point about it was that comfort was being sought for the hypothetical registrar as if he or she were the injured party when the injured parties were those people being denied the right to marry. That was lost sight of completely. These amendments do not warrant anyone's support.

**Senator Frances Fitzgerald:** If these amendments were accepted they would give a significant mandate to discriminate and, in effect, would provide an agenda for discrimination. There is no doubt about that. I agree with Senator Bacik that, without question, they would make a coach and four to go through equality legislation. They would allow for discriminatory actions in the provision of a range of services — in hotels, shops——

**Senator Jim Walsh:** Not in ours.

**Senator Frances Fitzgerald:** ——florists, all sorts of places including hospitals. The amendments could lead to that.

**Senator Rónán Mullen:** Senator Fitzgerald should read the amendments.

**Senator Frances Fitzgerald:** The ethos encapsulated in these amendments should not belong in a civilised and tolerant society that promotes equality.

**Senator Eugene Regan:** A Christian society.

**Senator Joe O'Toole:** To my colleagues who tabled these amendments I say, "You just don't get it." If a reinforcing argument was needed for passing this legislation today, it is found in these two amendments. I have just re-read section 7 of the Equal Status Act which has similar wording, as Senator Mullen noted. Doing so brought back the sick feeling I had in my stomach when that legislation went through.

**Senator David Norris:** Hear, hear.

**Senator Rónán Mullen:** Did the Senator oppose the current——

**Senator Joe O'Toole:** I did.

**Senator David Norris:** So did I.

**An Cathaoirleach:** No interruptions, please. Members have had an opportunity to speak.

**Senator Joe O'Toole:** I saw the law being abused for the past ten years to threaten, frighten and control people, especially teachers who had not come out in regard to their sexual orien-

[Senator Joe O'Toole.]

tation. I have seen this repeatedly and have met teachers and groups who outlined chapter and verse to me but would not allow me to become involved or do anything. One walks away angry, biting keen to do something but afraid to because that would expose or further threaten those people. On occasion, Senator Norris attended some of those meetings with me. I felt inadequate as a public representative.

The idea that people celebrating their relationship cannot go and buy a box of burgers or whatever they want for a barbecue is appalling. It is only one step from not being allowed breathe the air or come into a room. It is appalling, distasteful and offensive.

I ask my colleagues, having listened to the debate, to withdraw the amendments and not put this issue to a vote. It undermines all the arguments made. One cannot support those two amendments and at the same time claim to support the rights of people who, in different ways, are the subject of this Bill. It does not add up. Both notions do not come together. It also proves another point which I have been making since 1977. Before one can change habits and attitudes one must change legislation. The Employment Equality Act 1977 did more to change attitudes than any other factor. No attitudes were changed until that came about.

This is crucial. If this measure were applied to any other group in society, whether Travellers or anyone else, people would be appalled. It is desperate. As to ethos, I have appealed 24,000 times for someone to define that word. We finished up in primary schools with 3,000 different applications — perhaps I should call them ethoi — but there is no definition in the Education Act, the Equal Status Act or the amendment to the Employment Equality Act. Ethos means whatever people wish it to mean. It is Alice in Wonderland stuff, it is what I say it means. If one uses words such as “undermining” or “maintaining” or “essential to the ethos”, one winds up in court and is told that something quite other is the ethos as seen by another person. Ethos can be anything and there are no restrictions on it. This is open sesame to discriminate. It is worse than anything in the Equal Status Act. Once again, it is proposed to give licence to people to run through the legislation. I appeal to my colleagues who tabled these extraordinarily distasteful, offensive and embarrassing amendments to withdraw them.

**Senator Niall Ó Brolcháin:** I am very much on Senator O'Toole's side with regard to this. I am very disappointed in these amendments. I remember walking through the countryside as a young man——

**An Cathaoirleach:** We are discussing the amendments.

**Senator Niall Ó Brolcháin:** This relates to them and is important. I remember walking through the countryside and coming across——

**An Cathaoirleach:** There is very little about walking through the countryside in this.

**Senator Niall Ó Brolcháin:** ——a mass rock. That was a place where at one time in this country people had to go to celebrate mass, compelled to hide away from society to do so. In regard to the present discussion, where will people celebrate civil partnerships? In what places will homosexual couples get together under this legislation? These two amendments attempt to ensure there will be nowhere where people in a loving civil partnership can get together. That is appalling.

**Senator Rónán Mullen:** That is not true.

**Senator Niall Ó Brolcháin:** It is atrocious, especially in the light of what was the case at one time in this country. There was discrimination against Catholic people in regard to the celebration of masses.

**Senator David Norris:** Hear, hear.

**Senator Niall Ó Brolcháin:** That was equally appalling. I hope these amendments are not pressed because I am appalled by them.

**Senator Lisa McDonald:** Senator Mullen accused the Seanad of a lack of refined thinking. These amendments show lack of progressive thinking, in particular amendment No. 3 which is blatantly discriminatory thinking at best. I appeal to the Senator not to press it. There are some brilliant examples in the history of this country, instances in many areas, at many times, where minorities have been trodden upon. Why would anyone want to introduce a measure that would give a green light to people to discriminate against a minority of people?

We are here today to try to right that wrong and bring our society forward. If Senator does not mind me saying it, he is a disgrace.

**Senator David Norris:** Hear, hear.

**An Cathaoirleach:** I do not like that language to be directed at anyone.

**Senator Jerry Buttimer:** I will stick to the amendment. I remind Senator Mullen that since 2000, it has been against the law——

**Senator Rónán Mullen:** I do not——

**Senator Jerry Buttimer:** The Senator might care to listen. He has not listened to me all day.

**An Cathaoirleach:** Discussion is through the Chair and on the amendments.

**Senator Jerry Buttimer:** He might learn.

**An Cathaoirleach:** We are dealing with amendments on Report Stage.

**Senator Jerry Buttimer:** How one learns is important.

**An Cathaoirleach:** Please. I shall call the Minister to speak.

**Senator Jerry Buttimer:** I remind those Members who tabled these amendments today that since 2000 it is against the law to discriminate in the provision of goods and services based on nine grounds, namely, gender, age, race, nationality, sexuality, marital status and membership of the Travelling community. I understand the beliefs of those who tabled the amendments although I do not agree with them. If we were to accept this amendment, it would maintain discrimination. As Senators Ó Brolcháin, McDonald and others have noted, it would send people further underground.

6 o'clock

**Senator Joe O'Toole:** It would be legislative discrimination.

**Senator Jerry Buttimer:** It would make discrimination legal. I fail to see Senator Mullen's point about the amendment achieving common good. How would it achieve the common good? What is the common good? What does he understand by common good according to this amendment? To me, as a Christian, a Catholic and a legislator, this is not about common good

[Senator Jerry Buttimer.]

or maintaining the rights of people. This is erosion and the taking away of rights. This is not about the common good but about putting forward a proposition to play to the Senator's electoral gallery. Let us get real. I do not say that about some of the Members opposite.

**An Cathaoirleach:** Senator, please. My hands will be tied at 6 p.m. and I would like the Minister——

**Senator Rónán Mullen:** I never used anything but reasoned arguments. The Senator should withdraw that remark.

The Senator is accusing me of being a political cynic. He should be ashamed of himself.

**Senator Jerry Buttimer:** I am accusing the Senator being a political cynic.

**Senator Rónán Mullen:** He does not mind what he accuses people of.

**Senator Jerry Buttimer:** I absolutely am accusing the Senator of being a political cynic.

**An Cathaoirleach:** Senator Buttimer, I must now call the Minister.

**Senator Rónán Mullen:** Senator Buttimer should not be accusing people of anything. He has no respect for people's characters or anything.

**An Cathaoirleach:** The time allocated is up. My hands are tied in that respect. I want to give the Minister a minute to reply.

**Senator Jerry Buttimer:** I have absolute respect for people's characters. I completely respect Senators Walsh, Hanafin and Ó Murchú.

**Senator Rónán Mullen:** I completely despise the Senator's hatred.

**Senator Jerry Buttimer:** I have no hatred.

**An Cathaoirleach:** I want to give the Minister a minute to reply.

**Senator Jerry Buttimer:** I will conclude on this point.

**An Cathaoirleach:** My hands are tied due to the order of the House.

**Senator Jerry Buttimer:** I have no hatred whatever in my body.

**An Cathaoirleach:** The time will be up and I will not be able to call the Minister.

**Senator Jerry Buttimer:** I am a person full of love and spirituality and I embrace all people.

**An Cathaoirleach:** Unfortunately, I advise the Minister I will not be able to call him to reply.

**Senator Jerry Buttimer:** If this amendment is accepted, this Bill will be rendered useless.

**An Cathaoirleach:** Unfortunately, my hands are tied and I am unable to call the Minister.

As it is now 6 p.m. I am required to put the following question in accordance with an order of the Seanad of this day: "That amendment No. 2 is hereby negatived; that Fourth Stage is hereby completed; the Bill is hereby received for final consideration; and the Bill is hereby passed".

Is that agreed?

**Senators:** No.

Question put.

The Seanad divided by electronic means.

**Senator David Norris:** As this is an historic occasion, I would like a manual vote.

**An Cathaoirleach:** As the Senator is not a teller, will the Senators supporting his request please stand?

*More than four Members rose.*

**An Cathaoirleach:** The vote will now proceed.

Question put:

The Seanad divided: Tá, 48; Níl, 4.

Tá

Bacik, Ivana.  
Boyle, Dan.  
Bradford, Paul.  
Brady, Martin.  
Burke, Paddy.  
Buttimer, Jerry.  
Cannon, Ciaran.  
Carroll, James.  
Carty, John.  
Cassidy, Donie.  
Coffey, Paudie.  
Corrigan, Maria.  
Cummins, Maurice.  
Daly, Mark.  
Dearey, Mark.  
Doherty, Pearse.  
Ellis, John.  
Feeney, Geraldine.  
Fitzgerald, Frances.  
Glynn, Camillus.  
Hannigan, Dominic.  
Healy Eames, Fidelma.  
Keaveney, Cecilia.  
Leyden, Terry.

MacSharry, Marc.  
McCarthy, Michael.  
McDonald, Lisa.  
McFadden, Nicky.  
Mooney, Paschal.  
Norris, David.  
Ó Brolcháin, Niall.  
Ó Domhnaill, Brian.  
O'Brien, Francis.  
O'Donovan, Denis.  
O'Malley, Fiona.  
O'Reilly, Joe.  
O'Sullivan, Ned.  
O'Toole, Joe.  
Ormonde, Ann.  
Phelan, John Paul.  
Quinn, Feargal.  
Regan, Eugene.  
Ross, Shane.  
Ryan, Brendan.  
Twomey, Liam.  
White, Alex.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Hanafin, John.  
Mullen, Rónán.  
Ó Murchú, Labhrás.

Walsh, Jim.

Tellers: Tá, Senators Niall Ó Brolcháin and Diarmuid Wilson; Níl, Senators Rónán Mullen and Feargal Quinn

Question declared carried

**An Cathaoirleach:** Owing to pressures of time, I will call only the Minister and lead speaker from each of the parties and the Independent group.

**Deputy Dermot Ahern:** As I am under time constraints, I appreciate the Cathaoirleach allowing me to speak and thank him and the staff of the Seanad. I also thank my staff who have been working with me on the Bill for a number of months. They have been excellent and available at all times and the job they have done is a credit to the public service. We heard a great deal about public servants having objections or otherwise to doing their public duty. I assure the House that in this instance we have been very well served. I thank the Attorney General and the staff of his office who were also assiduous in the responses they provided, particularly given the constraints of time.

As I stated, both in this House and the other House, my party, before the previous general election, made a commitment to provide a legal framework for gay and lesbian couples. The preamble to this was a statement that it was to be done based on the republican ethos of our party and the equality agenda to which we are committed. These were significant words and this is a proud day for my party that we have been able to introduce this progressive legislation. I fully accept, however, that there are people inside and outside my party who may have difficulties with the Bill. That public representatives can argue their position without falling out with each other shows a sense of maturity. As I stated previously, I have good friends on the other side of this equation but we will remain friends following the enactment of the Bill.

As I noted on Second Stage, one thing we learned and I, as a heterosexual person, had not appreciated was that other people are directly affected by the lack of rights and duties available to gay and lesbian people. They include family members and friends who are affected as a result of the difficulties associated with a person coming out as gay or lesbian.

This has been a good day's work for the Oireachtas and politics generally. I stated, to a certain extent jocosely, that I should examine my conscience. In my 23 years in Leinster House and especially in my 13 years as a Minister, I have not had so many people on all sides agreeing with me. I do not believe I have ever secured such a large majority in this House. While I may have had frayed nerves on Committee Stage, the speeches made on Second Stage were a credit to this House and public representatives of all political parties. In that respect, I pay due regard to the Fine Gael Party and Labour Party in both Houses, the other parties and the Independent Members of the Seanad. This is a good day for politics and I thank everyone for their forbearance in ensuring the Bill passed. I hope it will be signed into law by the President in due course. Go raibh maith agaibh.

**Senator Eugene Regan:** I welcome the enactment of this Bill. I have never worked so hard to get Government legislation through the House. As one can see, all Fine Gael Party Senators supported the Bill because it is the right thing to do. It is good legislation that is modelled on Fine Gael's policy document of 2004 which carved out the civil partnership approach to resolving this problem in a manner that does not trespass on the constitutional guarantees and protection for the family.

The Bill reflects changes in society, the extent of same-sex couple and cohabitee relationships and the acceptance by the vast majority that civil union relationships should be given legal recognition and protection. It is also an attempt to end the victimisation, discrimination and hostility which has been shown to the gay community over the years. For Members of the House it has been an exercise of conscience to be fair and reasonable and tolerant of the gay community. It is the Christian thing to do. That is what we have done here over the past two days. We have had a good debate. It deteriorated at certain times and became a sham debate. It became taut because there is an issue of discrimination. The objective of the Bill was to end discrimination and we did not want to see any of that creep back into the Bill. I commend the work of the Department, the Minister and everyone who contributed to it. The input of the Independent Senators who have spoken and raised issues made for a good debate. It was too

prolonged, but nevertheless valid issues were raised. The debate centred on the merits of those arguments more than on the personalities. I am very happy with the Bill and I am happy that we have fully supported it. It is legislation that reflects a more modern Ireland.

**Senator David Norris:** This is a truly historic day. I agree 100% with the Minister, Deputy Dermot Ahern, that we have done a good day's work. In fact it has been a good couple of days' work. I note with some pleasure the collaborative nature of our efforts. The Minister said it was a Fianna Fáil Bill. We then learned that it was modelled on a Fine Gael Bill. I do not think we should leave out the Green Party without whose pivotal involvement we might not have had the Bill at all. I also acknowledge the Labour Party which was second into the field because with my usual modesty I must point out that I put the first Civil Partnership Bill before this House.

As the Minister knows I had reservations. I was very concerned about the children. I very much welcome the clear and positive indications he has given that what we all agree is a lacuna in the Bill will be speedily addressed, to which I very much look forward. I had intended and had signalled my intention to vote against the Bill, but after the extraordinary and dramatic developments of the past one and a half hours, I was left with absolutely no moral alternative to walking through the division lobbies with all my colleagues. I never thought in my dreams that I would walk shoulder to shoulder with almost the entire membership of Seanad Éireann into the division lobbies to vote for this kind of wonderful liberalising legislation. I am proud that this day has come. It is a massive overwhelming victory. It is a victory, not for gay people nor for Fianna Fáil, Fine Gael, the Green Party, Labour or the Independents; it is a victory for decency and for this country.

**Senator Ivana Bacik:** I add my voice to the voices of others very much welcoming the passage of the Bill. I thank the Minister and his officials who have worked so hard on the Bill. I ask the Minister not to get too used to such a big majority; it may not last. However, it was nice to be part of such a genuine consensus on the issue. I also thank the many non-governmental organisations and individuals, some of whom are in the Gallery now, who have worked for so many years to make this happen. It has been a long road to introduce this legislation. It is 17 years since the decriminalisation of homosexuality. Senator Norris and others have been working for many years on this legislation. A tribute must be paid to Senator Norris who introduced the first legislation on civil partnership, followed closely, of course, by the Labour Party with the two Bills introduced in the Dáil by Deputy Howlin in 2006 and 2007. All parties rightly support this legislation. It is a great day to see that we all support it.

Of course, the Labour Party has been critical of the legislation. We said it does not go far enough. In particular we were critical of the major omission of children and children's rights from the Bill. However, I was very heartened by what the Minister said last night in proposing a comprehensive review of children's rights in other legislation to come. We very much look forward to that. We are also very heartened by such a major shift in public opinion and such a vast majority in favour of the legislation as shown by the very small minority who sought to oppose it.

This is a day for celebration. We all look forward very much to the first civil partnership ceremony taking place in this jurisdiction and we see it very much as a stepping stone and a step forward towards true equality for gay people and all of us in society.

**Senator Lisa McDonald:** On behalf of the Fianna Fáil Party, I acknowledge the wonderful work done by the Minister, his staff and the staff of the Houses of the Oireachtas. The Minister put considerable personal effort and thought into the Bill. It is ground-breaking legislation that will join him with people such as the wonderful Máire Geoghegan-Quinn who decriminalised

[Senator Lisa McDonald.]

homosexuality back in 1993. In years to come when we look back at ground-breaking legislation, the Minister, Deputy Dermot Ahern, will go down in the annals of history for his courage in bringing this Bill through the Houses today.

The legislation gives rights to gay and lesbian people that they did not have yesterday, which gives grounds for celebration. I am delighted the mood has lifted in the Chamber. We had a very fraught Committee Stage and a very taut Report Stage. That is all about difference of opinion that must be respected, which is why we are here debating the legislation. The benefit of Seanad Éireann is that we get to air these views. It would be fair to say that if we did not have differences of opinion in politics, we would just be in the realms of public administration. As politicians we need to lead. Today we have led the country the right way forward in progressive legislation that will only make people's lives better. When we talk about people's lives, we must acknowledge that gay and lesbian people now have rights that they did not have and also their families do not need to worry so much any more. Their mothers and fathers can relax. It is to be hoped they can enjoy their new-found rights and settle down to enjoy their lives. I hope it lifts much of the pressure that has been on them in the past 17 years since the decriminalisation of homosexuality as we moved towards this point today. The summer of 2010 has been a very historic time and I am delighted to be here today to welcome and to have supported the passage of the Bill through the House.

**Senator Dan Boyle:** I thank you, a Chathaoirligh, those who sat in the Chair on your behalf and the staff of the Seanad for their patience, forbearance and even-handedness. I especially thank the Minister for his stewardship of the Bill through both Houses of the Oireachtas. His name will rightly be associated with one of the most significant pieces of social legislation in this country, on which I congratulate him. I thank the Members of the House for conducting a debate full of passion and directing Ireland towards a future vision of all citizens being treated more equally. I thank those who have waited so long for a day such as this, knowing that the Ireland to which we will wake up tomorrow will be a different Ireland. It will not have changed utterly, but it will have changed significantly. Our gay friends, our gay family members and other gay members of our community can now walk taller knowing there are rungs on a ladder that have yet to be clung to. I thank all Members for their co-operation in this debate.

**An Cathaoirleach:** A number of other people wish to contribute, but to be fair I only wanted to take the group leaders or spokespeople from the different sections.

**Senator Jim Walsh:** Given the stance that some of us took — I am talking in particular about Senators Hanafin, Ó Murchú and me — I would like to say a few words if possible.

**An Cathaoirleach:** If I take Senator Walsh I should take other Members.

**Senator Alex White:** On a point of order, I have no objection to Senator Walsh making a brief contribution.

**An Cathaoirleach:** As other speakers have taken less than two minutes, I will allow Senator Walsh to speak.

**Senator Jim Walsh:** Obviously, we had concerns. We expressed concerns over marital status, siblings, freedom of conscience for people, and children. The step we took was done from our own genuine beliefs and we acted in accordance with those beliefs. People may criticise us for it and obviously we are getting messages from people who disagree and those who agree. It gave rise to a debate on issues of real importance as to the core values we have in our Republic.

I recognise that this is a very important day for those in the gay community who are in same-sex relationships. I know that the rights and entitlements which you will gain will give them opportunities in life when they commit to each other which I know they will value. While I have taken an opposing view on certain aspects of the Bill, I wish them everything I would wish for myself and my family.

I thank the Minister and his officials who have been very helpful to us, as the three of us would acknowledge. We went through the Bill microscopically with the Minister. We might not have agreed on everything, but we have been friends for a long time and agreed a long time ago that our differences on the Bill would not cause a breach. I know he is anxious to get away and where he is going.

**Senator Rónán Mullen:** If I might just——

**An Cathaoirleach:** I am sorry; I allowed one person from the group which was opposed to the Bill to speak. I have given most an opportunity to speak.

**Senator Pearse Doherty:** On a point of order, this is an historic day. As the sole representative of Sinn Féin in the House, I would have liked to have had an opportunity to express my appreciation.

**An Cathaoirleach:** I understand that. I assumed the Senator was part of the independent group of Senators.

**Senator Pearse Doherty:** I am not a member of any grouping.

**An Cathaoirleach:** I understood the Senator was part of the independent group.

**Senator David Norris:** He is with Sinn Féin.

**Senator Pearse Doherty:** I am not part of any grouping. I will be very brief. On behalf of my party, I thank the Minister for being here throughout Committee Stage to assist us during the debate which was historic. This is an emotional day for those who have campaigned long and hard. I have outlined my party's position on the Bill which does not go far enough. However, I recognise the rights it confers on the gay, lesbian and bisexual community. Whoever the Bill belonged to, be it Fianna Fáil, Fine Gael, the Green Party or Independents Members, the reality is that as soon as the President puts her signature to it, it will be the people's.

**Senator David Norris:** Hear, hear.

**Senator Pearse Doherty:** This is a great day on which to rejoice. I am glad to be voting the Bill through the Seanad. Only a very small minority has opposed it.

Question put and agreed to.

### **Business of Seanad**

**Senator Donie Cassidy:** I propose an amendment to the Order of Business that No. 2 be taken without debate now.

**An Cathaoirleach:** Is that agreed? Agreed.

**Banking Reports: Referral to Joint Committee**

**Senator Donie Cassidy:** I move:

That Seanad Éireann requests the Joint Committee on Finance and the Public Service to consider the following reports:

- ‘The Irish Banking Crisis: Regulatory and Financial Stability Policy 2003-2008’, by the Governor of the Central Bank, and
- ‘A Preliminary Report on the Sources of Ireland’s Banking Crisis’, by Klaus Regling and Max Watson,

which were laid before Seanad Éireann on 9th June, 2010; and

taking account of the emerging EU proposals relating to fiscal and economic governance, to conclude its deliberations by 30th October, 2010 and to publish and report back to Seanad Éireann its findings and conclusions no later than 4th November, 2010 on the following key policy lessons in relation to macro-economic management set out in the report by Klaus Regling and Max Watson:

- the role of macro-economic management and surveillance in securing the long-term sustainability of Ireland’s economic performance and also in responding on a timely basis to risks and imbalances that may build-up in both the private and the public sectors of the economy, including external imbalances vis-à-vis other euro area members and the funding of any imbalances that might arise;
- the role of fiscal policy in securing an appropriate alignment of the national business cycle with monetary conditions in the economy;
- the requirement for the design and conduct of budgetary and taxation policies to take account of the cyclical nature of particular revenues as well as their temporary nature in certain circumstances in order to maintain an appropriate and effective tax base; and
- the case for the establishment of new institutional structures to provide an independent validation of economic and fiscal projections as well as for the introduction of domestic medium-term fiscal rules.

Question put and agreed to.

**Business of Seanad**

**Senator Donie Cassidy:** I propose that No. 3 be taken for 25 minutes to conclude at 7.20 p.m. and that Senators be allowed to speak for five minutes.

**An Cathaoirleach:** Is that agreed? Agreed.

**Commission of Investigation (Banking Sector) Order 2010: Motion**

**Senator Donie Cassidy:** I move:

That Seanad Éireann:

- having regard to the significant public concern about the scope and cost of measures that have been necessary to stabilise the Irish banking sector;

- noting the recommendations of the reports, ‘The Irish Banking Crisis: Regulatory and Financial Stability Policy 2003-2008’, by the Governor of the Central Bank, and ‘A Preliminary Report on The Sources of Ireland’s Banking Crisis’, by Klaus Regling and Max Watson, which were laid before Seanad Éireann on 9th June, 2010;
- noting the Government decision of 9 June, 2010 referring these reports to the Joint Oireachtas Committee on Finance and the Public Service for its consideration and input into the preparation of the terms of reference for a commission of investigation;
- noting the acceptance by the Government of the seven key policy lessons outlined in Part IV of the report by Klaus Regling and Max Watson and the proposal to refer for further consideration by the Joint Oireachtas Committee on Finance and the Public Service the macro-economic policy lessons arising from the reports;
- noting that it is the opinion of the Minister for Finance that a commission of investigation represents the best method of further investigation of specific serious lapses in respect of specified credit institutions;
- further noting that a draft Order proposed to be made by the Government under the Commissions of Investigation Act 2004 (No. 23 of 2004) has been duly laid before Seanad Éireann in respect of the foregoing matters referred to, together with a statement of reasons for establishing the commission under the Act;

approves the draft Commission of Investigation (Banking Sector) Order 2010, copies of which were laid before Seanad Éireann on 7 July, 2010.”

**Minister of State at the Departments of Finance and Tourism, Culture and Sport (Deputy Martin Mansergh):** Last January the Minister for Finance set out in the Dáil a framework of investigation into the problems that arose in the Irish banking sector. He stated a comprehensive understanding of the events that took place in the banking sector in recent times was an essential component of recovery. He noted that, as a Government and Members of the Oireachtas, we had a duty to ensure not only that the origins of the crisis were understood, but that lessons were learned and that international and domestic confidence in the banking system was restored in order that the economy could return to growth and employment creation.

As the first stage of the process of investigation, the two preliminary reports prepared by Klaus Regling and Max Watson and the Governor of the Central Bank, respectively, provide a comprehensive and authoritative examination of the crisis in the banking sector in Ireland. The authors have given us a detailed and insightful analysis of the global, European and domestic macro-economic factors at play in the relevant period. Governor Honohan’s report details the failures in our regulatory and supervisory arrangements and the weaknesses in the evaluation of the stability of the banks.

The reports draw attention to a number of issues which require further analysis and provide a sound basis for the further investigation of these significant issues. The Government welcomes their direction in this respect. They were laid before the Houses of the Oireachtas on 9 June and debated. The Joint Committee on Finance and the Public Service has had two separate and lengthy engagements with the authors and subsequently with the Minister to discuss how we should proceed. The meetings allowed a comprehensive airing of the issues raised in the reports and a necessary rebalancing of the initial interpretation and media commentary by highlighting the complex interplay of factors at work that culminated in the extreme turbulence that impacted on the banking system in September 2008.

[Deputy Martin Mansergh.]

In their report Klaus Regling and Max Watson distinguish between those issues that are amenable to further investigation through a legally orientated process and other issues which are less concrete and verifiable and may be more appropriately the subject of policy review. This distinction formed the basis of the Government's proposed approach to the next steps in the process.

I draw the attention of the Seanad to a number of points about the findings of the preliminary reports. Both reports, in particular that of Mr. Regling and Mr. Watson, describe in some detail the nature of the explosion in the availability of credit in the Irish banking sector and characterise the failures in governance and risk management in the banks as "disastrous" and ultimately leading to systemic difficulties in the financial system. What went on in the banks leading up to the crisis remains a cause of significant public concern. The public interest demands that we investigate the very serious failures in the standards and controls that should have ensured prudent risk management policy and procedures.

It is clear that there were particularly egregious failures in corporate governance and risk management at Anglo Irish Bank and Irish Nationwide Building Society. Certain matters are already the subject of investigation by the relevant authorities and I do not propose to comment on these. However, there is a clear need to examine more deeply and broadly what went wrong in these two organisations, while taking account of the other investigations. That is why the draft terms of reference prepared by the Government specifically set out the need for a full examination of the business models and strategies adopted by the boards of these institutions and the implementation by their senior managements of business and lending practices which resulted in these institutions experiencing such uniquely severe financial distress. The investigation will cover the period from 1 January 2003 to 15 January 2009, the date on which Anglo Irish Bank was nationalised.

Building on the need to investigate failures in governance and risk management, it is proposed that the commission also investigate whether the external auditors commented in their audit reports on the standards and controls and risk management policy and procedures, or on the business models and strategies and business and lending practices that led to the severe difficulties experienced by the banking system.

On foot of the analysis by Governor Honohan of the failures of financial supervision, there is a need for further examination of the nature of supervision and oversight of the banks by the Financial Regulator. For this reason, it is proposed that the commission examine the failures of the Central Bank and the Financial Regulator to regulate and supervise the covered institutions and maintain financial stability.

The terms of reference in the draft order laid before the Houses address each of these points in the light of the findings of the preliminary reports. Under the Commissions of Investigation Act 2004, a commission of investigation may be established by the Government, with the approval of the Oireachtas, to investigate any matter considered to be of "significant public concern". There can be no doubt that the banking crisis and its origins fall squarely within that category. It has had a profound impact on the State and its financial position and we will live with its consequences for some time to come. It is essential that we identify what went wrong and why and that we learn the lessons of the past to ensure we never make the same mistakes again.

The Minister announced this morning that Mr. Peter Nyberg, the former director general for financial services at the Finnish Ministry of Finance, has agreed to lead the commission. Mr. Nyberg has all the necessary experience to undertake this important role. He will be supported

by the expertise he requires and provision has been made in the Estimate for the Department of Finance for this year to cover the costs of the commission.

There are ongoing investigations by the relevant regulatory and other authorities into specific matters of a serious nature in a number of institutions. The commission of investigation will not supplant or hinder these investigations. In fact, it is open to the relevant authorities to initiate further investigations into additional possible breaches arising from any findings the commission may make.

The motion before the Seanad seeks approval of the draft Government order laid before the Houses yesterday providing for the establishment of a commission of investigation into the banking sector.

I draw the attention of the Seanad to the Government's decision, following the recommendation of the Joint Committee on Finance and the Public Service, to extend the period to be covered by the commission of investigation from 1 January 2003 to 15 January 2009. This means the commission will now be in a position to examine all relevant matters relating to corporate governance and risk management in each of the banks covered by the Government's guarantee up to the date of the Government's decision to nationalise Anglo Irish Bank.

The second motion before this House seeks to refer certain macro-economic policy lessons to the Joint Committee on Finance and the Public Service arising from recommendations set out in the Regling and Watson report. As is clear from that report, these policy issues can be divided into two groups — those that relate to macro-economic management and those that relate to financial stability and prudential-supervisory matters. The former are primarily the responsibility of the Minister for Finance in the first instance and the latter fall within the remit of the Central Bank and Financial Regulator.

The Government is, therefore, proposing that the joint committee, taking account of the emerging EU proposals on fiscal and economic governance, examines the following matters highlighted in the Regling and Watson report: the role of macro-economic management and surveillance in securing the long-term sustainability of Ireland's economic performance and also in responding on a timely basis to risks and imbalances that may build up in both the private and the public sectors of the economy, including external imbalances *vis-à-vis* other euro area members and the funding of any imbalances that might arise; the role of fiscal policy in securing an appropriate alignment of the national business cycle with monetary conditions in the economy; the requirement for the design and conduct of budgetary and taxation policies to take account of the cyclical nature of particular revenues as well as their temporary nature in certain circumstances in order to maintain an appropriate and effective tax base; and the case for the establishment of new institutional structures to provide an independent validation of economic and fiscal projections as well as for the introduction of domestic medium term fiscal rules.

7 o'clock  
Following discussions between the committee and the Minister, it is understood the committee is agreeable to the main elements of the overall proposed scope. It is proposed that its deliberations be concluded by the end of October in order to publish and report back to this House and to the Dáil by 4 November 2010.

In regard to the issues within the remit of the regulatory system, the House will be aware that the Central Bank published a report on 21 June setting out its proposed approach to future regulation of the banking sector. This report also addresses how the range of measures it is putting in place will address the issues raised in the Governor's report and that of Messrs Regling and Watson. This is another step in the road to the recovery of our banking system.

It is the Government's view, underpinned by the two preliminary reports, that certain decisions and processes, which are fundamentally political in nature, are not amenable to an

[Deputy Martin Mansergh.]

investigation, the purpose of which is to make findings of fact. The Government will not be changing its position on that point and there are no good reasons for it to do so.

It must also be made clear that the Department of Finance will feature in significant ways in both of these investigations. First, the terms of reference of the commission require it to examine whether any advices or directions given by the Department of Finance to the Financial Regulator were, in any way, relevant to failure of the Financial Regulator in the performance of its supervisory functions. Second, in regard to the proposed policy review by the committee, the Minister has already indicated his availability to meet the committee as the accountable Minister to assist it in its deliberations as necessary. The Minister and the Government have at all times remained accountable to the Oireachtas for decisions taken. That will continue to be the case.

In addition, as the Minister has already indicated, he is establishing an independent review by an international expert or experts with relevant international and-or domestic experience to evaluate the systems, structures and processes used by the Department of Finance in providing advice to the Minister and the Government. The review will examine the Department's role and performance in the past ten years in providing advice to the Minister and the Government.

The matters we are discussing are important and will have enduring consequences for future economic and financial policy. It is appropriate, given the scope and cost of measures that have been necessary to stabilise the Irish banking sector, that it be fully and completely investigated and the lessons learned in order to put in place the best systems and structures in the future so this kind of crisis can never happen again. I commend the motion to the Seanad.

I apologise to Senators for galloping through my speech but time is limited and it was for the purpose of allowing them to have their say.

**Senator Liam Twomey:** I welcome the investigation of the banking reports by the Joint Committee on Finance and the Public Service, the establishment of a banking inquiry and the review of the Department of Finance over the period to which the Minister of State referred.

However, there are other very important issues. There is a need to ensure there is a rapid investigation by the Garda and State authorities to restore confidence in our economic system. It has been a long time since the Garda went into the headquarters of Anglo Irish Bank. We need to know how that investigation is proceeding and whether prosecutions will be forthcoming from it. If anything is *sub judice*, it will hinder the work we can do in regard to other aspects of the investigation.

We have put much time and money into NAMA but we now find that the information we were given last October is complete bogus. We cannot allow that sort of thing to happen. We cannot investigate this crisis, the way it has affected taxpayers and what it will cost them in future only to find the banks are giving us the wrong information, either deliberately or they are somehow not capable of putting the information together. That does not inspire taxpayer confidence in the Government's ability to handle this crisis.

I hope we will see genuine changes in the way budgets are prepared in future and that all the announcements are not just made on budget day and that we are given some indication as to the position for the following year or the following couple of years.

Will the Minister of State indicate whether there will be interim reports? We do not want to wait three or four years before the final reports land on a Minister's desk when many of the issues about which we are talking will be resolved and the information may well be out of date.

**Senator Marc MacSharry:** I commend the motion. It is important the commission of investigation gets underway quickly. I welcome the appointment of Mr. Nyberg, former director general for financial services at the Finnish Ministry of Finance, and the work of the Joint Committee on Finance and the Public Service, of which I am a member. I look forward to both these investigations bringing more clarity to the mistakes of the past. It is a great sign of the maturity of our democracy that we are prepared to take the time to examine the mistakes of the past and learn from them. These processes will do that and will build on the already good work in terms of the structural changes we have made over the past couple of years. I thank the Minister of State and commend the motion.

**Senator Shane Ross:** I thank the Minister of State for coming to the House to explain this. I welcome the fact the commission is being set up. It is obviously required after the two earlier reports. There is a danger that we will have five reports in the same area fairly shortly, including the Honohan report and the Regling-Watson report. The Minister of State can correct me if I am wrong but there will be three inquiries going on. We will have this commission of inquiry, the policy inquiry and the inquiry into the Department of Finance, which is an awful lot. I am not sure whether they will overlap.

I worry about some of the limitations of these inquiries. The terms of reference are very important and are quite confusing when one looks at them. My understanding is that a very sensible concession was made at the Joint Committee on Finance and the Public Service last Monday in response to a motion tabled by Deputy Burton asking for an extension of the time. The Minister very sensibly extended the time to the date of the nationalisation of Anglo Irish Bank.

I worry about that. One of the problems with the last report was that there was a limit on the time until the end of September 2008. A legitimate complaint at the time was that it did not cover important matters such as the Anglo Irish Bank-Irish Life and Permanent deal, a few other deals and the Sean FitzPatrick deal in which he moved his loans. This will cover that area and other very sensitive areas, which we have not covered before. That is very mature.

It will also cover the actual process of the nationalisation of Anglo Irish Bank, which will be fascinating and useful.

Why does it stop there? I am not being pedantic. I am interested in what the Minister of State has to say about this. He said one never knows when to stop when one is holding inquiries, and I accept that. However, stopping there is not necessarily a good point. The Minister of State will be aware, as will all Members of the House, that what had been going on in the banks into which we are inquiring did not stop on 15 January 2009. It did not stop on 15 February 2009 or even on 15 February 2010. It has not stopped yet.

The evidence for this is what Frank Daly, chairman of NAMA, said this week. The NAMA business plan was revised because the banks had been telling lies, certainly until early this year. Frank Daly said we are not 100% certain we have sorted the problem out yet. He said we have got the majority in line but we are not 100% certain of that. The result of the banks' lies is that the NAMA projected profit, which is fantasy, has been turned into a loss. I do not believe the figures one way or another. I never did and no one should. However, the projection went from a profit of €4.8 billion to a possible loss of €800 million. This was because the banks had been telling lies about what percentage of their loans were being serviced. They were giving these lies to NAMA. NAMA was accepting them and making business projections on the basis of them. The figure has now been revised from 40% to 25%, which means the projections have gone west.

[Senator Shane Ross.]

Frank Daly said the banks had been misleading NAMA and getting away with it for a long period. If this was going on, we need inquiries. We need to find out how they continued to be able to do this. Right up to a couple of months ago they were pulling the wool over the eyes of NAMA as well, but our inquiry will stop on 15 January 2009. I have no objection in detail to this but I object to it in principle. The inquiry should probably have no time limit on it. One must restrict its terms somewhere because we do not want it to be like the Mahon tribunal and go everywhere. I see the problems we will have if we do that. However, if we restrict the commission's time, we restrict its pursuit of the themes and details, which are so important. Will the Minister of State explain why the inquiry stops at that point? I do not want him to say one must draw the line somewhere. I want him to explain why it stops there and why the inquiry cannot at least pursue a line it is following beyond that date.

Patrick Honohan did that in his report. He went beyond his terms of reference, as far as I can remember. The Minister may not be grateful to him for that but that is what makes him so useful. He stands up to those who appoint him and does not say exactly what they want him to hear. He is a wonderful appointment. I do not know anything about Mr. Nyberg but I accept what Senator MacSharry says about his bona fides. Let us accept him on face value, not criticise him and hope he is the sort of guy we are looking for. He is an outsider, which is tremendous. In that respect, the Minister of State and the Minister have dealt very well with the area of appointing outsiders. The appointment of people to the Central Bank, to the inquiries and to the regulator's office have been excellent. I will not say the same about bankers but in that area things have been done extremely well. Some very good, although unfortunately mostly foreign, appointments have been made.

I have a reservation and a worry that the restriction to that date means the inquiry is restricted on up-to-date things. It also restricts inquiry into people who are in positions of power. That probably plays into the pitch of the golden circle.

Am I limited in time?

**Acting Chairman (Senator Cecilia Keaveney):** We are finishing at 7.20 p.m. and two Senators remain to speak.

**Senator Marc MacSharry:** I propose that the debate be extended to 7.30 p.m.

**Acting Chairman (Senator Cecilia Keaveney):** Is that agreed? Agreed.

**Senator Shane Ross:** I apologise. I did not realise I was taking other Senators' time. If the inquiry is restricted to that period of time, it will tend to restrict itself to the fallen personalities rather than the present ones, and personalities are important. One of the values of the report will be that the commission will be in a position to criticise those people who are exercising power in the banks at present. That is very important.

The report on the Department of Finance, which is peripheral to this, is also important. That should examine the people in the Department of Finance and not just, as we continually hear, the systems, procedures and structures. It is fine to talk about systems, procedures and structures but let us also get a look at the mandarins and see what they were doing, who was advising the Minister well, who was advising him badly and who was saying what to whom and when. This is a people business and not just a structural business.

I welcome the fact that we are setting up this investigation. I wish it well and I wish the Minister well in his endeavours.

**Senator Dan Boyle:** I agree with the motion. Questions have been asked as to whether the right methods of inquiry were being followed, whether the right questions were being asked and whether the right people were involved in the process. There is still dissatisfaction with individuals who fail to take responsibility for what happened and we all share that frustration and impatience. Nevertheless, the inquiry process has worked well. People have been identified who were not part of the clique which brought us to where we are. Some of them are from outside the State and are not part of what is loosely described as the golden circle. Patrick Honohan has been appointed to the Central Bank and Matthew Elderfield to the Office of the Financial Regulator. The report was commissioned from Klaus Regling and Max Watson. Now Peter Nyberg will head the commission of inquiry. The right approach has been taken and will pay dividends in providing a long-term analysis of why things went wrong and what we need to do to avoid repetition of them.

That said, I agree with Senator Twomey. If we are to restore public confidence we must also use the other methods available to us, such as the judicial system and the prosecution services, to identify the key individuals who were involved in these institutions and who made the decisions that brought us to where we are. I share Senator Ross's view that the impact of both the internal review of the Department of Finance and the commission of inquiry report itself will be in identifying individuals who are still in the system and who had a direct decision-making impact, whether through the provision of wrong information or in taking decisions that led to the State, through the taxpayer, picking up the tab. Those procedures still have to be put in place.

As a member of the Joint Committee on Finance and the Public Service, I am confident that its element of the process, concentrating on policy decisions and the co-operation of those who were involved in the formulating of them, will work very well. It is important that the three facets — the commission of inquiry, the work of the joint committee and the internal review of the Department of Finance — take place within a very tight timeframe of six months to a year. This mitigates against the extension of the period to be examined, which Senator Ross proposes. If we keep extending the date we will make it difficult to complete the inquiries in that narrow timeframe. The Minister has been very accommodating in placing the nationalisation of Anglo Irish Bank as the key date in this process. We will learn more by having a definite date and waiting for the reports that arise from it.

**Senator Alex White:** The more information and analysis we have the better. I acknowledge that the Regling-Watson and Honohan reports are extremely rigorous and helpful in making an assessment or analysis of what has occurred. Although I have never heard of the gentleman who has been appointed to lead the commission, I have no reason to believe Senator MacSharry is incorrect when he says he is a person of integrity and experience. I am sure we will find out more about his level of experience and background in the coming days. Therefore, we will not hold up this discussion by going through his CV.

One of the points that strikes me about the sheer number of reports available is that there is at least a risk that various aspects of the problem will be analysed and scrutinised separately from each another. While perhaps to some extent that is necessary or inevitable given the structures involved, some in the private sectors, for example, the banks, and others in the public sector, for example, the Department of Finance as a discrete body with regard to macro-economic policy decisions, a different approach is required by an outsider. While I understand this, my concern is that, whereas we might end up with a proliferation of reports, each one of which might be important, stand on its own and contribute to the discussion, ultimately we will all have to pull together. We can have a debate between ourselves that is purely political in terms of who we say is responsible for what happened and the decisions made by politicians

[Senator Alex White.]

which were wrong or questionable, but that will remain at the level of a political contest until both sides are armed and equipped with the details of what, in fact, occurred. That will inform the debate and we will find it more satisfactory to have discussions and even disagreements if they are based on factual information and analysis.

One of the points that concerns me about the second of the two issues we are discussing relates to the Joint Committee on Finance and the Public Service. I am probably the only one present who is not a member of the committee.

**Senator Shane Ross:** No.

**Senator Alex White:** Senator Ross is also not a member. It is an important exercise. There was much debate about this issue a few months ago and I recall the Taoiseach being anxious to say he would be available to come to the committee to answer questions. However, because of the way the terms of reference have been drawn up, they do not suggest the Taoiseach will be going before the committee or will be involved in dealing with issues that were within his remit when Minister for Finance. I very much hope he will appear before it. Lest I am accused of what Senator MacSharry used to suggest, namely, of wanting to have a guillotine on St. Stephen's Green, that is not what I am interested in. However, in so far as Ministers made decisions which might be open to question and criticism and were put under pressure to make them, this should be analysed and debated. I raised the issue in the House previously in the context of a recent statement by the former Taoiseach, Deputy Bertie Ahern, who is never mentioned on the other side of the House any more, which is probably understandable.

**Senator Liam Twomey:** Yesterday's man.

**Senator Alex White:** He is still around and will still feature in all of this as our former Taoiseach. While I do not want to personalise the issue, I raise his involvement for one reason only, that he himself said this recently when asked about his role in what had occurred:

'Even the self-criticisms in it I accept also, which was mainly the tax incentives. We probably should have closed those down a good bit earlier, but there were always fierce pressures, there was endless pressures to keep them. There was endless pressures to extend them.'

He said the pressure had come from developers, owners of sites, areas that didn't have the developments, community councils, politicians and civic society.

That is a very significant statement by the former Taoiseach, one that requires further analysis, scrutiny and debate. I would have thought that this exercise would occur at the Joint Committee on Finance and the Public Service, although I may be naive in thinking that. I also thought that all the people mentioned, including the current Taoiseach, had said they would be happy to go before the committee. However, the terms of reference do not suggest that will be the nature of the inquiry at the committee. Will the Minister of State comment on this?

I accept there is a wider political environment. It is a matter for political parties and politicians to analyse the issues involved as they see fit and bring forward proposals, analysis, attack lines and so on. However, there is also a role for a committee of the Oireachtas to examine policy making, policy decisions and the pressures to which the former Taoiseach referred. I did not say it; he did.

**Minister of State at the Department of Finance (Martin Mansergh):** I thank Senators for agreeing to the motion which obviously was the subject of substantial discussion between the parties.

On Senator Twomey's remarks, there are many who would like to see outcomes, to put it tactfully, to the work of the Director of Corporate Enforcement, the Garda Síochána and so on. Certainly, what we are establishing will not interfere with this, but, equally, the Government is precluded from interfering. Nonetheless, the public's wish for developments is near universal.

With regard to NAMA or anything else being set up, it would be wonderful if one could foresee perfectly all of the difficulties, hitches and developments along the road. That is not always easy, but, at the same time, because of the extreme importance of the issue which is constantly debated and the subject of questions and media coverage, we also need structured investigations and reports. I am not concerned about the fact that there will be five reports. The importance of getting to the bottom of all aspects of what went wrong is so great that one has to examine the issues involved from different angles and through different lenses. Obviously, there will be overlaps, but it is important to synthesise to reach a conclusion. I do not believe it is a situation where, although investigations are important, one investigation will provide all the answers.

The crucial period is the years leading up to the crisis in 2008 and its early stages. I am very happy the remit has been extended to cover the period leading up to nationalisation of Anglo Irish Bank on 15 January. However, the Government does not consider there would be additional value, at least at this stage, in extending any later the period the commission of investigation will be asked to examine, having regard to the need to ensure it will undertake its work in as efficient a manner as possible and the requirement in the draft order that it complete its report no later than six months from the date of establishment.

Certainly, listening to debates in this and the other House, Members do not want investigations to continue interminably. As we have found with many other inquiries — Senator Ross mentioned some of the tribunals — if their scope is widened too much, the investigation is prolonged. There is nothing to stop the Houses from deciding when it comes to November and the report can be debated that further action is needed. One must take the process a step at a time and we may want the report in November extended to 15 January 2010, which was argued for by the Labour Party and which makes sense. We should get to November first.

I am sure the Taoiseach and former taoisigh will, if called upon in an appropriate context, be willing to answer questions. I agree with Senator Alex White with regard to the quotation from a former Taoiseach, Deputy Bertie Ahern, about tax incentives and the endless pressures to keep and extend them. I can express a personal view on those and other pressures. The Houses have been discussing non-financial legislation over recent weeks and people have tried to exert enormous pressure in this regard. We need to get better at dealing with, withstanding and resisting such pressure because many people seem to believe that legislators such as Deputies and Senators can be pushed around, bullied, intimidated and harassed by groups who very often do not represent any kind of majority but rather represent a vehement view.

We must get better at combating this. There was an amendment in the Finance Bill where people wanted to create financial incentives for building primary health care centres. I was lobbied on the subject but I did not bother either the Minister or the Department of Finance and told the parties involved they were part of a wealthy group and if the complexes were worth building, they could do it on their own. I argued that incentives had got us into trouble and said goodbye to them.

Question put and agreed to.

**Acting Chairman (Senator Cecilia Keaveney):** When is it proposed to sit again?

**Senator Diarmuid Wilson:** At noon on Tuesday, 13 July 2010.

## Adjournment Matters

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### Economic Competitiveness

**Senator Pearse Doherty:** This issue is the need to introduce legislation so that all those successful in tendering for State contracts would be obliged to comply with the registered employment agreement as laid down for the construction industry. I bring this to the Seanad because I am aware of certain incidents and have been in direct correspondence with the Minister about them.

In the county I represent, Donegal, companies are bidding for State contracts such as the construction of schools or much-needed refurbishment work to schools or Garda stations, among other public works. Whereas companies from Donegal must comply with the registered employment agreement, companies from the Six Counties do not have to comply with the agreement, leading to an anomaly. I am for an all-Ireland economy and do not advocate the idea that people from Strabane should not be able to bid for a contract in Lifford. However, a company in Strabane should not be able to bid for a contract in Lifford while paying their employees lower rates than the Donegal company.

The registered employment agreement sets out minimum wage rates for its workers. For example, an electrician under the registered employment agreement is paid €21.49 per hour, with the cost to the employer of the labour per week, taking in employer's PRSI and pension contributions, coming to €957.29. If we allow State contracts to be awarded to companies outside the State which do not have to comply with the registered employment agreement or pension scheme, we are discriminating against our own registered contractors in this State. There is no way companies in places such as Donegal can compete with those outside the State.

Is there a way to introduce legislation to ensure that out-of-State contractors would be obliged to offer their employees the same terms and conditions laid down by the registered employment agreement in the South? I note the issue of registered employment agreements has been taken to the High Court and a judicial review was sought with a judgment given last week. I do not support the idea of renegotiating these agreements but this issue is about ensuring compliance across the island. I noted the judge in the case stated the agreement applies to self-employed people and subcontractors, and out-of-State workers should enjoy the terms and conditions as laid down in the agreement while working in southern Ireland.

An example may clarify the issue. There is much-needed work ongoing in Pobalscoil Ghaoth Dobhair, a secondary school I attended. An emergency works scheme will start over the next couple of weeks. There is a pre-qualification application sent out by the Department of Education and Skills, and this is done across the board. Some other Departments dealing with public works ask in a questionnaire if the applicant complies with the registered employment agreement or the pension scheme, which is a signal that there is compliance with the agreement. There is no qualification in the Department of Education and Skills.

I do not want to name the company which has been successful in the Gweedore project but it comes from outside of the State. I do not know if it complies with the agreement but having spoken to people involved in the application, it seems likely that companies in the past and in this case may not be compliant with the registered employment agreement.

Will the Minister of State shed light on this and can legislation be introduced in this respect? Is the legislation already in place but not enforced adequately? Could we ensure through pre-

qualification documentation from the Department that we ask all companies — both inside and outside the State — that they be compliant with the registered employment agreement and pension scheme? How can we address the issue otherwise as it is currently unacceptable to companies in Donegal.

Senator Keaveney and I understand how many State contracts are going across the Border. As a republican I have no problem with people across the Border getting the work as long as the employees are treated the same and there is a level playing field. If it is a case that a company on the other side of the Border can pay a lower wage for doing a job in Donegal than a company from the county, the indigenous companies will not be able to compete.

**Minister of State at the Department of Enterprise, Trade and Innovation (Deputy Dara Calleary):** I thank the Senator for raising this issue and his ongoing interest in the area. I assure the House that one of the objectives of the industrial relations and employment law provisions currently in force in this country is to uphold a level playing field in the construction sector in which common labour costs apply to all contractors under the terms of the registered employment agreements.

An employment agreement is an agreement made either between a trade union and an employer or employer's organisation at a meeting of a registered joint industrial council which relates to the pay or conditions of employment of any class, type or group of workers. Such agreements may be presented to the Labour Court for registration. Where the Labour Court is satisfied that the agreement presented satisfies the statutory requirements, it will register said agreement. The effect of this is to make the provisions of the agreement legally enforceable in respect of every worker of the class, type or group to which it is expressed to apply and to his or her employer, even if such worker or employer is not a party to the agreement.

The maintenance of a level playing field with regard to the determination of basic wages and conditions is one of the objectives of the parties to registered employment agreements, REAs. The existence of these legally backed agreements is one means, recognised under European Union law, of ensuring contractors from outside this jurisdiction do not obtain an advantage over local contractors in terms of wage costs. As Senator Doherty stated, a recent ruling of the High Court in an action seeking to challenge a decision of the Labour Court upheld the Labour Court's view that in the absence of our system of REAs, contractors from other member states could readily exercise their freedom to provide services in this jurisdiction under the relevant EU treaty at the same rates and conditions of employment as apply in their country of origin. Accordingly, as all companies who are awarded State contracts are already legally obliged to comply with the relevant REAs, we are of the view that no new legislation is required.

There are two REAs in place for the construction industry. The first of these deals specifically with pension, assurance and sick pay, while the second relates to wages and other conditions of employment. Separately, there is also an REA in place for the electrical contracting industry which covers all terms and conditions of employment in that sector, including pensions and sick pay.

The construction industry REA in respect of pension assurance and sick pay requires employers in the construction sector to become and remain a party to a contributory pension scheme approved by the Revenue Commissioners and sets out the conditions upon which pension and mortality payments are payable, and the associated minimum amounts and benefits. This REA does not specify any particular pension scheme to apply but rather sets out the general criteria within which any such scheme should operate. The REA is an agreement reached between employers and trade unions representative of workers in the sector. The construction workers pension scheme, generally referred to as the CWPS, was established on foot of the REA. It is an independently run occupational scheme.

[Deputy Dara Calleary.]

While it is not a legal requirement for employers and employees in the construction industry to pay into this particular scheme, it is, as already stated, a legal requirement that employers provide for pension, mortality and sick benefits for those workers to whom the REA applies. The conditions upon which such pension, mortality and sick pay benefits are payable and the amounts thereof must not be less favourable than those which are set out in the REA.

The construction industry monitoring agency, CIMA, which was established by the Construction Industry Federation, CIF, and ICTU, monitors compliance with the REA with a view to ensuring employers register their employees in the scheme and pay weekly contributions on their behalf. CIMA engages trade union monitors to follow up on cases of non-compliance and to bring proceedings, where required.

The National Employment Rights Authority, NERA, carried out 395 inspections in the construction sector in 2009. Among businesses inspected, a compliance rate of 45% was recorded and €252,000 in unpaid wages was recovered for workers.

Enforcement of the provisions of an REA may also be effected by direct complaint to the Labour Court. A trade union may complain to the latter that a particular employer is not complying with an REA. If, after investigating a complaint, the court is satisfied that an employer is in breach of an REA, it may, by order, direct compliance with the agreement. Failure to comply with such an order is an offence punishable by a fine. In this context, a total of 108 employers in the construction sector were referred by NERA for prosecution in 2009.

These safeguards are in place to ensure the satisfactory operation of the pension schemes. They are also designed to ensure non-compliant employers are discovered and do not benefit in any way from their avoidance of their obligations. Information relating to REAs is disseminated to employers and workers by way of a wide range of structures and organisations, all of which have an important role to play in ensuring compliance by employers with the pay and conditions requirements in those sectors.

NERA provides information to employers and employees on its website and through its call centre in relation to employment rights and responsibilities generally. This would include responsibilities arising under REAs. It would also include providing detailed advice if requested. Other bodies that play an important role in disseminating information on the terms of the REAs in the sector under discussion include the CIF and IBEC.

The REA system has been the subject of a number of recent legal challenges that have come before the High Court. Senator Doherty referred to a number of these. As well as raising issues specific to particular REAs, these challenges also related to the constitutional propriety of the legislative provisions under which they were made. In this context, the Industrial Relations (Amendment) Bill 2009, which has passed all Stages in this House and is currently awaiting Committee Stage in the Dáil, will provide for a number of amendments to the existing legislative framework surrounding the REA and joint labour committee, JLC, systems, including that REAs will be given legal effect in future by ministerial order and that a perceived gap in the scope of parliamentary supervision will be filled by providing for Oireachtas scrutiny of these instruments.

All construction related projects involving public expenditure must conform to Department of Finance public procurement procedures. These procedures state that contracting firms, including subcontractors, must be compliant with all statutory legislation, including REAs, when engaged on public works contract. It is in this way that the level playing field to which I refer is created.

The standard public works contract between a contractor and procuring authority requires the former to undertake to ensure the wage rates and other terms and conditions for all workers comply with the relevant REA. I will raise the specific issue to which the Senator refers in this regard with the Tánaiste and Minister for Education and Skills. Furthermore, the contractor is obliged, for the purposes of the reporting requirements during the course of the contract, to make a statement to the contracting authority certifying compliance with employment rights legislation in respect of each payment due under the contract.

If an employer is aware of specific instances where public contracts have been awarded to firms that are not paying their workers their legal entitlements, the matter can be investigated through NERA, the Labour Court under the Industrial Relations Act 1969 or the relevant public authority that awarded the contract in the first instance.

In December of last year, the Tánaiste and then Minister for Enterprise, Trade and Employment received the report of the inquiry that she had established to investigate the dispute that arose between the Technical Engineering and Electrical Union, TEEU, and employers in the electrical contracting industry regarding the status of the REA which applies in that sector. Peter Cassells and Finbarr Flood addressed issues of enforcement and compliance in their report and jointly recommended that the Departments of Finance and the Environment, Heritage and Local Government should ensure those sections of the public works contract which oblige contractors engaged in public contracts to observe the terms of the REA are more rigorously enforced by public authorities, including local authorities. In particular, they highlighted the need to develop a more rigorous system of enforcement in respect of firms from other jurisdictions, including the Six Counties, which undertake short-term assignments in this jurisdiction. The Department of Enterprise, Trade and Innovation has taken up this issue with the relevant authorities and is also hoping to foster a renewed spirit of co-operation between the trade union and employer bodies in that regard.

I again thank Senator Doherty for his ongoing interest in this matter. I will correspond directly with the Tánaiste and Minister for Education and Skills on the specific issue relating to Pobalscoil Ghaoth Dobhair and revert to the Senator in respect of it at a later date.

**Senator Pearse Doherty:** I thank the Minister of State for what is probably the most comprehensive response I have received in respect of a matter I have raised since I became a Member of the Seanad. I also thank him for his commitment to raise the specific issue with the Tánaiste and Minister for Education and Skills. He addressed the general issue in a very clear manner and I would appreciate it if he could avail of the opportunity to follow up on the specific matter.

### **Cross-Border Projects**

**Senator Cecilia Keaveney:** I welcome the Minister of State and I am glad he is present to respond in respect of this matter. During the debate on the Civil Partnerships and Certain Rights and Obligations of Cohabitants Bill 2009 today, there was a great deal of discussion with regard to republicanism. There are many connotations attaching to republicanism. However, the ability of people to live beside each other and respect each other's differences lies at the core of what true republicanism involves.

Last year, I compiled a report for the Council of Europe on how history is taught in post-conflict areas. I spent approximately 12 months gathering information while visiting places such as Bosnia-Herzegovina and Northern Ireland. The one message that came across to me during that period is that we on the island of Ireland must find a way to respect each other and live together. Education in this regard must begin with young children and must be carried until people reach adulthood. I discovered that teachers must be given the ability to explain the standpoint of those on the other side or in the other community. Educational policies needed

[Senator Cecilia Keaveney.]

to be developed to help that. Strategies needed to be developed to that end. Too often, we think that means we are talking about some other group of people. In reality, the Twenty-six Counties are as bad as the Six Counties when it comes to a lack of perception or understanding of the other community.

I am raising this matter to highlight a short advertisement I saw over the weekend. When I happened to turn on the television, there were two little cartoon characters on the screen. One was playing with a red, white and blue drum and the other one was playing with a red, white and blue baton. They seemed to be having great craic in the playground until they suddenly started to look very scared. The cartoon then cut to two other boys, wearing Celtic jerseys and carrying hurleys, who were coming into the playground. The little lad with the baton threw it into the air in sheer horror. He thought he was going to be attacked. The baton got caught in some trees. Then the little lad with the hurley came racing up. It looked like there was going to be a fight, but instead he used his hurley to get the baton out of the trees for the young fellow — the perceived other person. They ended up playing together in the playground, having overcome their assumptions and presumptions.

After I saw the advertisement, I went on the Internet to find out where this advertisement was coming from. I had noticed the logo of the International Fund for Ireland. It was broadcast on UTV. I discovered it was made as part of a programme designed by Early Years, an organisation for young children. It received €1.1 million in support from the International Fund for Ireland, among others. The project is being rolled out among 5,000 pre-school children, parents and 240 pre-school teachers over a three-year period. It basically embraces Ulster — the North and the Border counties. Those involved are working with young children to increase their awareness of diversity and help them understand what it is like to be excluded or discriminated against.

Hundreds of thousands of euro are spent on peace and reconciliation projects, but this little advertisement knocked me back on my heels because it said so much in such a short period of time. I have discovered that there are five advertisements in total. I have seen the advertisement on the theme of anti-sectarianism. There are other advertisements about race, bullying, Travellers and physical discrimination. They are geared towards three to six year olds. I have discovered that they are being shown for a brief couple of months. I have seen the list of broadcast times. The advertisement to which I refer was shown on RTE during “The Den” on seven occasions between 23 June and 30 June last. I found its message so strong. It has been embraced by UTV, Channel 4 and, to a limited extent, RTE. The Department of Foreign Affairs may well be contributing to this campaign through its peace and reconciliation funding. Serious consideration should be given to increasing the number of times this advertisement is broadcast on television. No one to whom I have spoken has seen it. I would be interested in getting more feedback on it. We can all learn from it. Although the work that goes on in our schools is important, young people and adults who watch television should also be exposed to campaigns of this nature.

Following the three-week pilot programme, it was found that the children involved were more willing to play with others, including some of those who are different from themselves. There was an increase in their ability to understand how being excluded makes someone feel. They became able to recognise instances of exclusion without having to be prompted. I could go on at length, but I do not think I need to. I congratulate the chief executive of Early Years, Siobhán Fitzpatrick. Studies show that by the age of six, one in six children in the North is making sectarian and racial remarks. This project is proving to be right and to be working. We should accept it. An evaluation of it will be formally launched on 13 October. I ask the Minister of State to talk to the Minister, Deputy Martin, about injecting serious money into this project.

There should be a good blitz of a campaign here, because it is as valuable to us as it is to anybody else on the island.

**Deputy Dara Calleary:** I thank Senator Keaveney for raising this matter and giving me a chance to acknowledge the tremendous work being done under this specific programme and by the International Fund for Ireland. The Senator has confirmed that these advertisements, which take the form of short animated messages, were made under a cross-Border programme. The programme in question, *Respecting Difference*, is part-funded by the International Fund for Ireland, which is an independent international organisation established by the Irish and British Governments in 1986. Its objectives, as set out in its founding agreement, are to promote economic and social advancements and to encourage contact, dialogue and reconciliation between Nationalists and Unionists throughout this island. Since 1986, the fund has received international contributions from the US, the EU, Canada, New Zealand and Australia. At present, the EU and US contribute all of the funding, which is much appreciated. As required by the founding agreement, approximately 75% of the fund's expenditure is in Northern Ireland and approximately 25% of it is in the South. To date, the fund has committed over €811 million to more than 5,700 projects in Northern Ireland and the six southern Border counties. The board of the fund, which is appointed jointly by the two Governments, comprises a chairman, Mr. Denis Rooney, and six other members, who under the agreement establishing the fund act independently of the two Governments in discharging their decision-making roles.

In February 2008, the board of the International Fund for Ireland approved financial assistance of up to £1.1 million to allow the *Respecting Difference* programme to be rolled out to over 5,000 pre-school children, their parents and teachers in 240 pre-school settings over a three-year period, across Northern Ireland and the southern Border counties. Atlantic Philanthropies provided matching funding of £1.1 million. The Department of Education in Northern Ireland provided £200,000. Sufficient funding was not available at that time to implement the programme in counties Cavan and Monaghan. However, the board of the fund approved additional funding of €282,625 at its meeting in June 2010 to extend the programme to the two counties. The formal delivery of the programme in Northern Ireland and four of the southern Border counties — Louth, Sligo, Leitrim and Donegal — began at the start of the 2008-09 school year. The programme will commence in counties Cavan and Monaghan in September of this year. Under the programme funded by the International Fund for Ireland, 12 groups have been trained and resourced to service design level in Donegal. Some 25 practitioners and teachers have completed the training and 104 parents have attended parent workshops. The total number of children in the 12 Donegal groups that have been exposed to the programme is 207. The reconciliation fund of the Department of Foreign Affairs has provided funding for 13 further groups to be resourced in Donegal, with at least two members of staff trained from each group.

The *Respecting Difference* programme originated from a 2001 research study of the attitudes and behaviours of young children in Northern Ireland. The study concluded that sectarian prejudices are present in three year olds, become significant in six year olds and are particularly pronounced in boys. Following the 2001 research, a pilot programme was developed. It was designed to change such attitudes and behaviours in young children, particularly with regard to sectarianism and inclusiveness. The pilot programme was found to have positive effects, and led to the development of the *Respecting Difference* programme. The programme offers children a range of activities and resources, which aim to increase awareness of diversity and difference issues; help children understand what it feels like to be excluded and thereby encourage more inclusion and understanding of those who are different; make respect for difference a real experience that children can share with their families; provide comprehensive training

[Deputy Dara Calleary.]

and awareness seminars for parents, teachers and school management committees; and provide resource packs and specialist support to each group.

As part of the programme, the advertisements referred to by Senator Keaveney are broadcast three times each year — in October, February and May or June — to coincide with each school term. The themes of the cartoons are physical, cultural and ethnic differences. The cartoons are broadcast at various times over a one-week period to catch children and adults. While mainly broadcast on UTV, they are also shown on Channel 4 and on RTE during “The Den”. During the most recent run, they were broadcast on RTE on seven occasions over one week from 23 June to 30 June. I understand the promoters intend to broadcast them more frequently on RTE, particularly now that the Respecting Difference programme is being delivered in all the southern Border counties. However, it is a matter between Early Years, which is delivering the programme on behalf of the International Fund for Ireland, RTE and the other broadcasters to agree the terms on which the cartoon messages are shown.

The Senator and I are at one on the merits of the message conveyed and the wish that the series of cartoons and the respecting differences programme as a whole will succeed in addressing sectarian issues in preschool age children at that critical time when their attitudes are being developed. For the Senator’s information, the Department of Foreign Affairs, through the reconciliation fund, has contributed €85,000 over a four-year period to support the introduction of the respecting differences programme to additional preschools in Northern Ireland and the southern Border counties.

**Senator Cecilia Keaveney:** I very much welcome the idea that the number of programme broadcast times is to be expanded. If a funding application should come before the peace and reconciliation fund of the Department of Foreign Affairs, while I do not wish to pre-empt anything, I underline that this is the most effective intervention I have come across. I will be a very strong advocate and trust the Department also will recognise it.

### **Health Services**

**Senator Jerry Buttimer:** I thank the Cathaoirleach for allowing me to raise this Adjournment matter regarding the reconfiguration process in the HSE south area. This concerns the region’s acute hospital service. As the Minister of State will know well, a process is under way under the stewardship of Professor John Higgins. It is my view that the HSE is not communicating or making information available, although clarification is required on a number of topics, including the status of the accident and emergency departments in the Mercy University Hospital, the South Infirmity-Victoria Hospital, the transfer of services, the issue of community hospitals and the role of St Mary’s Orthopaedic Hospital.

There has been a profound impact on acute hospital services in the Cork-Kerry region. The reconfiguration process must be carried out in an open and transparent manner and it is for that reason I tabled this matter. As I understand it, a special and secret committee is being established in an advisory capacity. Its terms of reference are not clear and were not published when the committee was established. I stress I do not question the composition or membership of the committee and in no way do I wish to impugn the integrity of the members. However, the board is comprised of developers and medics. There was no public notification or ratification process and, to my knowledge, no selection or interview procedure for the membership. In many ways it could be viewed as self-nominating. Is there a conflict of interest? I stress again I do not question the bona fides of the members of the committee.

A number of other fundamental questions arise. What process was put in place to ensure there was no conflict of interest? Was the Minister for Health and Children aware of the establishment of this advisory board? Why were the terms of reference not set out until March 2010 when the board was established in September 2009? In addition, the board has a gender imbalance in that there is no female member. Although I am not a spokesperson for County Kerry there is no representative of the county on the board. There is no patient advocacy representative and no public representative although there is a HSE southern forum comprising councillors of all political parties and none. Ironically, the board has access to the highest level up to and including the chief executive officer but there are a dozen or so committees under the reconfiguration process which do not have the same level of access.

I ask the Minister of State in his reply to clarify the points I raised. I hope there will be increased representation on the board to take on board the groups I mentioned and that there will be a more open and transparent process regarding this. I reiterate I do not question in any way the integrity or the personnel but the presentation of the board on the part of the HSE and the Department needs to be more honest.

**Deputy Dara Calleary:** I take this Adjournment matter on behalf of the Minister for Health and Children, Deputy Harney. As the House is aware, patient safety is central to the delivery of health services. Ensuring patient safety is of paramount importance so people can have confidence in the care they receive and achieve the best possible health outcomes. The overwhelming consensus among clinical experts is that demonstrably better outcomes, as seen in cancer care, are achieved for patients if delivery of complex care takes places where the necessary staff and equipment are available and where there are sufficient volumes of activity. To achieve better outcomes for patients, the acute hospital system needs to change fundamentally the types of service it delivers to our communities and how those services are delivered. The reconfiguration of services in counties Cork and Kerry, when implemented, will produce an improved service, with clinical benefits for patients and treatment of the highest standard. The HSE's work on the reconfiguration of acute hospital services in counties Cork and Kerry is informed by the principles enunciated in the teamwork review of services in the region as well as by an extensive consultation process with stakeholder interests.

In early 2009 a group of individuals from the business, education and health care fields expressed to the HSE an interest in supporting the executive's work in regard to the delivery of acute hospital services in the region. Arising from this and after discussions between the parties, a non-executive advisory board was established in September 2009. This board has 17 members and includes persons from academia, professional practice and non-HSE hospitals. Its purpose is to support and advise the HSE, as appropriate, in regard to the reconfiguration of acute hospital services in the region and to bring practical experience to bear from outside the health field. The advisory board members receive no remuneration for their participation and give of their time and advice voluntarily. The board is purely advisory and has no executive or decision-making functions. The Minister for Health and Children very much welcomes the fact that senior people from a range of disciplines are willing to offer a fresh perspective on important issues in health care and on how the challenges that reconfiguration poses might be addressed.

The reconfiguration process in counties Cork and Kerry is informed by a wide-ranging and comprehensive consultation process. This includes a regional reconfiguration forum which brings together clinical directors and health service managers as well as 40 clinical subgroups, with input from patient advocates, nursing, service staff, general practice, primary, community and continuing care and from University College Cork. The regional director of reconfiguration has also met public representatives regularly and has reported to the regional health forum.

[Deputy Dara Calleary.]

Specific initiatives, such as the introduction of advanced paramedics to west Cork, have been supported by a public information campaign that included direct interaction with community groups and public meetings. None the less, in the light of a number of representations which it has received, the HSE is at present considering the possible extension of the membership of the advisory board to include additional representation of patients and the public.

The Minister looks forward to the continued engagement of the advisory board and all the other stakeholders in the development of arrangements which will ensure the provision of safe and sustainable hospital services for the people of Cork and Kerry into the future. I shall forward the Deputy's concerns about the gender make-up of the board directly to the Minister.

**Senator Jerry Buttimer:** I thank the Minister of State for his reply.

The Seanad adjourned at 8.10 p.m. until noon on Tuesday, 13 July 2010.