



# SEANAD ÉIREANN

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*Dé Céadaoin, 21 Meán Fómhair 2011.*  
*Wednesday, 21 September 2011.*

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

The need for the Minister for Jobs, Enterprise and Innovation to discuss the need for immediate, realistic and deliverable proposals to create jobs in Waterford and the south east.

I have also received notice from Senator Fidelma Healy Eames of the following matter:

The need for the Minister for Health to clarify the rationale for not allowing registered nurse prescribers in the private sector to prescribe using GMS prescription pads.

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

The need for the Minister for Health to immediately restore X-ray services to the community hospitals in Donegal town and Killybegs, County Donegal.

I have also received notice from Senator Thomas Byrne of the following matter:

The need for the Minister for Transport, Tourism and Sport to discuss the Slane bypass and its status described by a Government Minister as a top five priority project.

I regard the matters raised by Senators Cullinane, Healy-Eames and Ó Domhnaill as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

I regret I have had to rule out of order the matter raised by Senator Byrne as it is a matter for the NRA.

## **Order of Business.**

**Senator Maurice Cummins:** The Order of Business is Nos. 1 to 4 on the Order Paper. No. 1, statements on the Arts, are to be taken at the conclusion of the Order of Business and to conclude no later than 2.15 p.m., with the contributions of spokespersons not to exceed six minutes; questions to the Minister from other Senators will be taken in turn, through the Chair. There will be a sos from 2.15 p.m. to 3 p.m.

No. 2, Private Members' business will commence at 3 p.m. and conclude no later than 5 p.m. No. 3, Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011 — all

[Senator Maurice Cummins.]

Stages, will commence at 5 p.m. and conclude no later than 7 p.m., if not previously concluded, with the contributions of group spokespersons to the Second Stage debate not to exceed eight minutes and of all other Senators not to exceed five minutes. No. 4, resolution to be prescribed for the information of voters pursuant to section 23 of the Referendum Act 1994, No. 12 of 1994 in relation to the proposal to amend Article 35 of the Constitution, which is contained in the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011 and is the subject of a constitutional referendum, is to be taken without debate.

**Senator Darragh O'Brien:** The leader may have heard the news this morning of potential job losses in Aviva, which news has been in the ether for some months. Aviva's location of its European headquarters in Dublin three years, which did not create a massive amount of jobs, was seen at the time as a statement of intent in regard to the company's operation in Ireland. The Leader might recall that approximately six years ago, Aviva, then Hibernian, moved 500 call centre jobs to India. Obviously, all of us in parties and none want to ensure the Government does what it can before there is an announcement of job losses. The rumours have not been dismissed by Aviva in any shape or form. Unlike in the case of TalkTalk where the Government was not given sufficient time — I am not criticising the Government in that regard — a warning has very definitely been signalled and I ask that the Leader raise the matter directly with the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, and the Taoiseach. Will he inform the House of any contact the Minister has had thus far with Aviva? I am aware the Minister was quoted as saying he had heard the rumours. This is more than a listening exercise. I want to know what the Minister has said.

I seek clarification on the Government's stance in regard to support for Palestinian statehood at the forthcoming UN Convention. While we have heard mixed signals, I read with interest the Tánaiste's comments in one of the morning newspapers during his visit to the US. As was mentioned yesterday, there is a motion on the Order Paper from many Members on this side and Independents asking the Government to support the Palestinians in their quest for statehood. What is the Government's position on this issue? It appears it will toe the European line but I hope that is not the case. All Irish Governments up to now have had a proud tradition of supporting the Palestinians. I am concerned that we seem to have rowed back somewhat given that we have been to the forefront in supporting the Palestinian cause. Anyone who read today's *The Irish Times* will have seen an eviction order has been placed on a Bedouin tribe and the Israelis want to relocate them to a rubbish dump in Bethany. This is the type of government we are dealing with there. Taking unilateral action is probably the last thing the Palestinians wanted to do, but it is their last option. I hope the Government will support the Palestinians in their call for statehood.

Will the Leader clarify if we have a date for the Minister for Health to come to the House? Do we know if he is coming in within the next three to four weeks to deal with the many health issues that have been raised in this House because his silence on many of the issues has been deafening?

**Senator Ivana Bacik:** I join Senator O'Brien in expressing concern about the rumour, and it is only a rumour at this stage, of prospective job losses at Aviva. The trickle of rumour leaves the employees in Aviva in an appalling position of uncertainty. Coming on the heels of the TalkTalk announcement, it gives rise to grave concern. We in the Labour group will have private Members' time next week when we will seek to address this issue of big companies pulling out and leaving our workers in the lurch, particularly at such short notice.

I wish to take up a point raised by Senator Darragh O'Brien on Palestinian statehood. There are no mixed messages here. What the Tánaiste is seeking to do is to change the EU position

because the Irish position — the Labour Party and the Government position — has always been supportive of Palestinian demands. Senator O'Brien and his colleagues will see that the Government motion, No. 14, states that Seanad Éireann reaffirms the long-standing support of the Irish Government and people for the establishment of a Palestinian state. It is more nuanced because we are approaching such a——

**Senator Darragh O'Brien:** Motion No. 4 is much clearer.

**Senator Ivana Bacik:** As the Senator is well aware, we are seeking to do the best we can to support the Palestinian people's demands. Many of us individually signed the Sudaca advertisement in *The Irish Times*.

**Senator Darragh O'Brien:** As we did.

**Senator Ivana Bacik:** Many of the Labour Senators, myself included, and Deputies signed it. That is a long-standing position that I and my party hold and that the Tánaiste is seeking to promote in government.

**Senator Darragh O'Brien:** We still do not know whether we are going to support the Palestinian call.

**Senator Ivana Bacik:** We want to achieve an EU common position on that issue. That is a goal worth achieving.

**Senator Thomas Byrne:** Why can we not take the lead on it?

**An Cathaoirleach:** No interruptions please.

**Senator Thomas Byrne:** Protect the Government.

**Senator Ivana Bacik:** The Government is seeking to be careful about this, to promote the Palestinian cause in a way that is diplomatic and that tries to bring the other EU countries with us. If we cannot do that, then obviously we have to look at it again. The Tánaiste has been very fair about that.

Today is September blue day. I am not wearing blue myself — just to rub it in to my colleagues from Kerry — and although they may feel a bitter about it, I know some of them are wearing blue.

**Senator Marie Moloney:** It sits very hard but I will do it.

**Senator Ivana Bacik:** I am delighted that Senator Moloney is wearing blue today even though I am sure it goes against the grain. It is worthwhile that all of us support blue day, an initiative to promote men's cancer awareness. There has been a great deal of positive outcomes from the pink day for breast cancer. Research shows that women generally tend to be much more proactive about looking after their health. This is a good opportunity to promote men's cancer awareness, to support the Irish Cancer Society, which is having a briefing at 1 p.m. today, and to show our support by wearing blue. It is also an opportunity to show our support for the Dubs, if that was also necessary.

**Senator Jillian van Turnhout:** My question to the Leader is in regard to No.15.6 on the Order Paper which deals with the missing children hotline. This motion, which I drafted with my colleagues Senators Mark Daly, Feargal Quinn and many others who put their names to it, has agreement across the House. Unfortunately, children are falling between the gap of the Mini-

[Senator Jillian van Turnhout.]

ster for Justice and Equality and the Minister for Children and Youth Affairs, both of whom consider responsibility for putting this hotline into operation is the other's. Everybody agrees we should have it. Sixteen EU states have it and yet we cannot get it over the line. I ask the Leader to provide Government time, at the earliest opportunity, to discuss a definitive plan as to how the hotline can be put into operation — not to discuss the needs and merits of its — and to uphold our obligations to the children of Ireland and also to the EU.

**Senator David Norris:** I ask the Leader for a debate on the functioning of democracy here. The Seanad and the Dáil are under review, which is proper, but there is very little in any of this about the participation of the people. Most of the ills, economic and social, not just in Ireland, come from the fact that the preservation of the system and the interests of the establishment have been put firmly above the welfare of the people. That is the wrong order. This affects all our institutions from the local to the highest office in the land. Seanad Éireann is the place where we should have that discussion of ideas to bring the people of Ireland fully in at this difficult time.

**Senator John Gilroy:** It was stated in the House yesterday that the points system for university entrance is fair and transparent. It is probably fair for many students and families who can afford to go to the third level education, but I am not sure if it is fair for those who cannot. The points system has narrowed the learning opportunities for a great number of students in that the leaving certificate is an extremely result-focused process, a matter to which the ESRI report, published yesterday, draws attention. I met a student a couple of weeks ago and asked how she got on in the leaving certificate. She said she got 460 points. However, that was not the question I asked. When I boorishly pointed this out to her, she looked at me blankly and said points are all that matter. From her point of view, she is right. It is an awful indictment of our education system that after 13 years one is judged in two weeks at the end of it. The report also points out that students who get grinds do better in examinations than those who do not and, of course, grinds are available only to those who can afford them.

A conference taking place today in University College Dublin is discussing the future of education. Given that we need a debate on our education system here, I ask the Leader to ask the Minister to come to the House and address the issue. We need to stop coddling ourself when we say that our education system is fair. We all know that if we can afford it, it is probably fair; otherwise, it is not.

**Senator Marc MacSharry:** I join Senator Darragh O'Brien in again calling for the Minister for Health to come to the House as a matter of the utmost urgency for a debate on a series of issues that all of us on all sides wish to discuss, not least the most worrying one that €6 million is being written off in by HSE west.

Will the Leader schedule an early debate on social welfare, in particular on the processing of applications? The social welfare service is being inundated from all over the country by people applying for the various benefits to which they are entitled as a consequence of being unemployed or whatever. The length of time people are being asked to wait for relatively simple administrative processing is disgraceful. An example is that of an ill, elderly man from Tubbercurry in County Sligo who, having finished on illness benefit, applied for invalidity benefit in August. After four or five days of trying, he got through to the relevant office in County Longford last Friday. When he highlighted when his application was made, the person told him with a chuckle and in a dismissive tone that the office would get to him in approximately six months. This is disgraceful. An ill, elderly person is facing into a difficult winter and will require these benefits. A conciliatory and courteous tone should be used when dealing

with the public. We must do all within our power to put adequate resources in place to ensure the processing is done in an efficient and effective manner. Were it in the private sector, this service would be out of business. While the State is under great pressure, surely we could do more to facilitate needy people. Will the Leader arrange a debate on this matter?

Regarding Aviva's announcement about potential job losses in the Leader's part of the country, will he suggest to the Minister for Jobs, Enterprise and Innovation, Deputy Bruton, in whom I have great confidence, that a pre-emptive strike be made so that all Enterprise Ireland and IDA companies be audited in terms of their outlook, their challenges and so on? In this way we could isolate companies that are considering moving their operations outside Ireland and take steps to ensure they stay and to protect jobs to the fullest extent possible.

**Senator Cáit Keane:** I wish to raise the issue of cartels. We have just heard that a whistleblower has approached the Competition Authority about the cement industry. According to that person, a massive cartel has been operating in a region for many years. Its aim has been to increase the price of cement and restrict competition in the area. The authority is investigating. When completed, will the Minister alert local authorities, the National Roads Authority and other public bodies that have used the companies involved so that they might reclaim what they are owed from overpricing? This should accrue income for those affected.

It should be possible to estimate how much it costs to produce cement from the rock to the road, but it has not been done. In future, the ESRI or another body that is qualified to conduct an analysis should make such estimates in respect of every product so that those who are sourcing commodities, be they local authorities, the NRA or so on, can have an idea of the average price of cement. They should not need to rely on the word of people in the business. A scientific analysis should be possible. I ask the Minister to provide for this and to alert local authorities and others under his Department to ensure they claw back money from the cement companies that have been abusing the situation.

I thank the whistleblower, although I am disappointed that he was part of the cartel and waited until he went into receivership to blow the whistle. I hope his actions will teach others a lesson.

**Senator Feargal Quinn:** Senator van Turnhout drew attention to the motion on the missing child hotline, which should be given a high priority. Senator Daly has also put a great deal of work into it. It has identified a matter in respect of which we are slipping behind the rest of Europe. There would be no cost and we could do it readily.

Senator MacSharry made a point concerning social welfare and social protection. My attention was drawn to two figures published a few days ago by the Comptroller and Auditor General. Last year saw an €83 million overpayment in social welfare, €31 million of which was down to fraud. This is a jolting figure. Can we do anything about it?

My attention was also drawn to the fact that there was a tax amnesty some years ago for those who admitted their guilt. When it was proposed, there was an outcry from us all to the effect that the then Government was helping those who defrauded the State. However, the amount of money returned was considerable, far more than anyone anticipated. Has consideration been given to the possibility of a social welfare fraud amnesty? I am not proposing one, only that it be considered in light of the fact that some people might have histories of social welfare fraud. A sum of €31 million is a great deal of money. According to the Comptroller and Auditor General, some €300 million is still outstanding.

**Senator Jimmy Harte:** I call for a debate on social housing, in particular long-term leasing. I do not know whether it has been an issue elsewhere, but people in County Donegal who are

[Senator Jimmy Harte.]

offered long-term leases are being told by the local council that, according to the Department of Social Protection, they will not be entitled to exceptional needs payments, which are used to furnish the properties. I have been contacted by several of the affected families. Were they tenants in standard council houses, they would receive the payments. When I spoke with the county's housing officer, he told me that the council's hands were tied. Where Donegal County Council is concerned, the only show in town is long-term leasing. I do not know about other counties.

This is a catch-22 situation. A young couple rang me yesterday morning and this morning to tell me that they have been offered a property and must sign for it by today or tomorrow, although the council will not hold them to ransom on that. If they do not take the property, it will be regarded as a refusal. If they leave their current home and take the property, they will not have the financing to furnish the property. Many of the new long-term leasing properties are new houses with floor coverings and nothing else. Will the Departments of Social Protection and the Environment, Community and Local Government examine this catch-22 situation?

I call for a debate on social housing with a specific emphasis on long-term leasing. As a member of Donegal County Council, I welcomed this initiative when it was introduced by the former Government. Long-term leasing has merit, as it provides housing at short notice to young couples, single persons or whoever. However, an anomaly has arisen and other Members may have had similar experiences in their counties. Could they speak with me about the issue?

**Senator David Cullinane:** I support Senators' calls for the Minister for Health to attend the Chamber. It is beyond a joke that, week in week out, Senators from all parties ask that he discuss with us the important health issues at play in hospitals across the State. A number of weeks ago, I raised the issue of the impact of the public service embargo on health services. I will provide an example to which the Leader can respond. In County Waterford, the budget for community services has overrun by €3 million, resulting in 22 beds being removed from community care for the elderly. St. Michael's ward, a long-stay geriatric care facility in Dungarvan Community Hospital is to close because agency staff are being let go.

As I stated several weeks ago, the embargo is forcing hospitals to close wards because they cannot employ regular staff and must take on agency staff.

This demonstrates that the embargo is a crude instrument. It is not working and is driving up budgets for hospitals rather than driving down costs. Unfortunately, it is now resulting in front-line services and beds for the elderly being taken out of the system, including from St Patrick's Geriatric Hospital in Waterford, where 22 beds were closed, and St Michael's ward in the hospital in Dungarvan. When will the Minister for Health attend the House to address all these issues of concern?

I propose an amendment to the Order of Business that the Minister come to the House today. We should move an amendment such as this every day until we have a very clear commitment from the Leader of the House that the Minister will attend. It is not good enough for the Minister to simply hide away from elected representatives in this House. He should attend the House and account for himself.

With regard to Palestinian membership of the United Nations, it is not good enough for this State to wait to see what the President of the United States or European Union will do. Both parties are watching each other. This is an opportunity for the Irish State to show leadership. That is what we need to do. We should consider our affinity with the Palestinian people. Let the Government show leadership, both in Europe and the rest of the world and give a clear

and unequivocal commitment that we will support the right of the Palestinians to a seat at the United Nations.

**An Cathaoirleach:** Can the Senator clarify the amendment?

**Senator David Cullinane:** I move amendment No. 1: "That a debate on health matters with the Minister for Health be taken today."

**Senator Tom Sheahan:** On the present rumour about the closure of Garda stations, I would like to offer the Minister a few words of caution. I received a telephone call at 10:30 a.m. from a person in Kerry who, on leaving a certain post office, saw a person with a conviction for robbing another post office sitting outside in a high-powered Mercedes. I made seven telephone calls before I could get a garda, and that garda was off duty. He was on his way to investigate the matter when I was entering the House. While it is only a rumour that Garda stations are to close and the Minister has made no decision on the matter, or on the replacement of Garda squad cars, I ask him to bear in mind my point. We will know shortly the outcome regarding the person sitting in the Mercedes.

**Senator Ned O'Sullivan:** I share the concerns of other speakers regarding the rumours about Aviva, which followed swiftly the Talk Talk bombshell. It is a matter of great concern. I would like the Government to have a greater sense of urgency in dealing with this. The trend is very worrying, primarily for the employees. I have had some calls from people insured with Aviva and from elderly people whose private pensions are managed by the company. I would like the Minister to assure us that the movement, if it takes place, will not impair the service or the security of the investments in any way.

I call the Leader to arrange a debate on the Defence Forces. There is renewed speculation on the closure of Army barracks, despite this being denied by the Minister in today's newspaper. The rumours are causing concern among families and members of the Defence Forces, PDFORA and the officers' association, RACO. We need to have those concerns allayed. In the course of the debate, I would like to focus on the work of the FCA, the excellent voluntary service with a presence in almost every town in the country. To what extent is the Government committed to continuing to support the FCA and what resources does it plan to put in place?

I would like there to be an audit of Army property around the country. I wonder whether the many barracks and slua halls are fit for purpose. Are they providing value for money? We could usefully have a debate on all these issues.

**Senator Deirdre Clune:** I, too, would like to raise the issue of Aviva workers and the rumours that have been circulating in recent weeks. They have been heard in the media both last night and this morning, which is of great concern to the workers in the company. Our thoughts are with them today if there are to be job losses on the heels of other announcements regarding jobs, particularly those in Talk Talk in Waterford.

We all know the Minister is in the United States at present working to ensure the sale of MBNA will be to a buyer interested in maintaining the facility in Carrick on Shannon. That is very important. The Minister has been very proactive in that area. He spoke in the media last night and is aware of the rumours surrounding Aviva. He will be doing what he can to ensure, if at all possible, that job losses are minimised. The job of the Government is to continue to ensure the economic environment is protected such that there can be job creation and so existing jobs can be protected. That is important.

Governments do not create jobs but work on the environment in which enterprise can flourish. The report of the National Competitiveness Council last week will be a roadmap

[Senator Deirdre Clune.]

showing where we should be going to ensure we return to competitiveness. It will point to the skills that are needed. I do not know the position on Aviva, or whether skills comprise an issue, but we certainly must determine the skills in which there should be investment. We could probably debate this in the House at some stage.

**Senator Sean D. Barrett:** I strongly support the efforts of the Cathaoirleach and Leader to reform the House and make it more relevant and meaningful to citizens. Innovations such as the questions and answers session are commendable. I propose two addendums to that agenda. The first concerns the fact that the Government Publications Office no longer sells the printed versions of the debates in this House. One can obtain only those of the Dáil and committees. This might be considered. The second addendum concerns the fact that the coverage of both Houses is strongly geared towards insomniacs. There are morning people, including in this House.

**Senator Mary M. White:** There are a lot of them.

**Senator Sean D. Barrett:** On the “Today in Parliament” programme on the adjoining island, Mr. Sean Curran presents in the morning an account of what the UK Parliament is doing. Such a programme would be most useful. We should reach out to people who require a printed document and to morning people, whom I am sure would be delighted to be informed about the deliberations in this House and the Dáil.

**Senator Catherine Noone:** Hear, hear. Well said.

**Senator Susan O’Keeffe:** On foot of Senator Barrett’s point, I, having worked with the BBC, would like to say that “Today in Parliament” became known as “TIP” and “Yesterday in Parliament” became known as “YIP”. While I support the idea that we should have a programme such as “Today in Parliament”, I hope the acronyms do not stick.

I take issue with Senator Cullinane’s suggestion that the Minister for Health is hiding from us in this House. I, too, have asked for the Minister to attend the House on several occasions.

**Senator Darragh O’Brien:** Where is he?

**Senator Thomas Byrne:** He told the people he would resign if he did not get the hospital back.

**Senator Susan O’Keeffe:** Many Members would like him to attend so we can raise various issues with him directly. To suggest a Minister is hiding when there are so many important matters to deal with—

**Senator Thomas Byrne:** He said he would resign if cancer services were not restored in Sligo.

**Senator Susan O’Keeffe:** It is a cheap shot to suggest a Minister is hiding from us.

Will the Minister for Health ensure people such as young Meadhbh McGivern will not have to worry about how they get home when their transportation is arranged? Our thoughts are with Meadhbh as she recovers in London and with her brave parents. Without their decision to enter the public arena we would not have discovered the incredible mess that surrounded the transportation of patients such as Meadhbh. The head of the HSE, Cathal Magee, has given an assurance to the McGiverns that he will do whatever is necessary to ensure her safe transport home whenever that may occur, and we all pray it will be sooner rather than later. The idea that Cathal Magee would have to intervene specifically in her case raises the issue that it is still done on an *ad hoc* basis. Will the Minister for Health give this matter priority so that the HSE,

in its reorganisation of transport for patients such as Meadhbh, will ensure that coming home is treated as importantly as leaving?

**Senator Mark Daly:** I second the proposal by Senator Cullinane to amend the Order of Business to ask the Minister for Health to come to the House. As was pointed out last week, he most certainly is hiding. The only legislation with which he came to the House was something which was agreed on by all parties. We will have a very useful question and answer session with the Minister for Arts, Heritage and Gaeltacht Affairs, Deputy Jimmy Deenihan, which has been organised by the Leader. This is a great idea, and if the Minister for Health has time, and if it would not be too much bother, perhaps he will participate in a question and answer session in the House and not come to discuss a Bill which has all-party agreement. I guarantee that every seat in the House would be occupied and we could put the questions that all of us, on both sides of the House, have. Then we would not accuse him of hiding from us and going to China, as Senator Leyden pointed out, on a very dubious mission. He has the ability to go to China but not the ability to cross the corridor to come here.

I propose that during each term every Minister comes to the House for a question and answer session. All Members would find this most beneficial.

Senator Darragh O'Brien spoke about Palestinian statehood. In the article in *The Irish Times*, the Tánaiste quoted Robert Emmet's statement about Ireland taking its place among the nations of the earth. Palestine is seeking to become the 94th state recognised by the United Nations. I agree with the Tánaiste that we can disagree with our friends. We can disagree with the United States and Israel.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Mark Daly:** The motion will be put before the United Nations next Friday and I hope the same motion will be tabled and supported by all parties in the House. I hope we will vote on it and recognise the Palestinian state. While I agree with the deputy Leader that we should try to bring around the EU to our point of view, we all know it is not likely because the EU cannot get its house in order on any issue when it comes to foreign policy. If the EU is not willing to support the resolution that comes before the General Assembly, then Ireland should act alone, have its independent foreign policy and support Palestinian statehood. Back in 1919, we found ourselves alone when no one would support us at the Versailles——

**An Cathaoirleach:** Does the Senator have a second question?

**Senator Mark Daly:** I ask for all-party agreement when the motion on recognition of Palestinian statehood is tabled on the Order Paper next Tuesday.

**Senator Michael Mullins:** As the person who suggested yesterday that we have a question and answer session with the Minister, Deputy Reilly, I have every confidence that the Leader will organise it at the earliest opportunity.

**Senator Mark Daly:** When did you put that motion down?

**Senator Thomas Byrne:** He is agreeing with the motion.

**Senator Mark Daly:** We will see how he votes on it.

**Senator Michael Mullins:** It is cheap opportunism to expect him to attend at the drop of a hat.

**Senator Darragh O'Brien:** It is not; we have been asking every week for him to come here.

**Senator Michael Mullins:** It will be scheduled in due course.

**Senator Mark Daly:** We are asking for the same thing you are asking for yourself. Do not give out to us; we are following you.

**Senator Michael Mullins:** I share the concerns expressed this morning about the rumoured job losses at Aviva. It is very disappointing news. We in this House need do everything possible to promote job creation and, as the Government has stated, to create an environment for the creation of employment.

This morning, we all received correspondence about the possibility of 500 jobs being temporarily lost in betting shops throughout Ireland because of outdated legislation which forces them to close at 6.30 p.m. from the end of September unless racing takes place in Ireland. Online betting can operate seven days a week, 24 hours a day and the betting shops are at a disadvantage. I am not one to promote gambling in any shape or form—

**Senator Rónán Mullen:** You have been known to have a flutter.

**Senator Michael Mullins:** Yes, I have indeed.

**Senator Terry Leyden:** No family secrets, now.

**An Cathaoirleach:** A question for the Leader.

**Senator Michael Mullins:** I would be much happier seeing somebody having to go to the bother of going to a betting shop to place a bet rather than being addicted through the Internet.

**An Cathaoirleach:** A number of Senators have offered.

**Senator Michael Mullins:** Will the Leader speak to the relevant Minister to see whether we can initiate legislation to help save the 500 jobs that will be lost at the end of September? It is a significant number and I do not see why the law cannot be changed.

**Senator Mary M. White:** In August, a shiver ran through the people of Leitrim, Roscommon and Longford when MBNA announced it would leave the international credit card business. Fortunately, tomorrow the Minister, Deputy Richard Bruton, will attend a meeting, along with the IDA head of financial services, Kieran Donoghue, in Charlotte, North Carolina, to find out why MBNA Bank of America intend to leave the international credit card business and whether it involves a sale or a wind down. A total of 750 people are employed by MBNA Bank of America in Carrick-on-Shannon and salaries totalling €26 million a year are pumped into the local economy and the hinterland of Carrick-on-Shannon. If MBNA pulls out in an unsatisfactory manner there will be devastation in the communities of Leitrim and Roscommon. I call for the Minister to come to the House as soon as possible after his return to bring us up to date on the matter. The Government should be about jobs.

As I stated on many occasions in the Chamber, I established Lir chocolates with Connie Doody, during the previous recession and we now employ 250 people. I saw with my own eyes the devastation when people have no jobs and I saw the transformation in their self-confidence and psyche when they got a job.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Mary M. White:** The driver for the Government must be to hold on to jobs and get us back to being a decent economy where we do not have emigration, people's hearts breaking and people's mental health suffering from losing a job.

**Senator Colm Burke:** I wish to raise an issue with regard to health. I remind Senators that we inherited a dysfunctional health service from the previous Government.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Darragh O'Brien:** The present Minister negotiated a consultants' contract when he was president of the Irish Medical Organisation——

**Senator Colm Burke:** We should not forget——

**Senator Darragh O'Brien:** ——which is the biggest problem the country has.

**An Cathaoirleach:** Senator Burke without interruption.

**Senator Colm Burke:** I will give an example——

**An Cathaoirleach:** Does Senator Burke have a question?

**Senator Colm Burke:** I do indeed. I will give an example of the lack of organisation in the service. The centralised recruitment system was established by the HSE as far back as last December. It took until 29 June before agreement was reached with the Irish Medical Council on how the recruitment of new doctors would be managed.

**Senator Thomas Byrne:** We have a doctor as Minister for Health.

**Senator Fidelma Healy Eames:** So what?

**Senator Thomas Byrne:** He was on the inside track when the previous contracts were negotiated.

**Senator Colm Burke:** We have a medical council which sets the standards.

**An Cathaoirleach:** These points can be made during the debate.

**Senator Colm Burke:** The issue I want to raise is the fact that the junior doctors who came here in August gave a month's notice from the jobs they had held. They are professionals who resigned. As of today's date, they have not been given a date to sit the exams to enable them to practise here. Some of them have been here for more than ten weeks and they cannot sit the exams. They have been told they may not be able to sit them until October. They live in guesthouses and are paid €100 a week. They have young families to support at home.

**Senator David Cullinane:** Bring the Minister for Health to the House and tell him.

**Senator Colm Burke:** This a Medical Council issue. I want the Minister, the Medical Council and the HSE to deal with it immediately. It should not be left until October for those people to sit the exams. They are professional people who gave up good jobs. They came to this country to get us out of a bind in terms of a shortage of junior doctors that we inherited from the previous Government.

**Senator Darragh O'Brien:** The Senator should support the amendment to the Order of Business and have the Minister for Health, Deputy Reilly, attend the House another day.

**Senator Colm Burke:** The Minister must deal with the issue with the Medical Council and the HSE.

**Senator Rónán Mullen:** Senator Mark Daly was correct to say that there are times when we should be willing to disagree with our friends. He was speaking in the context of Palestine. That is also true in the context of the decision of the state of Georgia to go ahead with the execution of Troy Davis. I have not heard whether there has been any positive development in that story. It is remarkable that the country which most of us would regard as the leader of the free world sees fit to take life in the context of applying the death penalty. Amnesty International's US branch has pointed to the many doubts about Mr. Davis's guilt. It says that to allow a man to be sent to death in this circumstance is an outrageous affront to justice. We need to be clear that capital punishment is not just wrong when there are doubts about the innocence or guilt of the person who is sentenced to death. It is wrong *per se*. It is wrong in itself.

We have often discussed the issue in this House. The current controversy over Troy Davis affords us the opportunity in this House to bring forward an all-party motion on the subject. We would do well to do so in early course.

There have been many comments in these Houses in recent days on the ongoing issue of education. It will come as no surprise to people to hear that maths is the most popular subject for grinds at second level and that Irish is also popular in that regard. The fact that close to half of leaving certificate students are taking grinds at second level raises serious questions about the meaning of free education. I will conclude on this point. We must have a debate about that.

It points to the vital importance of primary school and stable family structures because if children do not attend primary and secondary school in a situation where they can compete equally and if they do not have the family environment and the quality of second level education that would allow them to progress without the need for grinds then there is not real equality in this country as people progress to third level. This is an important and troubling subject which I hope we can discuss soon.

**Senator Paul Bradford:** I support the request by Senator Jimmy Harte for a debate on social housing. That is basically what was requested. There are tens of thousands of people on housing lists and thousands of vacant properties across the country. The rental accommodation scheme, RAS scheme, which is useful, appears to be underfunded. The rental allowance scheme is being abused in many cases. The Minister must attend the House and attempt to devise a solution to house the people of this country given that tens of thousands urgently need housing. It should not be beyond the bounds of possibility that we can resolve the problem.

I wish to comment briefly on the debate on the recognition of the state of Palestine. Most people seem to have a simplistic view on the intricate situation in the Middle East. It is politically popular and correct not just in the House but outside it to wear the Palestinian hat but there is another side to the equation, namely, Israel. I am not surprised that the case for Israel is not stated clearly in this House because both in the Oireachtas and historically in this country we chose to see no evil and hear no evil when the Jewish people were being sent to the gas chambers and concentration camps. I do not hear much about the fact that almost on a daily basis missiles are sent to Israel and people are killed. I hear little objection to the fact that one state has an avowed aim to wipe the state of Israel off the map. That is the policy of the state of Iran.

**Senator Darragh O'Brien:** The other state is robbing land from the Palestinians.

**An Cathaoirleach:** Does Senator Bradford have a question for the Leader?

**Senator Paul Bradford:** I would like the House to have a substantial debate on the situation in the Middle East. I recognise the need to protect and define the Palestinian state but I also support the state of Israel. We need a substantive, inclusive and informed debate on the situation in the Middle East. I wish it were as simplistic and as simple to resolve as some of my colleagues appear to suggest.

**Senator Thomas Byrne:** I am disappointed that you disallowed my Adjournment debate this evening, a Chathaoirligh. When I was in the Dáil I raised a similar matter on the Adjournment and it was allowed at that time. The Adjournment debate I put forward today——

**An Cathaoirleach:** I ruled according to precedent. Senator MacSharry had raised a similar motion yesterday.

**Senator Thomas Byrne:** I am explaining the context.

**An Cathaoirleach:** I will discuss the issue with Senator Byrne further in my office.

**Senator Thomas Byrne:** A Minister of State came before the people of Slane during the summer and told them that the Slane bypass was a top five priority project for the Government. It was the first time I had heard the words “top five priority project”. I conducted a freedom of information request and to no great surprise found that there is no such thing in the documents I received. I am sure Senators would be delighted to hear what are the other four of the top five priority projects. We would like to find out what they are. There is nothing in the documents I received through a freedom of information request that would indicate there is any such thing as a top five priority list or that the Slane bypass is included in it, which it should be if there is such a list.

**Senator Terry Leyden:** Broken promises.

**Senator Thomas Byrne:** It is a broken statement. In the context of the Minister’s statement I felt it was important for the Minister for Transport to attend the Seanad to explain what a Minister has said and not what the NRA has done. In addition, the Minister also told the people of Meath that not only was it approved for planning permission, for which €1.5 million was allocated by the previous Government, but that money had been approved by the Government for the compulsory purchase of the lands. We are all delighted to hear that in Slane and elsewhere in County Meath but there is nothing in the documents released under the freedom of information request about funding being approved. I am entitled to raise the issue because it was first raised by a Minister. I will seek to raise the matter again tomorrow because it comes from the mouth of a Minister.

On health, it is important that the Minister for Health would attend the House. Sligo and Leitrim are represented by more Senators than anywhere else and they are going through a lot with the MBNA situation. It is an important issue. I am half-Sligo myself in that my wife is from Gurteen. The promises that were made to cancer sufferers and patients are among the most disgraceful promises made to sick people in this country.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Thomas Byrne:** Three Senators and a Minister said they would resign. The question is that those Senators said they would resign but they are not holding to that promise.

**Senator Fidelma Healy Eames:** Fianna Fáil did nothing about it.

**Senator Thomas Byrne:** They told sick people——

**Senator Fidelma Healy Eames:** The ball was in its court.

**An Cathaoirleach:** Senator Byrne should be allowed to speak without interruption.

**Senator Thomas Byrne:** I supported the national cancer strategy.

**An Cathaoirleach:** Does Senator Byrne have a question for the Leader?

**Senator Thomas Byrne:** The emphasis is on people getting better and improving cancer services in this country but the Government is no longer supporting the strategy. I fully supported the strategy although I lost services in my own area. There is no problem in that regard.

**An Cathaoirleach:** Does Senator Byrne have a question for the Leader?

**Senator Thomas Byrne:** The Minister for Health needs to come to the House because there are sick people who are upset because of the sick promises that were made to them by individual Senators. The Minister must be held accountable. He came to the House to discuss the female genital mutilation Bill — important legislation that had cross-party agreement — but he refuses to come to the Seanad to discuss the issues about which people worry on a daily basis. It is about time his colleagues told him that straight instead of standing up for him. I support the motion by Sinn Féin.

**Senator Mary M. White:** Hear, hear.

**Senator Jim D'Arcy:** I refer to an event which took place yesterday and is also taking place today and tomorrow, namely, the ploughing championships that celebrate their 80th birthday. President McAleese has described agriculture as the star of the Irish economy in tough financial times. We have record levels of Irish food exports and increased numbers entering Teagasc for farming courses. I ask the Leader to pass on the need to celebrate and nurture the future success of Irish farming, which is vital for the economy. We must ensure that the education system provides the necessary training and courses to encourage more young people into farming.

**Senator Mary M. White:** The Minister for Agriculture, Fisheries and Food, Deputy Coveney, praised the previous Minister, Deputy Smith, yesterday for his work as Minister.

**An Cathaoirleach:** Senator D'Arcy should be allowed to speak without interruption. Does he have a question for the Leader?

**Senator Jim D'Arcy:** I just asked the Leader a question. I did not hear what the Minister for jobs said.

**An Cathaoirleach:** She will not be replying to the Senator. I call Senator Leyden.

**Senator Terry Leyden:** I support Senator Susan O'Keeffe's request to the Leader. He will be concerned about the successful outcome of Maeve McGivern's case in London. I have no doubt that the Government and the Minister will see their way to providing transport for her. It has been a successful operation and we are all delighted with her progress. The family have gone through a very difficult time. The relevant authorities have now streamlined the transport of seriously ill patients. I know the Leader of the House will be sympathetic to this proposal. We should all agree that the Government jet should be made available because of the danger of infection in planes, as Senators will be aware.

I support Senator Mary White's proposal concerning MBNA. I happen to be a contributor to MBNA so I feel I am in a strong position to say that it is an excellent company. It built up Carrick-on-Shannon and the surrounding areas. In addition, MBNA has been involved in all sorts of charitable organisations supporting schools and educational development generally. It is an outstanding company and I am sorry that the Bank of America has decided to get out of the credit card sector. Nobody is in a better position to speak about jobs than Senator White. She created sustainable jobs from nothing and they remain in County Meath.

The Minister should utilise the abilities of those in this House to assist in trade missions. Senator White would be an ideal addition to a trade mission to the United States or elsewhere, as would other Members of the House. Senator Clune also referred to the MBNA situation, so I hope there will be a successful outcome because it is extremely grave.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Terry Leyden:** I am asking the Leader to arrange for the Minister to attend the House to report on the progress he is making on replacement jobs and the sale of MBNA, which is of crucial importance to Roscommon, Leitrim, Sligo, Longford and the surrounding areas.

**Senator Martin Conway:** Like others, I am concerned about the situation in Aviva. Unfortunately, the rumours circulating in recent weeks were substantiated on "Prime Time" last night. There was a time when companies who were making staff redundant would call them into a meeting before it became known through the media. The staff would be advised beforehand of what was going to happen. It is most regrettable that those rumours were confirmed for the workers on television last night. This practice seems to be developing, but it is most regrettable. It is a sad day for the insurance business. Ordinary policy holders have been through enough worry with the situation in the Quinn group, and now they are in a similar situation with Aviva. I ask the Leader to impress on the Minister the necessity for clarity on what will happen with the latter company and the fate of those jobs in particular.

When the Minister for Health attends the House, the Leader should ask him to formulate a proper policy for community hospitals. Raheen Community Hospital in County Clare closed a five-bed ward a week ago, which is most unfortunate. Similarly, the friends of Ennistymon Community Hospital, also in County Clare, have €500,000 sitting in a bank account.

**An Cathaoirleach:** Does the Senator have a question for the Leader?

**Senator Martin Conway:** Yes, I have. They are prepared to build a ward for the HSE in order to create more beds. They are afraid to do it, however, because they do not know what the hospital's future will be, or what the policy is. There are great communities that are prepared to work in partnership with the HSE and the Government, but people must be up front in stating what is the situation and what needs to be done. Community hospitals and their partnership with various communities can provide a model for the future.

**Senator Trevor Ó Clochartaigh:** The Leader should ask the Minister for Justice and Equality to attend the House to explain how our justice system works. How is it that a little old lady of 65 can be sent to prison indefinitely, while we still have bankers and investors who have not yet been imprisoned? This is because Teresa Tracey was affirming her right to keep trees on her land, whereas EirGrid and the ESB wanted to fell the trees. This lady is being kept in prison indefinitely until she purges her contempt of court. It is an important issue because individuals should have their rights upheld. The Leader should therefore ask the Minister for Justice and Equality to attend the House to explain this situation to us.

**An Cathaoirleach:** Some 27 Senators have made contributions on the Order of Business. As we are out of time, I regret that I am unable to call Senators Coughlan, Healy Eames and Mulcahy. I will give them first choice tomorrow. I call the Leader to reply.

**Senator Maurice Cummins:** As the Cathaoirleach rightly pointed out, some 27 Members contributed to the Order of Business. I will do my best to get through them as quickly as possible. Senator O'Brien mentioned the rumours of job losses at Aviva, which are a source of great concern to the workers, their families and everyone else involved. Aviva is currently undertaking a review of its operations in Ireland, but until that has been completed it would be premature to speculate on its outcome. I can confirm that IDA Ireland is working with Aviva management to mitigate any negative outcome from the review. We all wish that any job losses will be minimised in that regard. Hopefully, the rumours will prove to be false and we will have very few job losses in Aviva. The matter is under review, however, and the IDA is in negotiation with management.

Senator O'Brien and others also referred to the Palestinian request to the United Nations for statehood. Government motion No. 14 states, "That Seanad Éireann reaffirms the long-standing support of the Irish Government and people for the establishment of a Palestinian state, based upon Israel's pre-1967 borders with mutually agreed land swaps". It is a worthy diplomatic motion.

**Senator Darragh O'Brien:** Is there anything wrong with the non-Government motion No. 4?

**Senator Maurice Cummins:** Government motion No. 14 should be supported by the House.

**Senator Darragh O'Brien:** Non-Government motion No. 4 is also there.

**Senator Maurice Cummins:** Senator Bacik also raised that question, as well as the issue of men's cancer awareness. It is blue day in the Oireachtas and I see many people sporting blue. I was even accused of wearing Dublin colours this morning.

Senator van Turnhout mentioned the children's information hotline and I will consider giving Government time for such a debate shortly. Hopefully we will have clarity on the matter soon.

Senator Norris spoke about the need for further democracy in involving people in the operations of the Oireachtas. That is one of the reasons we established the public consultation committee which I hope will address the gap in democracy that has been there for some time.

Senator Gilroy spoke about the points system, which was discussed on the Order of Business yesterday. It is a worthy point. The Minister for Education and Skills, Deputy Ruairí Quinn, attended this House yesterday for an interesting debate to which quite a number of Members contributed.

Senator MacSharry referred to waiting lists for social welfare applicants. The attitude of staff that he described is totally unacceptable. The Minister for Social Protection, Deputy Joan Burton, will attend the House next month when she will be able to take a number of questions on social welfare matters, including the problems outlined by Members today.

Senator Keane referred to a cartel in the concrete industry and I will certainly ask the Minister to examine that situation. I am sure he will do so.

Senator Feargal Quinn mentioned social welfare fraud and the possibility of an amnesty. That matter can be raised with the Minister when she is here next month. She will be taking statements as well as questions and answers in that regard.

Senator Harte raised the lack of exceptional needs payments for people taking up long-term house leases. I know it has been a problem and it can be addressed by the Minister when she

next attends the House. There has been a discrepancy in the amount of money allocated by community welfare officers for exceptional need payments in the various areas throughout the country. The Minister is endeavouring to address this matter.

Senator Cullinane spoke about the over-run in health service budgets. It is time the hospitals and everybody involved must realise that they have to live within their budgets. This has to be done and the HSE and hospitals must realise their budgets need to be realistic. There is currently an embargo on staff recruitment in the health service and throughout the public service.

Senator Cullinane has proposed an amendment to the Order of Business which I do not propose to accept. The Minister, Deputy Reilly, has just returned from representing the country and the Government at a UN conference on health. The request for him to attend the House is on his desk and I hope to have a date fairly soon.

Senator Sheahan asked about Garda stations and this matter was discussed yesterday. The Minister is currently carrying out a review of the entire Garda organisational structure. This is necessary in the context of dealing with the very difficult financial circumstances facing the State but also for the modernisation of the force. The purpose of this review is to ensure we will have the most effective arrangements in place to meet the challenges which the Garda Síochána will face in future years.

Senator O'Sullivan called for a debate on the Defence Forces. He outlined the work and the service of the FCA. I will arrange to have this debate as the House has not had a debate on the Defence Forces for quite some time. Senator Clune spoke about the points system. Other Senators spoke about Aviva and MBNA and the need for workers to upskill to allow for future investment in the country. This matter was raised with the Minister last week and I hope the Minister can come to the House again. He was here only last week so it may be another while before he is available but we will take on board the points made by Senators Leyden and White and ask for a report on his deliberations as regards MBNA and the protection of jobs in Carrick-on-Shannon.

Senator O'Keeffe spoke about the case of Maedbh McGivern. I am sure all Members wish this young girl a very speedy recovery. The question of safe transport home will have to be addressed as this should not be an extra worry for people who have undergone life-saving operations. It is only fair that safe transport home would be provided for them.

Senator Daly asked for the Minister for Health to come to the House. I have already dealt with that matter and I hope that when the Minister comes to the House there will be more Members present than were here last week for questions to the Minister for Jobs, Enterprise and Innovation. As I stated, people were shouting for the Minister to come to the House but only three or four Members were in attendance at some stages for the session of questions and answers with the Minister. In this regard, it is very irresponsible of Members to be standing up and demanding that Ministers come to the House to answer questions.

Senator Mullins spoke about betting shops and the loss of 500 temporary jobs as a result of the closing hours. We are due to have betting legislation before the House, possibly before Christmas. I am sure that matter will be addressed in that betting legislation.

Senator Colm Burke raised some very relevant points regarding junior doctors and their problems with sitting examinations. I will bring this matter to the attention of the Minister for Health. Senator Mullen referred to the death penalty and he said that the current controversy in Georgia over Troy Davis affords the House an opportunity to bring forward an all-party motion on the subject. I am sure there would be no problem in obtaining all-party support for such a motion.

[Senator Maurice Cummins.]

Senator Bradford supported the request by Senator Jimmy Harte for a debate on social housing. He also asked for a debate on the Middle East. He outlined his support for the State of Israel. I hope to have the Tánaiste in the House for statements and a question and answer session on that area.

Senator Byrne asked for time for discussion of the Slane by-pass but this was dealt with and ruled on by the Cathaoirleach. Senator Jim D’Arcy referred to the 80th anniversary of the national ploughing championships. All Members will agree that the education system should be geared towards supporting young people who wish to work in agriculture.

Senator Leyden also raised the question of MBNA. I thought he was going to propose Senator White for the Presidency but it did not get that far. Senator Ó Clochartaigh also made some points and asked for the Minister for Justice and Equality to come to the House to deal with a matter.

**An Cathaoirleach:** Senator Cullinane has moved amendment No. 1 to the Order of Business, “That a debate on health matters with the Minister for Health be taken today.”

Amendment put.

The Seanad divided: Tá, 16; Níl, 31.

Tá

Barrett, Sean D.  
Byrne, Thomas.  
Cullinane, David.  
Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mooney, Paschal.  
Mullen, Rónán.

O’Brien, Darragh.  
O’Sullivan, Ned.  
Ó Clochartaigh, Trevor.  
Ó Murchú, Labhrás.  
Quinn, Feargal.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Bacik, Ivana.  
Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Conway, Martin.  
Cummins, Maurice.  
D’Arcy, Jim.  
D’Arcy, Michael.  
Gilroy, John.  
Harte, Jimmy.  
Hayden, Aideen.  
Healy Eames, Fidelma.  
Heffernan, James.  
Higgins, Lorraine.

Keane, Cáit.  
Landy, Denis.  
Mac Conghail, Fiach.  
Moloney, Marie.  
Moran, Mary.  
Mulcahy, Tony.  
Mullins, Michael.  
Noone, Catherine.  
O’Donnell, Marie-Louise.  
O’Keeffe, Susan.  
O’Neill, Pat.  
Sheahan, Tom.  
van Turnhout, Jillian.  
Whelan, John.  
Zappone, Katherine.

Tellers: Tá, Senators Ned O’Sullivan and Trevor Ó Clochartaigh; Níl, Senators Paul Coghlan and Susan O’Keeffe.

Amendment declared lost.

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

### Arts Plan: Statements

**Minister for Arts, Heritage and the Gaeltacht (Deputy Jimmy Deenihan):** I am delighted to be present and I would like to acknowledge Senator Mac Conghail's work in organising this debate. I served in the House for four years in the 1980s and I always found it a creative place. It is where I learned about politics and legislation and I had the opportunity to introduce a number of initiatives. I would also like to acknowledge Senator Mac Conghail's work in briefing other Members. I am sure they are wiser about the arts than they were last week and that is positive for the arts.

I am glad a large number of people involved in the arts are present in the Visitors Gallery, including Ms Pat Moylan, chairman of the Arts Council and Mr. John McGrane of Ulster Bank who is with Mr. Willie White, artistic director of the Ulster Bank Dublin Theatre Festival. Ms Tania Banotti of the National Campaign for the Arts and Theatre Forum is also in attendance. They are all welcome and I hope we will have a good engagement and that some new ideas will emerge.

When I was appointed by An Taoiseach to this brief, I resolved that I would try to make the arts and culture part of our national script. In other words, it would be a central and essential part of the narrative about the character of a new, different, changed and better Ireland. A country like ours today survives, grows and prospers on foundations built on the talent and ability of its people. Human ability, resilience and creativity are key. The more they are developed, the better we are. Modern goods and services require high value added input, some of which comes from technology and financial capital, but more comes from people and their ability to innovate, think and be creative.

The process of stimulation through music, drama, literature, films, works of art and the delight in design, in architecture, in crafts, enlarges a country's capacity to be reflective, interested, dynamic and bold. Dynamism in the arts and culture, I believe, also leads to dynamism in a nation — a kind of national reawakening. When more children get access to the possibilities of art and creativity, it is not the art alone that they learn; it is the art of living, thinking for themselves and creating. They may never become an artist or a dancer or a designer, but in whatever job and in whichever walk of life they choose, they will carry an idea that is not just about commerce, law, engineering or medicine but about what makes the ordinary special and the extraordinary possible.

That is why I am putting arts in education at the heart of my ministerial objectives. I have met the Minister for Education and Skills to discuss a range of ideas. These have been further elaborated out by our advisers and a team headed up by the assistant secretaries of the two Departments is now working on those ideas. When young people can visit museums and see great works of art, they take some of the inspiration with them. A nation that cares about arts and culture and its youth will not be a better nation only; it will be a more successful one because arts and culture, more than any other programmes of Government, worthy and necessary though those are, can make people think, see things differently, and understand where the other comes from. As my colleague, the Minister for Education and Skills says, we need to teach young people to think and not just to remember,

I believe that the next five years can be an exciting time for the arts and culture sector. The combination with the Irish language and heritage responsibility makes eminent sense and I look forward to seeking and building on the self-evident synergies between the three areas. Over the next five years, the Government will seek to work to maintain employment levels in the sector; increase visitor numbers to the cultural institutions to 3.5 million per annum in 2011 and grow that number further next year — so far this year those numbers are up about 4% on last year's record numbers; enhance engagement with the arts from the community up, with

[Deputy Jimmy Deenihan.]

particular reference to young people; continue to support our national cultural institutions; build on Ireland's cultural brand through the work of my Department's agency, Culture Ireland, especially in the US and the BRIC countries, and during our Presidency of the EU; finalise development work on key regional arts and culture infrastructure; complete refurbishment of the National Gallery historic wings; ensure that key arts and culture venues in major centres throughout the country remain in business; maximise the return from section 481 film production relief; leverage the impact of our expertise in the animation business and build on the success of Brown Bag Films, Cartoon Saloon and JAM Media among others; in the context of our jobs strategy, move forward on implementing the recommendations of the creative capital report on the film and television production sector, which I published during the summer; maintain our competitive position in film and television production internationally to drive inward investment opportunities in co-operation with the IDA and the industrial development agencies; build on the success of the regional festivals programme in 2011 as part of an integrated cultural and regional tourism drive; maximise the impact of the 1901 and 1911 census digitisation project in conjunction with the tourism agencies, and advance the proposal to publish the 1926 census on-line; build on the business links established through Culture Ireland's promotion programme in China, the US and UK; address economic reputation damage through cultural promotional work and maintain our prominent position internationally, particularly in theatre, music, dance and traditional music; reorganise and achieve economies of scale across the sectors through shared services' models; maintain regional venues and touring programmes within available funding; leverage the City of Literature designation for the entire country; and work on an exciting commemorative programme for 2016. These are just some of the initiatives which the Government will pursue over the next five years. I have a number of ideas that I will try to pursue and Senators will no doubt inform me further and provided further challenges.

We must achieve all of this in the context of reduced Government expenditure in order to meet the EU and IMF targets. In doing this, we are building on our natural strengths in the arts. These are brand recognition and quality; scale; an inherent capacity for renewal; and the fact that arts and culture are now a recognised part of the economic mix. Our stock is high internationally in the arts, culture and film sector. For example, the value of column inches generated by our cultural ambassadors in the last 12 months is put at €20 million worth of advertising because they were all positive column inches. We must build on that and leverage the impact of our world class artists. We must work together with tourism and enterprise agencies, and each opportunity internationally is potentially a selling opportunity for our country. We host the EU Presidency in 2013 and that is a potential audience of 550 million people. We should bring the Imagine Ireland experience to Europe in 2013.

There are considerable opportunities for the film and audiovisual sector. The Government recognises this as an important economic sector and an internationally traded one. I published Creative Capital, the five-year development strategy for the sector, earlier this year and I have put the implementation committee in place already. We should build on the successes of recent years and work to maintain hard-won competitiveness and craft reputation. Technology opportunities should be exploited. The web hosting, data centre and high-speed international broadband infrastructure should also be leveraged. A closer alignment between writing and film talent might bring even more benefits. Our film festivals should become world class.

International partnership and collaboration too is full of possibilities. There has been a tendency to undersell ourselves here. To give a few examples, the National Gallery is in the top 50 most visited art galleries in the world. In the visitors' leagues internationally, it is ahead of the San Francisco Museum of Modern Art, the Musée des Beaux Arts and the Musée d'Art Moderne de la Ville in Paris. The Irish Museum of Modern Art lies ahead of the Whitney in New

York and of the Neue Nationalgalerie in Berlin. Collectively, cultural institutions here had more visitors in 2009 than the Musée d'Orsay in Paris, placing us in the top eight of the most visited museums and galleries in the world. That is a remarkable statement about what we have. It indicates clearly that we have something to bring to international partners.

If the number of visitors to the Book of Kells is included, we would probably be in the top five in the world. That is quite an achievement for a small island nation on the periphery of Europe. In sports terms that is not a standing start. An exciting range of possibilities include further US and EU linkages; the possible development of partnerships with the private sector; further academic developments, including joint research projects, internships, programmes and summer schools; the increased promotion of Dublin as a creative city via initiatives such as culture night and opportunities to engage the public in cultural life with the potential to further promote this city and Ireland as a destination for cultural tourists.

One of our specific commitments in the programme for Government is to expand the culture night concept and I have set the wheels in motion on that already. I have a strong sense that we can achieve this by the designation of St. Patrick's Day as the International Day of Irish Culture and build on solid foundations already in place. I hope that all public representatives will support culture night 2011 this coming Friday evening throughout the country.

Literature is our primary cultural calling card and our writers and dramatists introduce us on the international stage. Thanks to Government funding through the Arts Council and Culture Ireland, we are now also known internationally on dance, contemporary music, visual arts, and many other art forms. In the digital world, the customer is just 0.8 seconds away anywhere on the globe. There are novel partnerships across the technology platforms which are possible here. With imagination and technological knowledge we can bring our collections and our artists to entire new markets.

In this regard we can consider the success of the on-line census. If we got even 1% of the 200 million on-line hits to those pages visiting this country, we would increase annual visitor numbers by 33%. We can imagine the value of placing the collections of the National Library of Ireland at the disposal of every school child in the country. More global business is being done on the web and we must be there in an imaginative and compelling way. We must have a centre of literary excellence in Dublin, and I am exploring a number of possibilities in that regard. We have the content for this beyond doubt and with a clever use of the existing stock of public buildings, we can accommodate it in a manner appropriate its importance.

My vision for this is very simple. It should be a place where all the public and visitors could encounter writers of the past, engage with writers of the present and encourage writers of the future. It will be a place in which our rich literary heritage would be brought to life — an embarkation point and launching pad for the literary visitor and a pantheon of Irish writers. There is no doubt that we are a world class artistic and creative hub.

In the past two years, Irish artists continued to make a major impact on the global stage. Five Oscar nominations brought international focus and acclaim to the Irish animation sector, with Richard Baneham, a graduate of Ballyfermot College, winning an Academy Award for special effects for "Avatar". Joan Bergin won a third Emmy for her costume design on "The Tudors". The outstanding Irish documentary "His and Hers" won the best cinematography award at the Sundance Film Festival. Michael Fassbender from Killarney won best actor at the Venice Film Festival and "Albert Nobbs", starring Glenn Close and produced in Dublin by Alan Moloney, with the screenplay written by John Banville, is opening the Los Angeles Film Festival.

The Villagers rock group made an international breakthrough with their nomination for the prestigious Mercury music prize. Colm Tóibín's *Brooklyn* won the Costa Novel Award and

[Deputy Jimmy Deenihan.]

Colm McCann won the IMP AC for *Let the Great World Spin*. Paul Murray's novel, *Skippy Dies*, was selected by *Time* magazine as one of the top three novels of 2010, and it was on the holiday reading this year of US President Obama and British Prime Minister David Cameron. *Room*, by Emma Donoghue, was also shortlisted for the Man Booker Award.

In its top ten list of theatre productions for 2010, *The New York Times* included Druid's production of Enda Walsh's "Penelope". With the same production, Enda Walsh and Druid also won a third Fringe First in a row at the Edinburgh Festival Fringe. *The New York Times* selected two Irish books in their top five fiction list for 2010 — Emma Donoghue's *Room* and William Trevor's *Selected Stories*. This year Pat Kinnevan enthralled the Edinburgh Festival with a great fusion of dance and acting talent, and I was delighted to be there to witness it.

Arts and Culture spans so many disciplines. There is not a sector of the arts that cannot contribute to our growth and redefinition as a nation. We must develop a particular model of government working with the cultural sector that is both successful and distinctively Irish, and which recognises the constraints on the public purse. That model is a mixed new economy model combining public funding with private enterprise, philanthropy, subsidy and the box office together with new media and technology.

Critically, the Arts Council operates as an arm's length body, so the State is placed in the position of doing what it can do well, creating the right policy conditions and funding, and not what it has no business doing, controlling the arts. The simplicity of this model is that public subsidy permits risk-taking in creativity. A new breed of entrepreneurial leaders in the arts world have shown that art of the highest quality is compatible with sound financial discipline. The small team that delivered Dublin Contemporary has gathered incredible international press coverage from *Le Monde*, *El Pais* and so forth, with praise for their creativity, innovation and delivery, and the public subsidy produces a return not just in creativity but in economic activity and social impact.

Taking into account economic multipliers, the value added that was dependent on the arts, culture and creative sectors in 2008 was €11.8 billion or 7.6% of GNP, according to DKM. Cultural tourism is a key element of Ireland's tourism industry, again according to DKM. The list of top visitor attractions is dominated by natural and built heritage, and in addition festivals and musical and other events attract major numbers of attendees. In 2008, some 3.5 million overseas visitors engaged in cultural or historical visits, which represents 43% of total visitors, and they spent €2.3 billion, which represents 56% of the total overseas visitor spend. As Senators know, a large number of the tourists who come to Ireland engage in cultural pursuits. We only have to look at Kildare Street on a day such as today to see the large numbers of people going into the National Library and the National Museum. People visit them in greater numbers because they are free of charge, but our cultural venues bring people into Dublin and that is one of our great advantages. A total of €3.03 billion or 2% of GNP is at least partly dependent on overseas cultural tourism, and domestic cultural tourism would add significantly to that. In 2008, some 73,000 jobs were dependent on cultural tourism, which represents 3.4% of the workforce. There is a significant showcase impact from Irish culture, which raises the profile of the country and has a substantial economic benefit, most directly in tourism.

There is a strong regional aspect to the arts, culture and creative sectors as cultural activity is strongly rooted in locality. Remoteness from larger metropolitan areas is less of a disadvantage than in some other sectors, and in some cases it is an enhancing factor. This is most obvious in the area of events and festivals and the related cultural tourism. Examination of the most popular visitor attractions and events in Ireland in recent years points to a range of locations around the country, including many along the western seaboard. For instance, the third most popular visitor attraction in Ireland is the Cliffs of Moher.

Total Exchequer expenditure on the arts, culture and creative sectors in 2011 is €150 million. The 2008 equivalent was €220 million. Against this, direct Exchequer revenue from the arts, culture and creative sectors in 2008 was approximately €1 billion. The growth rate of the creative sector in Ireland has been well above the European average, indicating the importance of the creative industries for overall Irish economic performance. The new enterprise model for the Irish economy recognises the vital importance of the arts, culture and creative sectors and places strong emphasis on creativity, the accumulation of knowledge and the development of ideas and designs as well as the application of technology.

The combined arts, culture and creative sector is one of the fastest growing globally. It represents 7% of global GDP and is growing at 10% per annum. Likewise, cultural tourism is expected to experience growth of 15% per annum. The culture-related sectors form one of the key growth areas that Ireland must tap into for economic and employment opportunities in the next decade if it is to recover from the current severe recession. Furthermore, on a global scale, the culture-related sectors are expected to be a significantly greater part of the international economy in the future, and Ireland must make its presence felt in these sectors if the overall economy is to be a competitive leader in the future. I have no doubt that those in the sector have the capacity and creativity to make that impact.

I am pleased to have this opportunity to address the House. I will listen attentively to what Senators say and my officials will take notes. I hope our discussion on the arts will add to the overall narrative. It is important that new ideas are listened to, accommodated and implemented if possible. Looking at the profile of the people in the House, I believe there are great opportunities to come up with some really good ideas. Many Senators have worked in the arts in the past, and the Seanad can really prove itself in the arts in this term.

**Senator Labhrás Ó Murchú:** Go raibh maith agat a Leas-Chathaoirligh, agus fáiltím roimh an Aire. Tréaslaím leis as a bheith ceaptha mar Aire dos na healaíona sa tír. Chomh maith leis sin, tugaim faoi ndeara an méid oibre atá déanta aige go dtí seo. Is beag cúinne den tír seo nár thug sé cuairt air. Tá sé ag éisteacht, agus tá sé sin thar a bheith tábhachtach. Tá sé ag dul i gcomhairle leis na heagrais agus leis an bpobal go náisiúnta agus ar leibhéal áitiúil freisin. Níl aon amhras faoi ná gur seo an treo is fearr le tabhairt faoi obair na healaíne.

I welcome the Minister to the Seanad and compliment him on the manner in which he has approached his Ministry to date. I note he has travelled the length and breadth of Ireland. As well as negotiating and consulting at national level, he has been particularly active in dealing with organisations and communities at the local level. I compliment him on his presentation. It is clear he has captured the essence of the potential that exists for the arts in Ireland. I also praise his officials, who in my experience have always been accessible, encouraging and helpful. We have developed a unique partnership for the arts with Deputy Deenihan as the Minister, the Departments, all the Senators and the people in the Gallery as well. I thank those who provided presentations and submissions in advance of today. I have never noticed that happening before. It is possible that some of the credit goes to Senator Fiach Mac Conghail, to whom I pay tribute for the leadership he has provided in that regard.

I have always felt that misunderstandings can be avoided in any area where there is consultation and where partnership develops. I must say I get quite excited at the manner in which the model is developing. I do not think it is accidental that our discussion is taking place in advance of the forthcoming budget, and I am sure the Minister understands the importance of that as well. Each Senator here, based on his or her experience, and most of us having taken soundings from the greater arts world, will be in a position to help the Minister so that, when he goes forward to make a case on behalf of the arts, he does so with an extensive and comprehensive view.

[Senator Labhrás Ó Murchú.]

The Minister touched on a number of particularly important points. He did not focus on any one specialist area but endeavoured to encompass them all. He gave statistics that are exceptionally compelling at budget time, and they show clearly that at a time of economic challenge it is often cultural activity that provides, cosmetically and otherwise, a remedial response or an antidote to the economic difficulties. If we consider the depth of the economic problem that we have in that manner, thinking in terms of the spirit of the people, of creativity and of how we bring cohesion of effort, there is no doubt that the arts and cultural activity play an important role. As stated by the Minister, we have so many gems at our disposal, including the Abbey Theatre and all other cultural institutions on this island.

I would like now to set out for Members an experience, in a world other than the national institutions, which brought home to me the potential that exists for us to bring about an identity of our own which, incidentally, is strongly recognised internationally and is, therefore, a direct conduit with tourism. Fleadh Cheoil na hÉireann, with which I presume most Members are familiar, was held recently in Cavan. More than 12,000 performers of all age groups took part in the event. Of particular significance, however, was that 300,000 people attended it. For those thinking of that figure in terms of seats in the Dáil, if we could bring them all together, it would mean ten seats in the Dáil. There is a political issue involved here.

Some €34.9 million was generated at last year's fleadh. That is an official statistic from Fáilte Ireland following a survey. It is estimated that €40 million will be made this year. It is important we bear in mind the economic advantages of the arts. There is a more important advantage in the arts, as with sports. Members will recall the event held in Merrion Square following the football final — I regret I must bring this up now but I am sure the Minister will understand — and the power it had to energise people, allowing all other problems to fade into the background. That is also true in relation to the arts.

Young people in particular are the ones who will have the energy for a new Ireland. They are the ones who will take risks and provide leadership. I thank the Minister for coming to the House today and for this approach, which gives particular significance to Seanad Éireann. What will come out of this debate today is further dialogue. It will no longer be a case of them and us but one of all of us together, working for a single common cause, namely, the arts world, cultural activities and so on. I wish the Minister good luck in his efforts. If he requires further backup, we are all here to help him.

**Senator Catherine Noone:** I am delighted to welcome the Minister, Deputy Deenihan, to the House. It is hoped everyone in the Visitors Gallery realises what a hardworking and energetic man he is. While not wishing to be too gushing and pathetic, we know from his weekly schedule, which is made available to us, the amount of territory he covers and the sheer energy he brings to this portfolio. We must all be encouraged by the fact that he is the man in the job. I would also like to acknowledge Senator MacConghail's efforts in bringing the committed campaign for the arts people to meet with us last night. I am new to all of this. That presentation was inspiring. One of my colleagues went so far as to suggest they go on tour with their presentation. If they could go on tour to all the councils and manage to present to the arts officers and various county and city managers, it would resonate with them.

I am delighted this debate is starting in the Seanad. The Seanad has an important role to play in the arts because we, more than our colleagues in the Dáil, have an opportunity to debate the issue here. It can be easy to forget about the arts, in particular in difficult times such as those in which we now find ourselves. However, to do so would, in my view, be short-sighted and unwise. As Government Seanad spokesperson on arts and culture, and as someone

lucky enough to have grown up in a home and community fortunate enough to be involved in the arts, I am strongly committed to the artistic community.

The arts represent our artistic soul, for which we are globally recognised, and a field in which we can as a nation invest and benefit if we do so in a strategic manner. It is important to keep this in mind in any debate on the arts. The arts is often wrongly viewed as a drain on resources. However, investing wisely in selected events can, in my view, work to augment our tourism sector and ensure great returns. The arts is completely complementary and intrinsically linked to other vital money making sectors in the country. One of the main reasons tourists visit Ireland, in particular American tourists, is our vibrant arts sector. Our books, plays, festivals and works of art are renowned across the world. We must ensure we are working to get the most out of these and to ensure our talent is celebrated and nurtured through a fully rounded education within which the arts plays a role.

I am particularly passionate about the contribution which the visual arts can make to the lives of those with disabilities. It is well known that art enriches the lives of those who appreciate it. For people with disabilities, that enrichment is even greater. Research has consistently shown that visual arts can enrich the lives of those with disabilities, in particular people with mental difficulties. I have had the pleasure of experiencing in a personal capacity the benefits the Lundbeck arts awards bring to this area. Visual arts, with the added competitive element, brings a renewed sense of self worth and self esteem to people who, for a variety of reasons, find it difficult to cope with the complexities of modern living — but for the grace of God go so many of us.

I know that there are many other organisations across the length and breadth of the country doing similar great work. There are a number of challenges facing the arts sector, including fewer resources, difficulty for personnel in finding seasonal work and venues across the country adapting to new tastes. However, the arts has always prided itself on being creative with money. The best art tends to come in times such as these. I believe the State has a role to play in allocating funding wisely and ensuring that key projects across the nation go ahead. The arts sector needs to have confidence that politicians are behind it. As Seanad spokesperson for the arts, culture and Gaeltacht affairs I would like to make it abundantly clear that I intend to support the arts and to act at every opportunity as a sounding board for issues pertaining to the arts.

We face challenges but we also have a number of opportunities. Turbulent times always present opportunities. Rent is relatively low and new spaces are popping up throughout cities and towns. New drama and literature collections are appearing in villages, towns and cities. An opportunity I have previously highlighted is that of acquiring the site of the Central Bank for use by the arts. I know the Minister has been actively working on that idea and it is hoped we will get that site from the clutches of the Bank of Ireland. I believe this would be a magnificent boost for the arts and would underscore its importance to the type of nation we are trying to rebuild. Indeed, that is to my mind what this debate is about, namely, highlighting the importance of the arts in the context of the type of nation we aspire to be. As such, I believe the Seanad has played an important role in allowing this debate to go ahead, thus highlighting that our arts and culture sector are more than just the sum of their parts. We still have at our disposal the vital ingredients to continue our internationally recognised prowess in this sector. The protection of the arts needs to be seen as a statement of intent. It serves to show that Ireland has learned to treasure its artistic soul. As long as I am a Member of the Seanad, I will continue to support and speak out for this sector to the greatest of my ability.

**Senator Fiach Mac Conghail:** I wish to share time with Senator Mary Louise O'Donnell.

**Acting Chairman (Senator Pat O'Neill):** Is that agreed? Agreed.

**Senator Fiach Mac Conghail:** I, too, welcome the Minister, Deputy Deenihan, to the Chamber for his first visit here as Minister for Arts, Heritage and Gaeltacht Affairs. I am aware of the Minister's great commitment to and knowledge of the arts and of his personal contribution in that regard, in particular in respect of the literary arts.

I have been working professionally in the arts for more than 20 years and this is the most critical time for our community and the lives of our citizens. In this Republic everything seems to be up for grabs, including our sovereignty, our health system, our education system and our values as a nation. Everybody is trying to live and survive in the short term and somehow make sense of the long-term strategy that might get us to a more healthy and prosperous place. I believe that one of the reasons the Taoiseach nominated me to the Seanad was to provide a view, through the lens of our arts and culture community, to any debate on nationhood and our society. This is one such time.

Creativity in imagination is what the arts community can offer. We can do this by ensuring we are part of the debate around the future of our Republic particularly in areas such as innovation, enterprise, jobs, health, community and, in particular, education. The Minister knows the facts. For €65 million from the Arts Council and €42 million from the local authority, the arts is one of weaves that keep our communities alive and vibrant. Last year, 66% of the adult population, approximately 2.3 million people, attended arts events. I will not go into any further detail. Will the Minister confirm that he will not cut the Arts Council funding in 2012? We recognise that EU-IMF targets have to be reached over three years. If there are to be cuts will he make a statement today so that we can start to plan better and work over the next three years?

We do not pretend to be in a position to help restore the economy but we can make a difference between being citizens and not just consumers. We also make a good business case. Of the €76 million of State funding in 2007 that was used to fund arts organisations and individuals across Ireland, €54 million was returned directly to the Exchequer in the form of VAT, income tax and other taxes. Our tourism, our national culture institutions and art festivals are a major driver. We also work well with business in attracting more than €20 million annually to the arts in terms of sponsorship and philanthropy. What is the status of the current working group on philanthropy and has the Minister any recommendations to make to the House today? I look forward to an answer in the House today.

We are also lacking a longitudinal survey, a researcher on the value of the arts. How do we value the arts as opposed to viewing it from an economic or tourism viewpoint? How can we get support? One of the greatest challenges facing the Department of Arts, Heritage and the Gaeltacht is that it has failed to make any inroads into or contribution to education policy. There is no arts and education unit. I am pleased that in his contribution the Minister mentioned that he is engaging with the Department of Education and Science at assistant secretary level. I would like to know exactly what is happening. There is no arts and education unit. There is a good document which has been passed by his Department entitled Points of Alignment, produced by the Arts Council in 2008 and which contains excellent recommendations. There is no need for further reports as this report can be used as a benchmark to engage with the Minister for Education and Science, Deputy Ruairí Quinn, who has an interest in the arts, on a structural response to maintaining the arts in the heart of the curriculum, not as a discretionary option, where there is an enlightened principal and an enlightened teacher.

To quote Francois Matarasso in the national economic and social forum report of 2007: "Put simply, since the arts shape the continuing evolution of people's thoughts and beliefs, democ-

racy must ensure all citizens have equal access to the arts alongside equal access to education and to political enfranchisements”.

**Acting Chairman (Senator Pat O’Neill):** I call Senator O’Donnell who has two-and-a-half minutes.

**Senator Marie-Louise O’Donnell:** You have to be joking.

**Senator Fiach Mac Conghail:** There was an interruption so the Senator can get an extra 30 seconds.

**Senator Marie-Louise O’Donnell:** I welcome the Minister into the House. It is a privilege to stand here speaking to him. I have a very simple idea about the arts. The arts are about human imagination and human energy. Yesterday, spokespeople from the national campaign for the arts came in and told us the who, why, what, how and where they were and in the process opened up a complete world. They covered participation, outreach, tourism, impact, jobs, communities, innovation, health, identity, economy, citizenship, business, arts reputation, education and learning — a world, a cultural circle with 1,000 artistic radii, presenting the best of who we are as individuals and what we are as a country. It is a privilege to stand here with the Arts community in the Visitors’ Gallery speaking for and about them.

What will the Minister bring about that is unique in his tenure of office for which he will be remembered? I ask that with affection and respect because it is a question I am asking myself as a new Senator. What am I going to do? I wish to make one small suggestion that during his term of office the Minister take a determined and realistic positioning of drama, music and visual arts in all their forms, as Senator Fiach Mac Conghail has mentioned, as statutory and independent required disciplines in the school curriculum primary, middle and senior. Arts education is as important as mathematics education. The Greeks got that right many years ago.

The template I suggest the Minister look at is the vision and the leadership of John Kelly and the Irish Chamber Orchestra title “Sing out with Strings”, in the Limerick regeneration. Some 30% of our population is under 18 years of age, that is, more than 1 million, yet only 5% of the arts budget goes to the area of young people and children in the arts. Does the Minister intend to change that? I suggest he does not allow the budget to be cut as it would not be right. The arts community is the only community who have never let us down.

**Senator Trevor Ó Clochartaigh:** Hear, hear.

**Senator Marie-Louise O’Donnell:** We have been let down entirely by the banking community who have nearly brought the country to its knees. We depend on the arts community for the energy, creativity and vision to help us stand up again. I call on all Senators to make sure the budget is not cut.

In 2010 the Arts Council received €68 million, €65 million from the national lottery. The national lottery revenue is gathered from lower socio-economic groups, unskilled workers, the unemployed and those with lower educational qualifications so who is paying for the arts? Is it like the banking transfer of artistic wealth from the less well off to subsidise the better off and the better artistically to be able to avail? I would like to hear the Minister’s thoughts and whether he might walk the arts where they do not easily reside.

Kurt Vonnegut, my favourite, said the arts make life bearable. They have certainly made all my life bearable. Practising an art, no matter how well or how bad, will make your soul grow. Electronic communities do not do that. We are dancing animals. How great it is to get up, to go out and do something.

[Senator Marie-Louise O'Donnell.]

I ask for three things. First, fight for a bigger budget. I will help. We will all help. I ask the Minister to implement the arts in education as a truly qualitative, imaginative, creative form on the national school curriculum and using their money from the Lotto walk the arts into thorns and into places unknown and unnoticed. When in doubt, Minister, and without money, be brave and build a castle.

**Acting Chairman (Senator Pat O'Neill):** I was very liberal with my time to the Senator.

**Senator Marie-Louise O'Donnell:** We were so engaged.

**Acting Chairman (Senator Pat O'Neill):** It was the dramatic effect of her statement. I call Senator John Whelan who has six minutes.

**Senator John Whelan:** Thank you.

**Acting Chairman (Senator Pat O'Neill):** I will allow the Senator the same liberties.

**Senator John Whelan:** I understand. It is an indication of the importance and central role played by the arts in Irish society that we are having this debate. I commend the Government and particularly those who drew up the programme for Government in difficult economic times for ensuring that the arts has a full Minister in Deputy Deenihan, at the heart of Cabinet. That is a recognition of the importance that the arts play.

The arts are justifiably centre stage in an Irish political forum today and it is right and proper that they are represented at the Cabinet table. They play a central role in all our lives and are not only invaluable to our social, cultural and educational fabric but, as stated here, play an important role in the economy and in the tourism industry, with an estimated 10,000 people directly employed in the arts and responsible for generating €3 billion in revenue. Not everything that is important can be measured in euro. We are paying a heavy price for that lesson today.

Let no one doubt the international currency of Riverdance, U2, Roddy Doyle, Joseph O'Connor, Paul Durcan, Colm Tóibín, Colin Farrell, Brendan Gleeson, Gabriel Byrne, Seamus Heaney, Des Bishop, Pat Shortt, Martin McDonagh, Mannix Flynn, John B. Keane, Brian Friel, Mick O'Dea and Robert Ballagh. The list stretches for as far as the eye can see. Everyone could include their personal favourites, but that is what the arts are all about — audience participation.

I will take this opportunity to pay tribute to some contemporary talents, including Eugene O'Brien, the playwright from Edenderry, and the young actor Robert Sheehan from Portlaoise. I am certain we will see more of their work and that it will enlighten and entertain us and inspire across the world's stage.

The arts stretch from the heart of Dublin in the Abbey Theatre to the picturesque streets of Abbeyleix and its small fledgling community arts festival. From the National Concert Hall to the rolling fields of Stradbally, which play host to the Electric Picnic, the arts are not a fuddy-duddy, elitist, exclusive enterprise. They are all around us on a daily basis and engage, excite, enlighten and educate us all. Pound for pound, the arts owe us nothing. They give great value for money and have never short changed us.

Not everyone involved in the arts can be a rock star or headline act. Many artists struggle to make ends meet. Some are on the bread line. Artists are hard working by nature and, in the best sense of the word, proud of what they do. In today's climate, many find making a living difficult. Some do not have a pay day from one end of the year to the next. For example,

someone might work on a body of work for an exhibition for a year or two in the hope there will be some sales. In the case of sculptors I have met, it could be three years from the time they receive a commission to the time they get paid.

Perhaps the Minister will ask the Cabinet to address an anomaly, namely, the special status of the artist in terms of revenue and taxation affairs. It is not fair that an artist who receives a pay cheque once every two or three years has that money viewed as a single year's income, given the heavy tax and PRSI penalties imposed. The artists to whom I refer do not live in ivory towers. They must feed their families, send their children to school and pay their bills. It would be a relief and helpful were the Minister to intervene and resolve these unjust traps, perhaps inadvertently imposed by Revenue.

The way in which Revenue's rules apply to artistic capital projects is unsound and nonsensical. Laoighis-Offaly is fortunate to have fantastic facilities such as the Dunamais Arts Centre, the Birr Theatre and Arts Centre and the Arthouse in Stradbally. With the local authorities, the Department and the Arts Council played leading roles in providing these. Tullamore is in the throes of a large effort to raise €250,000 in the community, no mean feat in the current climate, to build a new arts centre. I pay tribute to those behind the project on its outstanding design, technical specifications and superb location on the banks of the Grand Canal. The catch-22 is that, while the community is making great strides to fund-raise and match the Government's contribution, the VAT charged on the building of this capital project could be as high as €400,000, which would negate the community's contribution and could sink the project. That would be counterproductive and in no one's interests. In light of this anomaly, will the Minister intervene with Revenue? It would be futile for the Government, the Arts Council, local authorities and community to fund-raise and put resources into building a necessary arts centre only to have Revenue claw back the money.

I pay tribute to the constant contribution made to Ireland's cultural landscape by the Arts Council, particularly under the dynamic leadership of its chairperson, Ms Pat Moylan. Her hands on expertise and experience in the sector are immense. I urge the Minister to use his good offices — he does not interfere with council policy — to ask the Arts Council to re-examine some of its funding application processes, which can be unnecessarily convoluted and complex. Red tape is a burden wherever it is found and can be a significant and unnecessary deterrent to artists and small community groups.

I commend the Minister on the vigour and enthusiasm he has brought to his portfolio. I understand he wants to formulate a coherent arts and culture strategy for the country, which is to be commended. However, I caution him that it would be dangerous and counterproductive to impose a single template on the whole of the country. For example, counties Galway, Clare and Kerry do not have the same needs and priorities as counties Laois, Offaly and Longford. As far back as 1988, County Laois showed great initiative by appointing one of the country's first arts officers. Laois is an example of a county that is trying to build and nurture its arts infrastructure, although it is not at as advanced a stage as counties Kerry, Galway and others. Will the Minister take this into account? In terms of arts policy and strategy, one size does not necessarily fit all.

**Senator Sean D. Barrett:** I welcome the Minister. He is bringing the great work he does in County Kerry to a national scale. One must commend the Taoiseach on his choice of Senators, for example, Senator Mac Chongail.

**Senator Catherine Noone:** Hear, hear.

**Senator Sean D. Barrett:** I have many important matters to raise, but I will try to adhere to the six minutes the Acting Chairman has given me. In the college where I grew up, the two

[Senator Sean D. Barrett.]

people we most admired were Brendan Kennelly and Brian Boydell. Other people had fancier titles, but those two gentlemen's representation of the arts inspired us all.

Consider the North-South problems we have dealt with in recent times. The arts constitute one of the best ways to achieve such liaisons. Remember Brian Friel, Pat McCabe, Seamus Heaney and Hamilton Harty. As far as the arts are concerned, there are no borders. This is a valuable asset as we try to bind the wounds of many years.

There must be more interest in the arts within the university sector. It has worried me for some time that TCD has no professor of music. Brian Boydell is greatly missed. When I discussed this matter with the outgoing provost, he agreed that we needed a professor of music and that the post should be performance-related. I agree with Senator O'Donnell's suggestion that the next professor of banking who retires should be replaced by a professor of music. It is important that we have the ability to inspire the young.

There will be a short intake of breath from the people behind me in the Gallery but, if budgets are constrained, what can we do within our existing resources? A suggestion from an economist working in this area, Professor Dick Netzer, related to rehearsals. We rehearse for concerts and theatre productions. He suggested that we hold these rehearsals in shopping centres, schools and factories so that those who might not attend an opera could see how it was put together. Children in particular would see that it was not the perfect product they might hear were they to pay €50 to go to the opera. Let us see how the conductor gets things going. These rehearsals would bring the arts out to shopping centres, pubs, schools, offices and factories. We do not know what will inspire young people. It might be they will remember the day that two or three people from an orchestra came to school.

The Aosdána comprises amazing talents and fantastic people. Could it form part of the *quid pro quo*, no pun intended, for Aosdána members to visit schools? People would be inspired to meet such wonderful artists. This would reach out to the next generation, which tends to be neglected in formal arts budgets, as Senator O'Donnell stated.

Having put my suggestions to the Minister, I compliment him on the enthusiasm and energy he has brought to his post. I also compliment the arts community on how much it has done for our morale and the country in general.

**Senator Trevor Ó Clochartaigh:** Cuirim céad fáilte roimh an Aire. Not wanting to upstage my good friend, Senator Mac Conghail, it should be noted that Sinn Féin has been asking for the Minister to attend the House since my election. We are delighted he is present.

**A Senator:** There will be no taking credit.

**Senator Trevor Ó Clochartaigh:** No. We have been calling for this debate because it is an important matter. Bhí mé i láthair ag an ócáid ar a d'fhreastal an tAire i Halla na Cathrach i nGaillimh nuair a d'oscail sé suas an díospóireacht maidir leis na healaíona. Bhí an ócáid sin thar barr agus tá an-mholadh ag dul don Aire maidir leis an fíis atá aige.

Einstein said all religions, arts and sciences are branches of the same tree. It is interesting that we quote a scientist on a day like this because it is important to put the arts in the context of the overall position of the nation. All of these factors need to work together. I am afraid that, in the run-up to a budget, that might be forgotten. It is wonderful to hear the contributions today on the arts. There is much cross-party support for the arts.

There should be three foundations to any arts policy: to engage, to excel and to inspire. This touches on much of what has been said already. Engagement is very much about what our

friends in the gallery do. It is about getting people on the ground involved in arts-related activity. This echoes what Senator O'Donnell was saying. We need to reach out to all communities and get people involved in the arts at all levels. It is good for the soul and the community and a great antidote to the country's present woes. To be involved in creativity is important in itself. It is part of what we need to do as human beings to fulfil ourselves.

Having taught drama in school for quite a long time, I noticed that once children were engaged, a couple of them always shone and were fantastic. One goes home and says that one should have seen such a boy or girl. There are people in our arts communities who excel and we need to be able to support them in a very practical fashion.

The names of great people who inspire were mentioned. They really shine and make a name for themselves and Irish culture on the international stage. They show we box way above our weight when it comes to creativity, the arts and culture. We need to be proud of them and to support them.

References to the artist have been lacking in the debate thus far. We have talked about the arts groups, the arts community, culture, tourism and education but not the artist. Most of the artists to whom I talk say that all they want to do is produce their art. They need the space to be able to paint, write, dance or create theatre, either as an individual or with a group of like-minded people. They do not need conditions imposed on them such that if they receive a grant from the Arts Council to write their play, they must go into a few schools and do a few workshops. They want to be able to produce their art. I do not necessarily agree with the policy that if one is to be funded to engage in the arts, strings should be attached. We need to respect the artist as a professional. That is a fundamental mindshift we need in this country. We need to respect the space the artist takes up.

The bard was once renowned in Irish tradition as a very important part of the court. The bard was respected because of the poetry he wrote and not because of anything else. We need to return to respecting the fundamental role of the artist within our community. This must bring us to practicalities. I agree with the Minister that his engagement with the Department of Education and Skills is crucial because many teachers thank those who enter schools to do drama because they are not sure how to deliver the curriculum themselves. They thank God there is a few who can. The education system certainly needs to live up to its policies and to have professionals who can deliver the type of arts education that is needed. This, however, requires resources.

I received an e-mail this morning from five young people who want to work on a film in Galway this week. Their dilemma is that if they do a couple of days work on the film and sign off the dole, they will get a load of hassle. If they do not sign off, they could get into trouble. Whenever artists or people involved in the arts go into the Department of Social Protection, they are looked at as if they have two heads. The Department should begin to understand the role of an artist in the community. We need more flexible arrangements so those who work in the arts can come in and out of the system in a way that is suitable. This also relates to the Office of the Revenue Commissioners. The sporadic nature of funding for arts commissions should be borne in mind.

Ta an-áthas orm gur thagair an t-Aire do chúrsaí ealaíon agus do chúrsaí Gaeilge. Tá sé iontach tábhachtach go dtabharfaimís aitheantas agus tacaíocht dos na grúpaí ealaíon atá ag feidhmiú tré mheán na Gaeilge. Ceann des na jabannaí atá le déanamh againn ná labhairt leis na hinstiúidí móra a bhfuil feidhm orthu go náisiúnta ó thaobh na n-ealaíon, le déanamh cinnte go bhfuil siad ag comhlíonadh a gcuid dualgais maidir leis na healaíona i nGaeilge. Tréaslaím leis an tSeanadóir Mac Conghail ó thaobh Amharclann na Mainistreach. Tá sé ag déanamh sár jab mar stiúirthóir ealaíon. Ach ceann des na lochtanna a bhéadh orm ar Amhar-

[Senator Trevor Ó Clochartaigh.]

clann na Mainistreach ná nach bhfuil sé ag comhlíonadh a chuid dualgais maidir le cúrsaí drámaíochta tré Ghaeilge agus ba bhreá liom tuilleadh deiseanna a fheiceáil agus go mbéadh achmhainní ar fáil do sin.

I am sure more points will be raised in the debate. I agree with Senator O'Donnell that the economic arguments put by groups such as the National Campaign for the Arts and the Arts Council are very compelling. We should not cut back on the arts.

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

**Senator Trevor Ó Clochartaigh:** It makes no sense. With a minimal injection of funding into the arts sector, there is an accumulator effect and jobs are provided. These benefits and the international prestige gained far outweigh the investment.

Sinn Féin is probably the only party that has stood against the austerity measures. It argues that money should not be given to the unguaranteed bondholders but invested in the arts, health and social services. The arts and structural organisations have their part to play in making sure the relevant economies are put in place and that as much money as possible gets to the individual artists and arts groups providing services on the ground.

Oscar Wilde stated, "Ordinary riches can be stolen from a man. Real riches cannot. In the treasury-house of your soul, there are infinitely precious things, that may not be taken from you." The arts are those things. We have seen our riches stolen from us but they cannot steal our arts.

**Acting Chairman (Senator Pat O'Neill):** I call the Minister, who may respond to spokespersons before taking questions. How much time will he need in which to reply?

**Minister for Arts, Heritage and the Gaeltacht (Deputy Jimmy Deenihan):** As much as I need to reply to everybody.

**Senator Trevor Ó Clochartaigh:** Artistic licence.

**Acting Chairman (Senator Pat O'Neill):** A lot of people have got that today.

**Deputy Jimmy Deenihan:** We are here until 2.15 p.m.

**Acting Chairman (Senator Pat O'Neill):** Yes, but 10 Senators have indicated they have questions.

**Deputy Jimmy Deenihan:** I thank all the speakers. Their contributions, although short, were very much to the point. They asked pertinent questions and I will try to answer them in so far as I can.

I have been a great admirer of Senator Ó Murchú for some time. Comhaltas Ceoltóirí Éireann has been one of the great cultural movements. It and the GAA have been all-embracing movements and their contributions to Irish culture are immeasurable. One must appreciate the level of volunteering in Comhaltas Ceoltóirí Éireann and the time people devote to it for absolutely nothing. The organisation is possibly the most influential Irish organisation in America and it has branches in Sardinia and Russia. There is great growth associated with Irish music and dance in Russia.

I totally agree with what was said about partnership. Senator O'Donnell asked what I would like to be remembered for as a Minister. I would like to be remembered as having been a friend of the arts and a facilitator, that is, somebody who listened and tried to implement many

of the good ideas emanating from the arts community nationally. I will certainly do so. None of us has a monopoly of wisdom in the arts; we all have our own areas of expertise but are not experts in all the artistic forms.

I agree that if officials, the Minister, Members of the Oireachtas and arts community work together, something very special can be done. I see plenty of opportunities for collaboration and even for using existing resources to the full. We have a really good human resource, including young college graduates who are very well qualified.

We now have spaces we did not have 15 years ago. Over the past ten years, previous Governments invested €1 billion in creating spaces, and this must be recognised. The Irish taxpayer has made an enormous contribution to the arts over the past 15 years. Now, we must concentrate on human resources, programming, content and creativity. We have done the building, and for the time being we do not have the money for further building. We must concentrate on ensuring the human resources we have nurtured over the past ten years remain in the country and that we support them as much as possible.

To refer to last Sunday's game, which was a great spectacle for Gaelic football——

**Senator David Norris:** It was a great result.

**Deputy Jimmy Deenihan:** Absolutely. I am sure the Senator would have done very well with the Dublin football team if he ran for the Presidency. He would have been out there leading them.

**Senator David Norris:** I might yet. The game is not over yet.

**Deputy Jimmy Deenihan:** As you know, my goodwill is with you, sir.

**Senator Marie Moloney:** Is it not hard for Kerry people to wear blue today?

**Deputy Jimmy Deenihan:** Certainly.

I was at Croke Park last Sunday and I felt the atmosphere, even if the result was not what we Kerry people would have liked. However, as we say in Kerry, when we lose it is good for the game and when we win, it is good for Kerry. Last Sunday's match was very good for the game. I was impressed with the number of young people I saw taking pride in the Dublin jersey. The city was a sea of blue with young people enjoying themselves like I never saw before, even at rugby and soccer internationals. There was an identification between the people of Dublin and their team in Croke Park. Even as a player I had never felt this. As Senator Ó Murchú stated, it was a younger breed of people and it is encouraging that they embraced this in such a positive way. They were very proud of what their team achieved. I hope they do not achieve the same next year. Garry McMahon was a very good Kerry songwriter, and his brother is chairman of the Abbey Theatre board. He wrote a beautiful song about dúchas — tradition — and two lines sum up Kerry, "And when we lose, there's no excuse, we pick up our bags and go". That is what our lads did last Sunday.

**Senators:** Hear, hear.

**Deputy Jimmy Deenihan:** Senator Mac Conghail emphasised the aspect of education. Engagement between the Department and the Department of Education and Skills has taken place and will continue. At present, two high-ranking officials, assistant secretaries in each Department, who have worked with each other in the past, are engaging with each other. The engagement started with my adviser and the advisers of the Minister, Deputy Quinn, getting

[Deputy Jimmy Deenihan.]

together. Then, the two Ministers got together and we had very positive engagement. Now, two high-ranking officials are working together.

We are serious about what we can contribute to the arts. It may be impossible to implement all of the Points of Alignment report but parts of it are implementable. It has been put aside for three years, perhaps for good reasons such as the resources not being available; I do not know whether the commitment was there. Certainly, the commitment exists now on the part of both Ministers to ensure not only the implementation of Points of Alignment but also to work on other aspects of arts policy that can be put in place with good will, support and a small amount of resources which would yield a considerable outcome.

**Senator Fiach Mac Conghail:** However important mathematics and science are, in the developing policies on numeracy and literacy, arts and arts related subjects are being marginalised and becoming discretionary. The education system is governed by the marketplace——

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

**Senator Fiach Mac Conghail:** ——and we must be very careful. I am aware of the Minister's bona fides and we Senators will do what we can to encourage him and the Minister, Deputy Quinn, to ensure we deliver holistic education to all our young citizens so they can participate in all aspects of Irish life.

**Senator Trevor Ó Clochartaigh:** Hear, hear.

**Deputy Jimmy Deenihan:** I understand from my experience of teaching how if a school places an emphasis on certain subjects generally they prevail. This can be guided by the principal. However, I must state that just yesterday, I met a delegation from the National Association of Principals and Deputy Principals, and I will address its conference this year. It has a direct connection with 700 schools in the country and its members are as enthusiastic as I have ever seen with regard to promoting the arts. This includes practitioners throughout the country. If principals are this committed surely it is a very positive sign.

**Senator Trevor Ó Clochartaigh:** They need the resources.

**Deputy Jimmy Deenihan:** They are committed. We cannot live in your perfect world either.

**Senator Trevor Ó Clochartaigh:** We could. You would be very welcome.

**Acting Chairman (Senator Pat O'Neill):** Please do not interrupt the Minister as other Senators want to ask questions.

**Deputy Jimmy Deenihan:** I would love to be in that zone but unfortunately it is not the reality. However, when these people request a meeting and four of them travel to meet a Minister irrespective of who is Minister, one must acknowledge and appreciate it. If they are very positive and recognise that resources are stretched at present but are still prepared to try to do something, then one must accommodate it and ensure their enthusiasm is used as much as possible and that we capitalise on the opportunity. I felt very positive after the meeting and we will continue this engagement. I hope also to create a forum with a number of interested parties in education. I know it exists already, but I would like to expand it so I can enter a conversation with people involved in education provision in the arts throughout the various sectors during the next four years.

With regard to study, we have looked at the economic value but we must also look at the creative imperative and creative dividend the country gets from the arts. People state the Irish are creative and we have proven this. For such a small nation, we are very creative people. We must measure this also in the context of economics.

As I described him on a number of occasions at international fora, and with all due respect to other Senators, Senator Mac Conghail is Senator for the arts.

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

**Deputy Jimmy Deenihan:** He has started very well.

Senator Marie Louise O'Donnell and I have known each other for a very long time and we have very good mutual friends in the United States and elsewhere. She asked for what I would like to be remembered. I would like to be remembered as a friend of the arts and that is all. If, after four years, I can come out as someone who has tried his best, listened to people and delivered something I will be quite happy.

With regard to funding for young people, in 2003 when arts legislation was going through the Dáil I delayed it for months. I argued for an arms-length approach, in other words that the Minister could not direct the Arts Council on arts policy or on how it spends its money. The 5% is very much in the hands of the Arts Council and it is that body which will decide how much money it spends on various aspects of the arts. I am sending out a strong message on how I see the arts developing and the importance of education. I hope the Arts Council executive will respond to what Senators have stated and to my overarching policy.

Senator John Whelan is a practitioner. As regards making a living, I spoke to an artist last week who is quite well known. She said that in order to make a living and support her family she would have to undertake approximately 120 commissions a year. That is a lot of sales. Painters, actors and those involved in the film industry are finding it very difficult at the moment. There is less activity now in the documentary sector than for the past ten years. These are difficult times. We should all be very much aware of that because we have a great skills base in various aspects of the arts, visual and performing, and we must support that.

I am very much aware of the challenges that exist currently. I support the provision of resources from whatever angle for artists in the next four years. There are other ways of making money. I will refer to what has been said in a moment. There are difficulties as regards VAT and tax, but my official has informed me that if Members wish to engage with him, the Department has worked with people in the past on aspects of revenue with which they may be able to assist. I agree that it takes an artist time to create a work. It must have taken time for the artist that created the beautiful and spectacular statue of Michael Cusack in front of the Cusack stand. I also agree that the time taken into account should relate to the time from when an artist started a commission to when it was finished. It would make sense for the time to be averaged over a period so that a person is not hit with a big tax bill in year three when the work has been ongoing for a few years.

I wish to comment on the arts policy and having one blueprint for the country. The Department is located in Kerry. I brought in all the practitioners in Kerry on the Monday following my appointment. It was suggested that they should devise a strategy or template in Kerry in consultation with all the organisations and practitioners which could act as a template for the rest of the country. It is an online project which has been completed. It involved input from all practitioners, the arts office in Kerry and others. It is now available to the rest of the country. It is not a blueprint for the rest of the country but people can look at it and adopt aspects of it in other counties. What might be successful in Galway could be successful in Kerry and *vice versa*. In that way people could avoid pursuing dead-end projects that did not work elsewhere.

[Deputy Jimmy Deenihan.]

It is a way for arts practitioners throughout the country to engage in dialogue online. Following that I brought together all of the arts officers, who are a great resource in this country. They are very much part of the project. I am travelling around the country and I have already been to six counties. Local arts officers bring together all the practitioners in an area and we have a conversation about what is good for the arts in the county in question, what is different there from other counties and what is required. I found the engagement to date useful.

Senator Barrett raised some important questions. So much is going on in the university sector at the moment in terms of the arts and creative industries but it is confined to the sector and is not being transmitted to the broader population. There are tenuous connections between universities and the general community. There are good examples of interaction. For example, I have been engaged with University College Cork and in other places where there are good examples of interaction. Universities are an invaluable resource waiting to be tapped. Collaboration can take place but it is not taking place to the extent that it could or should. I am delighted Senator Barrett raised the issue of more engagement between the arts community and universities given that so much is going on at the moment. Some very bright, creative people are coming up with new ideas but they are not being translated and transmitted to the broader community.

**Acting Chairman (Senator Pat O'Neill):** A total of 12 Senators have indicated they wish to ask questions.

**Deputy Jimmy Deenihan:** I am sorry. I will finish. I have only a few more points to make. The Senators who spoke raised some pertinent points.

**Acting Chairman (Senator Pat O'Neill):** I know they did but other Senators wish to contribute.

**Deputy Jimmy Deenihan:** I am prepared to stay here until 5 p.m.

**Senator Maurice Cummins:** If the Minister is willing to stay we should let him stay. What time are we supposed to finish?

**Deputy Jimmy Deenihan:** There should be no time limit on the arts.

**Senators:** Hear, hear.

**Acting Chairman (Senator Pat O'Neill):** I am sorry but we must stick to the agenda.

**Deputy Jimmy Deenihan:** As regards rehearsals, when I was in Boyle and Clifden this year I was delighted to see use being made of unoccupied buildings of which there are many around the country. Some good exhibitions are being held in various unoccupied buildings. I refer to shops that were closed down. They are ideal for the purpose. People like to go into a building such as a garage or space. I opened a major exhibition for the Mexican Embassy in a former car park. Some Members may have attended. There was an enormous crowd there. Such a venue creates its own atmosphere. An older building such as Earlsfort Terrace can be attractive for the display of contemporary art. Senator Barrett's idea is a good one. I am trying to encourage as many people as possible around the country to look at existing buildings and use them for rehearsals for choral groups, for example, and the visual arts. I will try to encourage that as much as I can.

Reference was made to Aosdána. It is an interesting issue. Senator Ó Clochartaigh may have been listening to some of the practitioners in Galway. During my engagement around the

country I mentioned the possibility that people who are getting funding from the arts could make a contribution to education. They are not compelled to do so. That suggestion got a negative reaction in Galway. Senator Ó Clochartaigh has been briefed on the issue. I just threw out the suggestion for consideration.

If people from Aosdána could go into schools for even a half hour visit it would make such a difference. I know that is the case from my experience of going into schools as a sportsman and now to some extent from my involvement in the arts. There is no doubt that any politician going into a school makes an impact. It will make a greater impact if one goes to a school to talk about the arts or any subject to which young people can relate. Senator Ned O'Sullivan will understand my point. Any time that Bryan MacMahon or John B. Keane came into our schools we remembered it for ever. That is the bottom line. If Brendan Kennelly appeared it would be like a god appearing in schools.

**Senator Martin Conway:** He is a god.

**Deputy Jimmy Deenihan:** That is the reality. People should not underestimate their connection with and influence on young people if they visit a school for even half an hour every year. Gabriel Fitzmaurice is a great Kerry poet. He was principal teacher in a school in Moyvane. Now he is visiting schools. He has produced one of the best children's poetry books in the country and he is visiting schools with great effect. That is a good idea and it should be considered. I fully agree with Senator Ó Clochartaigh on the three foundations of arts policy; engagement, excellence and inspiration. They can certainly change the whole narrative in this country. Some time ago, I was in west Belfast for Féile an Phobail, which is one of the biggest festivals in Ireland. I can see how Féile an Phobail has changed the mindset of people in west Belfast. In addition, it has been very successful in crossing boundaries into other communities as well. If it can work in a place like Belfast where two communities were at loggerheads with so much division for so long, it proves they can work together and that the arts transcend all boundaries. I was delighted to attend that festival. I was described there as the "first Southern Minister" to go North. I reminded them that I was from the Republic of Ireland, of course, but I was delighted to be there.

We were speaking earlier about social inclusion. I was involved in that NESC report on social inclusion which was published in 2007. I took it seriously and went to all the meetings we held. We engaged with many people around the country. At that time, I said there are communities around Ireland that have not been touched by the arts, so touring is very important. I acknowledge the Arts Council's programme this year which involves an expenditure of more than €1 million on touring to all parts of the country. It is not just to regional centres, but also to community halls and other venues. That work is most important. The Arts Council should keep up that policy, which is for the whole country. Senator Mac Conghail's Abbey Theatre is for all of the country too. It is a national theatre and its productions should be seen in Donegal, Galway and Kerry and elsewhere along the western seaboard. People should know the Abbey is there, as it is a national cultural institution for everyone.

As regards resources, I agree that young people who are on social welfare may have skills, such as film production, sound technicians or camera operators, but they cannot get work at present. There should be flexibility, tolerance and understanding that because of the nature of the film industry a person might be lucky to get one gig during the whole year because there is so little activity going on. I have heard that from people who are very busy in whatever capacity. I agree with Senators that there must be an understanding of the position of people in the film industry, or artists generally.

I think I have referred to most of what Senators raised in the debate.

**Senator Fiach Mac Conghail:** I asked the Minister a question about funding.

**Deputy Jimmy Deenihan:** The Senator has been in politics for only a short time but, as he knows, we are not allowed to divulge what is in the budget.

**Senator Fiach Mac Conghail:** Excuse my naivety.

**Deputy Jimmy Deenihan:** Every Minister will make budget submissions but the Senator can read my lips from the point of view that I will be in there fighting for the arts. In addition, the national campaign for the arts must advise the Minister for Finance accordingly, as well as the Taoiseach, who is very receptive towards the arts. They are the critical people. Senators and TDs can be advised and educated but ultimately the Minister for Finance will make the decision. It is very important, therefore, that he understands the economic importance of the arts, as well as their role in fostering creativity. At the moment, it is important to repair the damaged image we have around the world. Nonetheless, it is improving because of our artists. In New York, for example, there may be 400 shows going on each night. Our dramatists are doing exceptionally well in the first Irish festival there. The Origin Theatre Company is giving out a very positive message for us in New York at the moment, which is very important. That impact around the world should be also measured.

I now look forward to hearing Senators' contributions until 5.00 p.m.

**An Cathaoirleach:** Over ten Senators have indicated they wish to ask questions. I will take them in groups of three. They will have one minute each with a brief reply from the Minister, so we can get through everybody. The first three will be Senators Moloney, Norris and Coughlan.

**Senator Marie Moloney:** I welcome the Minister to the House. It is nice to see a fellow Kerry person. I know the arts are in good hands because I know how passionate he is about the sector. I also know that if anything can be done to help the sector he will do it. I will try to fit my questions into one minute. The funding of cultural centres for the performing arts, such as Siamsa Tire, has reaped benefits for the community as a whole. Members of Siamsa Tire have toured the world showcasing Ireland in storytelling, song and dance. In turn, they have enticed tourists to visit Ireland for more of the same. It is well known that cultural tourists stay longer in Ireland and spend more. Likewise, Riverdance has increased Ireland's standing on the cultural map. No one should claim that the arts cannot do much for this country's recovery. That is not the case because tourists flock here, perhaps not for the weather but for our hospitality, cultural richness and traditions. I will get to the question because I can see that the Cathaoirleach is getting cross.

**An Cathaoirleach:** I have to be fair to everybody.

**Senator Marie Moloney:** Will the Minister ensure that funding will continue for centres such as Siamsa Tire? Such an investment will benefit the economy. I was going to speak about education but the Minister has addressed that issue pretty well, and I thank him for doing so. However, research by the Scottish government has shown that a positive association exists between participation in arts activities and a reduction in crime. Crime rates have been known to drop in areas where such activities have been provided.

**An Cathaoirleach:** Does the Senator have a question?

**Senator Marie Moloney:** Do the Minister and his colleague, the Minister for Justice and Equality, have proposals, as with the Minister for Education and Skills, to introduce programmes in high crime areas?

Local arts funding is at the discretion of county managers. I ask the Minister to ensure that funding provided for the arts is identified and earmarked in local councils. In addition, all moneys allocated to the arts should be spent in that sector. The Minister should request reports from the local authorities to monitor how the money has been spent.

**An Cathaoirleach:** Senators should ask questions and if we have more time they can come back in again. I call Senator Norris.

**Senator David Norris:** The Minister has a track record and we are lucky to have him. It all comes down to funding. How can we help? Can we have more of these sessions? Can we have this sort of debate regularly, with an interchange of questions and answers? Thank God we have people like Senator Fiach Mac Conghail and Senator Marie-Louise O'Donnell who are central to the arts debate. The Abbey Theatre is an international gem. I was thrilled by the Abbey's production of "John Gabriel Borkman" which has an international audience and export potential.

The Trondheim report clearly showed a substantial increase in mental health well-being through involvement in local cultural activities. I am thrilled that we have 70 theatres all over this country, which means that every community can have access. They must continue to be funded. Can we help in any way and, if so, how can we do so?

As regards the Irish language, Comhaltas Ceolteoirí Éireann is so important, as is the GAA. The language is one of our distinguishing characteristics. I was over in the Aran Islands and that community needs support. People sometimes say it is disproportionate but they are an island community, which is different from communities on the mainland.

**Senator Trevor Ó Clochartaigh:** Hear, hear. Maith an fear.

**Senator David Norris:** We must support the people of the islands. Our culture is invaluable. We made a huge mistake in getting rid of the cló gaelach.

**Senator Paul Coghlan:** I will be brief. I would like to make a speech but that is not allowed. The Minister sold himself short when he said he was a friend of the arts. Everyone realises the Minister has been a tremendous supporter of the arts, not just when in government but also for years when a member of the Opposition. I welcome very much what he has achieved, particularly in that Department and in those offices in Killarney. Nobody had made use of those offices but the Minister has done so. He has held meetings in those offices early on Monday mornings with people in the arts. He has brought together people from all over and great work has been done. Since Deputy Deenihan became Minister, that building has hosted exhibitions and shows and it is a great credit to him. He comes, of course, from the literary capital that is the kingdom and, therefore, I would not expect anything less.

**An Cathaoirleach:** Has the Senator a question?

**Senator Paul Coghlan:** I have a question, of course. I salute the Minister's initiative with regard to Killarney House and his policy for the use of our housing heritage for cultural purposes. I know he also supports what we have done in Muckross House and the cultural events that have been hosted there over the years, such as shows, plays and music events. I would like to hear the Minister's views on the tremendous initiative on Killarney House, an initiative which would not have happened without him——

**An Cathaoirleach:** I think the Senator has asked a question.

**Senator Paul Coghlan:** It had been gathering dust in files. I want to hear from the Minister because I believe he has very good ambitious plans.

**An Cathaoirleach:** Please give him a chance to reply.

**Senator Paul Coghlan:** Of course.

**Deputy Jimmy Deenihan:** In answer to Senator Moloney's question about Siamsa Tíre, it began in my own village of Finuge with Teach Siamsa where a renovation is currently under way. Siamsa Tíre plans to apply for the status of a national cultural institution. It is the national folklore theatre which reached out in the time before Riverdance and other performers. It toured around the world before these other performers. I agree with the Senator as to the importance of Siamsa Tíre. Most of the summer audiences for Siamsa Tíre are from his own town of Killarney. The company provides a significant cultural service for Killarney and for the rest of Kerry. It has performed in Dublin and in other parts of the country so it wishes to move on being recognised as a national cultural institution. It is a question of making an application and making the case that it is a truly national institution. I suggested to the people in Siamsa Tíre that it might be preferable to apply to the Department with responsibility for the Gaeltacht which would give them a greater spread. There is no question of a cut in their funding but both the Department and myself would like to see more support from the local authority in County Kerry for Siamsa Tíre because it makes such a significant contribution to the local tourist industry. Funding needs to come from the local authority as well as from the Department and philanthropic sources. I am aware that Kerry Group is very supportive of Siamsa Tíre and it is to be hoped this important support will continue and even be increased.

Senator Norris referred to An Taibhdhearc. There was a danger this theatre was to close but the Department ensured it would remain open. I have given assurances that we will support it and provide funding on the expectation that the theatre will provide development plans for the future. This shows that the Department took action in this matter. I do not have to remind Senator Norris that James Joyce is a major global figure. When one meets Japanese and Chinese —

**Senator David Norris:** I thought he was too predictable. I knew the Minister would do it for me.

**Deputy Jimmy Deenihan:** I thank the Senator.

**An Cathaoirleach:** The Minister without interruption.

**Deputy Jimmy Deenihan:** The Senator knows well there will be a tsunami on Joyce next year with the ending of copyright on his works. It is important that the Senator's organisation—

**Senator David Norris:** We will help in any way we can.

**Deputy Jimmy Deenihan:** —and the Irish Government should also be ready.

**Senator David Norris:** Absolutely.

**Deputy Jimmy Deenihan:** There is an extraordinary interest in James Joyce all over the world, and it is also extraordinary that an Irishman, a Dublin man, could have such an influence right across the world. The ending of copyright restrictions will provide a significant opportunity. We should discuss how to maximise that opportunity next year. I was delighted that this year, all over the city and also in Dún Laoghaire, Blackrock and elsewhere, this event is being used to generate local enthusiasm. I refer to a very fine event held in Dún Laoghaire. People

dressed in period costume and it created a great buzz, so to speak. I know a certain actor for many years and he was performing in front of the museum. I have met him on the street on Bloomsday in the past when people dismissed his performance as being a nuisance. That attitude has changed now. This year, people were engaging with him, listening to him and enjoying what he was saying. He can see the change in attitude over the years. Dubliners now regard James Joyce in a different light. Ulysses in translation by a performer is very different from Ulysses as reading material.

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

**Deputy Jimmy Deenihan:** We have a lot to talk about in this regard.

**An Cathaoirleach:** We have many more questions yet.

**Deputy Jimmy Deenihan:** I agree with Senator Norris about mental wellbeing. One of the reasons I appointed an adviser who was working with the Arts Council was that this person was very familiar with what was happening in the arts world in Dublin. I also wanted him to act as a cultural broker. He will negotiate with all Departments having any connection with the arts. He has been in contact with the Department of Education and Science and we will be engaging with the Department of Health and the Department of the Environment, Community and Local Government. I am making a special trip to Kilkenny to engage with the Minister for the Environment, Community and Local Government. The Minister for Health understands the therapeutic value of the arts for mental health and wellbeing. The hospice in Tralee has a very good programme and the arts can have a significant effect on the terminally ill. I am in favour of supporting such programmes.

I know that Senator Paul Coghlan claims total credit for Killarney House——

**Senator Paul Coghlan:** I was campaigning for years until along came the Minister. I could not have succeeded without him.

**Deputy Jimmy Deenihan:** The most important news is that Killarney House will be restored. The McShane family donated the house to the State, the only charge being for the furniture. It is very valuable furniture which is now in storage in Limerick and it does not cost as much as people thought. The house was given free of charge to the State. Sister Pauline McShane used to be horrified every summer on her visits home when she saw an iconic house disintegrating and being vandalised. The State stood indicted to some degree by this neglect. The national parks and wildlife service administer the Killarney National Park. It is the largest national park in the country, at 22,000 acres and one of the finest parks in Europe. Because of the synergy between biodiversity and the arts, this is a very exciting project. The park contains a unique collection of various species of fish, bird and plant life. The connection between biodiversity and the arts will be emphasised in the new proposal. It links Killarney town with the park which is on the outskirts of the town.

I thank Senator Coghlan for his support over the years and for keeping it on the agenda of the House at all times. I refer to what is happening in Limerick as regards the music initiative. We should look at that to see how it can be transferred to other parts of the country.

**Senator Marie Moloney:** It is a tremendous success.

**Deputy Jimmy Deenihan:** It proves a point. From my experience in Ireland and beyond, wherever there are good programmes in place, they can change people's lives. I read about such a programme in London where young drop-outs were involved in a drama programme

[Deputy Jimmy Deenihan.]

and one young girl who brought her mother along said it was the first time she ever really understood her mother. That insight alone was important.

I agree that the pursuit of the arts with young people, particularly through music, can be a very good way of getting people to refocus and find a different meaning for their lives. Studies over the years have shown that such programmes are effective. The Limerick experience, which is part of the whole regeneration programme, is very important in that regard. I have told the people of Limerick that they should look at Galway to see how arts and culture totally rejuvenated Galway. The same could be done in Limerick because the structures are there and the expertise is available through the university. There is a great opportunity and as Senator Moloney said, the project could be applied to any part of the country.

**An Cathaoirleach:** The next questions will be those of Senators Daly, Healy Eames and Conway.

**Senator Mark Daly:** It is great to see the Minister in this House. I am aware of his passion and work for the arts over many years as a Deputy in north Kerry. Not only does he assist projects, but he spearheads them. I heard his comments about the match and we can obviously console ourselves.

**An Cathaoirleach:** Has the Senator a question for the Minister before he runs out of time?

**Senator Mark Daly:** I am delighted to be on the committee on the 2016 celebrations which is chaired by the Minister. What can we do in the arts area in the run up to the 2016 celebrations? I am aware of proposals such as the freedom trail. The Minister is spearheading a task force that will go around the country. Can he outline to the House what will be done? Also, we have some cultural ambassadors, the most famous of whom is probably Gabriel Byrne. Does the Minister propose to appoint more ambassadors?

While it is not in the Minister's remit, I was delighted to see yesterday that the mother of a New York fireman who died in the September 11 attacks received the first certificate of Irish heritage, an initiative the Minister has been most helpful in ensuring is successful. Will the Minister explain to the House his vision and how this certificate could help the arts, the IDA, Tourism Ireland and the other institutions and colleges to assist our recovery in the near future?

**Senator Fidelma Healy Eames:** I welcome the Minister to the House and have three questions for him. Like others, I applaud the Minister on his vision for the arts and his belief in its capacity to transform this area.

**An Cathaoirleach:** If the Senator has three questions, she better get to them, because we will run out of time.

**Senator Fidelma Healy Eames:** Galway was once a sleepy place, but it has been transformed. The arts have played a huge role in that transformation. Currently, the arts are worth €150 million to Galway. However, there is one major obstacle. Galway would have been the city of culture in Ireland — unofficially it probably is — but for the lack of adequate space. The arts are meant to be open to all, but what do Galway people do if they want to dance or play the piano? There is no dance studio or school of music in Galway, despite the fact that it has often been the intention to provide one. My interest is in literature and children's writing and I would like to see a writing centre, perhaps along the lines of Fighting Words, in Galway.

There is much to be done. Does the Minister have a regional plan for the arts and what will his legacy be to the country when he leaves this Ministry?

**Deputy Jimmy Deenihan:** I answered that question already.

**Senator Fidelma Healy Eames:** I apologise, but I did not hear that. Does the Minister plan an audit —

**An Cathaoirleach:** The Minister has answered that question already and there is no point in asking it again.

**Senator Fidelma Healy Eames:** Does the Minister plan an audit of needs in the regions so that we do not see an unfavourable bias for Dublin or Kerry? My second question relates to the arts in education, particularly drama.

**Senator Marie-Louise O'Donnell:** That question was also answered.

**Senator Fidelma Healy Eames:** I would like to address a particular aspect, namely, oral language. I was very much involved in the revision of the primary school curriculum and know that drama is included in it. However, arts—

**An Cathaoirleach:** This question was answered already. It will be on the record.

**Senator Fidelma Healy Eames:** I would like to ask the Minister about it.

**An Cathaoirleach:** We cannot be repetitive. In fairness, there are other people who wish to ask questions.

**Senator Fidelma Healy Eames:** This is my little bit of time.

**An Cathaoirleach:** The Senator is over her time.

**Senator Fidelma Healy Eames:** I have not asked the question yet.

**An Cathaoirleach:** The questions were already asked and answered. The Senator is out of time.

**Senator Fidelma Healy Eames:** Dramatic arts will not happen at second level unless time is allocated. This requires two things. Will the Minister join with the Minister for Education and Skills to consider time, training and methodology for this, because these are the key needs?

Finally, what is the Minister doing about the issue of VAT on foreign art?

**An Cathaoirleach:** The Senator is out of time.

**Senator Martin Conway:** I welcome the Minister. He spoke earlier about the Cliffs of Moher and the Burren, but he may not be aware that over the weekend that region became a world geo-park centre. It has got great recognition and arts and culture in that area have played a significant part in that. I have two quick questions. The first concerns art spaces and arrangements with regard to rates and local authorities. A number of art studios are feeling the pinch in terms of their rate bills. Is there any joined-up thinking between the Department and the Department of the Environment, Community and Local Government? The Minister is going to Kilkenny and perhaps he can talk to the Minister, Deputy Hogan, while there.

The Minister spoke in his presentation about the benefits of art to people with disabilities in terms of expressing themselves. When people see a beautiful painting done by somebody in a wheelchair, they look at the painting and the person who created it rather than at the disability. Therefore, the broad spectrum of inclusivity is very much part of the arts, particularly with regard to disability. The Minister launched the Disability 1 Initiative in Dublin recently and

[Senator Martin Conway.]

may have spoken to some of those involved with the intention of assisting them in rolling out the initiative on a national basis. I would like to have had more time to speak on this issue. I put my name forward, but did not get the opportunity.

**An Cathaoirleach:** I am operating within constraints and there are a number of others who wish to speak. The Senator has had over a minute and a half to speak.

**Senator Martin Conway:** Compared to many others, I have been very restrained.

**An Cathaoirleach:** I have been fair to everybody, but I must ask the Minister to respond.

**Senator Martin Conway:** Thank you. When I checked with the Acting Chairman, I was third on the list, but I was not called third.

**An Cathaoirleach:** I can show the Senator the list.

**Deputy Jimmy Deenihan:** I appreciate Senator Daly's comments. He is from a very cultured town, Kenmare, where the people have a very good balance between tourism and culture and have always held on to their unique identity. The Senator is in a very special part of the globe in Kenmare.

The 1916 commemorations will be very important and it is important they are inclusive. We can all trace our party origins back to 1916, to the GPO and the other areas and we must all be part of the celebration. It cannot be the preserve of a particular party or individual. It is important we work closely together and that we start immediately. It all started with the Home Rule Bill 1912, followed by the Ulster Covenant setting up the Ulster Volunteers and then the reaction here to set up the Irish Volunteers in 1913. The process started then. If I get the opportunity, I would like to see these celebrations as a great cultural event. When one looks at the signatories of the proclamation, one sees they were all poets and writers. The rising was driven by a national zeal, patriotism and nationalism that were inspired by writers. Many of us read Pádraig Pearse when we were going to school.

He wrote wonderful, understandable Irish, much of it describing Connemara, and he was an inspirational figure. It was through his writing that he inspired people, as did the other signatories and many others. This must be seen to be a great commemorative event. We must acknowledge the military aspect but it is so much bigger than that. These people were inspired, although they had no hope of winning the engagement. They were opposing a powerful empire but they made a major statement for our country and our culture and history inspired all of them to give their lives for all of us. We must appreciate their contribution to the country and we must start to do that as soon as possible. The Senator and Senator White are on the committee. It is important that there is a wider engagement beyond the committee and perhaps I will come back to the House when we formulate the strategy for the celebration and commemoration of 1916 for ideas on how we can approach it in a broad way that ensures inclusivity for all of us.

Heritage certificates will be important. The Irish diaspora in America has reduced in number from 40 million to 30 million but there are 70 million throughout the world. In the UK, people were reluctant to put down their nationality as Irish but a major campaign was undertaken prior to this year's census to encourage people to do so and that will change everything. The figure mentioned at the time for those of Irish descent living in the UK was 3 million but that could increase considerably. In Australia, New Zealand and elsewhere, we do not have the same problems with nationality and identity. For example, a huge number of Irish people attended last Saturday's match in Auckland but most of them did not travel from Ireland for

the game. They travelled from Sydney, Melbourne and so on in Australia and from elsewhere in New Zealand. It brought home the number of young people who have left the country. The diaspora is interested in the country. Farmleigh MK 1 reached out to them and Farmleigh MK 2 will be an extension of that. The connection I have been working on for a long time is critically important for the country at this time to reach out to our diaspora who are more than willing to help us. There is great goodwill towards us in the international community, especially among our diaspora. People feel they are from the soil of Ireland and they have an attachment to the country. The heritage certificate must show a connection to Ireland and a person must be identified. Senator Daly has been involved over the years in helping Brian McCarthy and FEXCO to develop this project. That must be recognised.

Both Senator Healy Eames and I worked on a project in the past that covered the writers' week in Listowel, the Yeats festival in Sligo and the Cúirt festival in Galway. We got the three organisations together to promote them in America and that was successful. We should seek more of these collaborations. If any community or city can provide space, it is Galway because it has generated a great deal through the promotion of the arts and culture.

**Senator Fidelma Healy Eames:** But this is presenting as a difficulty.

**Deputy Jimmy Deenihan:** It is easy to adapt buildings for dance studio space and it should be possible to do that. I am sure there are several opportunities for music——

**Senator Fidelma Healy Eames:** Is the Minister considering engaging with NAMA?

**An Cathaoirleach:** The Senator should allow the Minister to reply. Several other Members are waiting to ask questions.

**Deputy Jimmy Deenihan:** I met NAMA officials. They are loan managers, not property developers, and, therefore, they are facilitating people, hopefully, in a significant way in certain instances. The likes of the Senator or her community should engage with NAMA if buildings are available. I met the agency's officials and we discussed possibilities for the arts in vacant buildings and they have been enthusiastic and co-operative. They will work through the owners of the buildings as they manage the loans and they will be facilitators. I have been assured by them that they will be sympathetic when it comes to the arts.

I have referred to arts in education on numerous occasions. It is very much my ambition to facilitate more engagement between schools and communities and universities. I agree with the Senator regarding a regional strategy for the arts. In 1994, the then Minister, Michael D. Higgins, drafted a spatial strategy for the arts. It identified the need for theatres in Letterkenny, Portlaoise and other towns that did not have facilities. The cultural development incentive scheme, CDIS, funded these facilities and at the time a committee was set up to identify where grant money should be spent. There was one proposal for Dingle but the money was transferred to another iconic project that did not work out. The remainder of the money was allocated as directed at the time. That was the last time a proper regional spatial strategy was drafted for arts provision. When I travel around the country, I sometimes come across two major facilities located close to each other, which could have worked together using a common space.

Senator Conway also raised the issue of arts spaces and cultural venues and rates. Generally, local authorities give these venues an exemption if they are run by community groups. It depends on the local authority but the general understanding is that if it is a community facility and it is undertaking cultural programmes and so on, it will be accommodated.

**Senator Martin Conway:** If they charge, it applies.

**An Cathaoirleach:** The Senator has asked his question.

**Senator Martin Conway:** Hang on a second. It is a point of information.

**An Cathaoirleach:** Other Members want to ask questions.

**Deputy Jimmy Deenihan:** It depends very much on their economic circumstances. Most local authorities will consider the income and expenditure of the venue and make a decision on that basis. I agree with the Senator regarding people with disabilities. Only a few weeks ago I opened a project run by people from Mount Eagle Lodge in Tralee. The standard was extraordinary. The parents of these adults with special needs were also present and the atmosphere was something to savour. It was a completely different feeling from what I have experienced anywhere else over the past six months. It meant so much to the parents that their children could achieve. I agree with the Senator's comments and if he has further ideas to promote these projects, I would be interested.

**An Cathaoirleach:** Seven Senators have indicated. Five have not contributed so far and, therefore, I will take the five together and the Minister will then give a brief reply.

**Senator Ned O'Sullivan:** As a constituency colleague and former teaching colleague of the Minister, I hope the Cathaoirleach will give me a little latitude in acknowledging his bona fides in the arts long before he became a member of the Cabinet. He has driven and delivered some fantastic arts projects in Kerry and I know he will continue in that vein at national level. I have three questions. I am pushing an open door with the Minister, and although he cannot interfere with the Arts Council budget, can he ring-fence money for regional arts centres? He knows what a wonderful job they are doing. They are allowing people in rural communities access to the arts. I know Senator Mac Conghail's theatre, as well as the National Concert Hall and Opera Ireland, must fight battles for funding. It is important to have arts in the regions.

Will the Minister try his best to get music into our schools? We are still in the 18th century in this regard, particularly in trying to get music on the curriculum in all-male schools. We have all seen the wonderful joy that music can bring to young people in garage and pop bands. I know this from my own family.

The final question may be the most politically difficult for the Minister. In the run-up to 2016 I would like to address a significant omission made in our capital city. Every one of the 1916 leaders is commemorated in the city between rail stations, the Cathal Brugha barracks, Collins and Griffith avenues. One man is not commemorated and I would like to see Éamon de Valera with proper respect in the city by 2016.

**Senator Mary Moran:** I would welcome a further debate as I have been anxious to speak since the beginning of this one. I am a former music teacher in a secondary school and I taught for almost 30 years. I also ask for music to be promoted, particularly, in Irish schools. If there is a cut to be made in a school today, music is the first to go. With the introduction of extra subjects some years ago to the curriculum, my own school, which had offered music to every student coming to first year, reduced it to being a choice subject offered for one period a week. Having taught and examined leaving and junior certificate music, I agree that with the change in our young people we need a more modern music curriculum. May we have a more integrated and informative course for junior and leaving certificate music?

In that school I founded an orchestra which had more than 100 students participating. It was all done on a voluntary basis.

**An Cathaoirleach:** Does the Senator have a question?

**Senator Mary Moran:** Such an initiative combined children with various intelligence quotients and family backgrounds. Everybody was brought together to perform on a national stage.

**Senator Cáit Keane:** Tá a lán ráite mar gheall ar an tábhacht a bhaineann leis an Ghaeilge, an chultúr agus an ealaín. Molaim é sin.

My question is on voluntary participation in the arts. As we know, much of the arts is done through a voluntary capacity and I resigned as chairperson of Rua Red, the arts centre in south Dublin, when I came in here. I miss it but I will work for the arts while here.

With regard to cross-Border participation, we should note Voluntary Arts Ireland, or the Voluntary Arts Network, VAN, as it is known in Northern Ireland. Currently, the VAN works in a voluntary and professional capacity both North and South. Voluntary Arts Ireland links us to similar bodies in England, Scotland and Wales. Much work has been done in a voluntary capacity in a disjointed way around the country. Comhaltas has worked in the traditional arts but Senator Ó Murchú has covered the topic on the music side. Could we provide a link with Northern Ireland through the VAN, as there is a pilot project running in Donegal, Sligo and Fermanagh?

**Senator Paschal Mooney:** I echo the fine compliments that have been made about the Minister, Deputy Deenihan. Will he consider using his influence to ensure that out-of-work actors and those in the artistic community in general are treated a little more sympathetically by the Department of Social Protection, particularly in seeking benefits, because of the nature of their work? These people are not technically available for work in the real sense and the issue is an ongoing sore. Perhaps the Minister could use his influence in that regard?

Will the Minister consider encouraging RTE and TV3 to produce more costume drama to reflect our Irish culture, much of which he has contributed to today? This is in the context of “Downton Abbey”, the costume series which won seven Emmy awards last Monday and is a worldwide hit. It is bringing in enormous sums not to the BBC but ITV, which is a commercial channel. As a result, it is now almost guaranteed that ITV will spend more on television drama.

In supporting the local community arts activities we must ring-fence funding for local arts activities. What are the Minister’s thoughts on how to attract more film and television productions to Ireland? They contribute enormously to local communities. Does the Irish Film Board require more resources to become more proactive in bringing this type of business to Ireland?

**Senator Ivana Bacik:** I welcome the Minister. It is a sign of how vibrant and dynamic is the arts sector that so many people wish to speak in this debate. Some very strong ideas have been put forward and I hope the Minister will bear these in mind when devising and developing arts strategy.

I ask the Minister about creating a formal structure, not just with NAMA, as has been suggested, but with individual developers to ensure spaces can be made available at reduced rents or lower rates for arts activities, events and work. It would be a creative use of our resources to do so and there are good examples in Smithfield and the Fumbally Exchange where developers and landlords are amenable to these approaches.

Will the Minister return for a more structured debate on the arts in this House? We can put forward ideas and see them being put into effect in arts policy. For those in the Visitors Gallery who sat through the debate and those of us who have partaken, it is important to continue the debate on another occasion.

**An Cathaoirleach:** We are out of time but the Leader has indicated he will extend time for the Minister to reply.

### **Business of Seanad**

**Senator Maurice Cummins:** By agreement of the House, I propose to extend five minutes for the Minister to finish. I have two technical amendments to the Order of Business. No. 2 is a Private Members' Bill and we will take Order for Second Stage and Second Stage, commencing at 3 p.m. and concluding at 5 p.m. With regard to No. 3, I should have stated this morning that the Minister will be called on to reply at 6.25 p.m., with Committee and Remaining Stages to be taken at 6.30 p.m.

**An Cathaoirleach:** Is that agreed? Agreed.

### **Arts Plan: Statements (Resumed)**

**Minister for Arts, Heritage and the Gaeltacht (Deputy Jimmy Deenihan):** Senator O'Sullivan spoke about ring-fencing money for regional centres. Funding is available from the Department for certain operations, which is very important, but it is a matter for the Arts Council in certain ways. The council takes an overview on all the country. Considering the distribution of the council funds, there is a national distribution and balance, which is taken into consideration provided that every other factor is okay.

With regard to music in schools, in Venezuela everybody learns a musical instrument. At the recent 30th anniversary event at the National Concert Hall, I spoke to a very good pianist for a few minutes at the intermission. She told me that in Venuzeela there is a major emphasis on music in schools. If that country can do it, we should surely be able to mirror its efforts. I see no reason why de Valera should not be acknowledged for his part in the 1916 Rising. I suggest that the Senator immediately set up a trust and collect the required money.

Coincidentally, people from the National Library of Ireland were visited me this morning and I saw the letter discovered recently that was sent to plenipotentiaries, including Collins, from de Valera in 1921, directing them to negotiate the treaty. This letter had not been seen before and it was extraordinary to see how structured the letter was. Even then we did not have our own government but the group was well organised, judging by the paper and the presentation of the letter. The Senator's suggestion is a good one.

I agree with Senator Moran's comments on the teaching of music. Many schools are doing it, with many people acting in a voluntary capacity. Comhaltas has a major programme in this regard across the country, as do several other groups. Much depends on whether the principal in the schools wants music but the issue should be bigger. There should be a national drive and even if every child in the school had the opportunity of learning the tin whistle, it would not cost much money.

Another issue is the music syllabus. I have learned that the art syllabus for the junior certificate is quite creative, innovative, challenging and project driven, whereas the syllabus for the leaving certificate dates back to 1971. It has not been changed for 40 years. In the discussions with the Department of Education and Skills, we are trying to change that. Many young people are giving up art after the junior certificate because it is too difficult to get an A grade. Only about 3 per cent of those who did art this year got an A; it was a very small proportion. People count their points, so they do not do art, and we are losing creative people as a result. That has to change. Some parents and teachers have told me the music syllabus is quite challenging, but I learned today from the Senator that it can be improved as well.

Senator Keane mentioned voluntary participation, and I agree that there should be more recognition of that. Most of us will have been volunteers in the arts for years. It is rewarding work. For years, Senator O'Sullivan and I were on a committee to set up a writers' centre in Listowel. At times, I get more satisfaction from doing voluntary work than from doing political work. I am currently involved with the cross-Border orchestra and we are doing a major event at the Ulster Hall in Belfast on 26 November, to which Senators are invited. My counterpart in Northern Ireland, Carál Ní Chuilín, is supporting it as well. It is based on a partnership and people from both sides of the Border are participating in it, including Una Hunt and others. The event has a major cross-Border emphasis and it should be great. I would like to talk to Senator Keane again about the VAN project. My official informs me that a number of cross-Border initiatives are in place in cinema and other art forms. We can discuss that further.

The matter that Senator Mooney raised was discussed earlier when Senator Ó Clochartaigh and others mentioned it. The incomes of performing and visual artists are stretched at the moment. I have engaged with RTE about television drama and so on, and we will have further meetings. RTE television and radio are the most important instruments in the country for the promotion of the arts. RTE is our national broadcaster and can do so much to promote the arts, so we have entered serious engagement on how it can improve its coverage. It does a good job but, like others, it can do more within its resources to encourage the arts.

I was asked how we can bring more productions to Ireland. Just a few months ago I signed a co-production agreement with Luxembourg that had been around for about eight years. It is to facilitate Brendan Gleeson's film of Flann O'Brien's hilarious novel *At Swim-Two-Birds*, much of which will be filmed in Galway, Kerry and around the country. Brendan Gleeson has put together a fantastic cast — all the great Irish actors will be in it — and it will hopefully be done by early in the new year. That collaboration between Luxembourg and Ireland has resulted in the film being made. That is just one example of what can happen.

**Senator Paschal Mooney:** Such things will only happen through co-productions because the cost of costume drama is outrageous.

**Deputy Jimmy Deenihan:** Absolutely. However, that is a good example.

I suppose another sign of the times is that when the Minister for Finance, Deputy Noonan, goes to America he will meet the former American Senator Chris Dodd, who now represents five or six of the major studios in America, to talk about the film industry. The Minister, Deputy Noonan, told me about that this morning, before I came to the Seanad.

**Senator Paschal Mooney:** Good. It is hot off the press.

**Deputy Jimmy Deenihan:** I suppose it is part of the national narrative at the moment that we are promoting the arts, be it film or whatever.

Before my time, a good report on the creative industries was drawn up under previous Ministers, and the recommendations were to double the number of people involved in film and the audio-visual sector to 10,000 and to double the money from €0.5 billion to €1 billion. That report was there when I came into the Department, but I got the Cabinet to accept it and, more important, I put in place an implementation body that will implement the recommendations. It is no good having a report if it is not implemented. I hope we will now be able to meet those targets over five years.

Regarding Senator Bacik's point, I would love to come back to the House and outline what progress I am making on my commitments and objectives. I would also be delighted to discuss projects that Senators would like to see encouraged. If projects or proposals come from the Seanad, I would be delighted to promote them in whatever context I can.

**Senator Ivana Bacik:** Good.

**Deputy Jimmy Deenihan:** Recently, I put together a group of people, some of whom are the top people in the arts in the city, and they have drawn up a good proposal on philanthropy. The group was set up four months ago under John McGrane of Ulster Bank, which is a great sponsor of the arts. It is important to recognise that. Sometimes people are happy to be invited into the photographs when they go to an event, but they forget about the sponsor. We should remember that the sponsor is the most important person because they are paying, whether it is the Department, a bank or whoever.

**Senator Martin Conway:** And the taxpayer.

**Deputy Jimmy Deenihan:** That is the Department — the taxpayer. They must be recognised at all times. That happens in America and elsewhere, but sometimes it does not happen here, so I would like to recognise the work of Ulster Bank. Anyway, John McGrane chaired a meeting of the group, which has some really good people on it, including Kingsley Aitkens, Maurice Foley, Gemma Duke, Eamon Carroll, Stuart McLaughlin, who was in the Gallery earlier, Fiona Ross and others. They came up with some really good proposals and I hope we will be able to get some funding for the arts as a result of implementing them.

My very good official who is sitting behind me has brought to my attention that culture night is on Friday this week. It is important that Senators support the very good events, which are free of charge, all over the city and the country.

I thank Senators for their attention.

**An Cathaoirleach:** I apologise to Senator Mullins. He indicated to speak but I did not see him, and he had not spoken before. If he considers putting down an adjournment debate, I will give it favourable consideration. Senators Mac Conghail and O'Donnell also indicated to speak. They had spoken previously, but I am sorry they could not get in again. That concludes the discussion.

*Sitting suspended at 2.30 p.m. and resumed at 3 p.m.*

### **Reporting of Lobbying in Criminal Legal Cases Bill 2011: Order for Second Stage**

Bill entitled an Act to ensure that all communications between any member of the Oireachtas and members of the judiciary or any employee of a Department, agency, or body corporate which are entrusted with powers of prosecution or detention by this State, or members of the judiciary in foreign states, are recorded where the communication relates to the exercise of these powers.

**Senator John Crown:** I move: "That Second Stage be taken today."

Question put and agreed to.

### **Reporting of Lobbying in Criminal Legal Cases Bill 2011: Second Stage**

**Senator John Crown:** I move: "That the Bill be now read a Second Time."

It cannot have escaped the attention of the House that over the past few months there has been an inappropriate level of public and media attention and concern focused on what appears to be a fairly widespread practice, sometimes gentle and other times not so gentle, of interference by parliamentarians in the workings of the judicial process, in particular with respect to criminal cases. This has occurred within our own State and internationally. Obviously, there have been several high profile cases, one in particular which re-ignited the debate over the past

several months. I will not go into the details of these cases, some of which emerged into the public domain and others which had already been in it but were re-examined.

Suffice it to say that there have been well documented cases of Ministers, Deputies and Senators intervening in the process of prosecution or sentencing of rapists, child rapists, multiple rapists, incestuous rapists, of at least one person found guilty of vehicular homicide and of another found guilty of organising a quasi-political-criminal terrorist conspiracy. These are only the cases that have come to light. God only knows how many cases there have been in which intervention of this type was made. It has been reported that a well known constituency organisation in this country — I will not be specific — the office of which is known to give a high level of service to its constituents, was making up to 600 petitions per week on behalf of its constituents in their interface with public bodies. I am certain that in a proportion of these cases the interface was with the criminal justice system.

In days gone past, we had a semi-formalised system of petitions in which there was an actual mechanism for parliamentarians to make representations through the Department of Justice to have outcomes of the process of sentencing amended. As a result of concerns raised by a then retired judge, the matter was brought before the courts and a change was made. The system of petitions was replaced by the notion of making representations. As a political outsider looking at this, I contend that what we have with the current system of representations are stealth petitions. It is a way of exerting the same gentle degree of influence on a case as had previously been made in a formal petition through something couched as a question. I am not entirely comfortable with this.

The legislation we are discussing — I am grateful to my colleague, Senator Quinn, for seconding it — is an attempt to regulate this process by ensuring it is reported and cannot happen surreptitiously, that in the event that such an intervention is made it must be recorded by, say, something as trivial as a telephone call to a Garda or a prosecuting official anywhere in the State. Some will say that the Bill does not go far enough. Others will say we should try to ban the process. In the immediate aftermath of the events which occurred earlier this year, my visceral reaction was to state my intention to introduce legislation in this House to end that practice. There are problems with that. There are also issues relating to the whole concept of freedom of speech and whether it is possible to stop any two people from actually speaking to one another. It certainly seems entirely reasonable to introduce legislation which would ensure that if any Member of Parliament makes any representation of this type to the Judiciary, the Garda or members of the prosecuting service — they may well do it from very pure motives — it will, at least, be recorded. It may be that a subsequent Bill will go further in the future and we would have an open mind on supporting any amendment at some stage, but this Bill gives us an opportunity to grasp this nettle now and put a brake on a process which, if not corrupt in itself, can be readily corrupted.

This issue must be acknowledged, especially in light of today when a poor gentleman, Troy Davis, may well face execution as a result of a conviction which many authorities believe is very unsafe. It may be entirely appropriate for colleagues to make representations internationally and nationally where they believe a true miscarriage of justice is occurring but if they make it, they should be prepared to make it publicly. They should be prepared to make it in a fashion where it is reported to the justice officials here, where it is subject to FOI legislation and where it can be scrutinised by the media and the citizenry.

It is important to think about why people do this. I have had a number of conversations with my new colleagues and, in many cases, my new friends in this House since I had the privilege of coming in here some months ago. It is apparent to me that many of the old timers here have felt under a degree of pressure with this process. It is something that happens which they wish

[Senator John Crown.]

did not happen. They wish they had a defence against it and had a better means of saying to a petitioning constituent, “No, I cannot do this; please do not ask me to do this”. Under this Bill, it would be easier to point out to a petitioner in a case where the request for representation may be less than fully justifiable that the person must understand that every aspect of that petition, including the approach that was made, will be subject to public scrutiny.

Parliamentarians may believe that within a system like ours where there is a heavy emphasis on some local aspects of politics — I do not use these terms pejoratively — in terms of a certain basis of clientelism and patronage, one of their currencies is the ability to portray their office as having a degree of influence on behalf of potential voters. People can argue about the rights or wrongs of that. I believe we need a fundamental reform of our rules regarding influence but that is another day’s work.

Parliamentarians should remember that a number of parliamentary careers have been destroyed by this process, including that of a Minister. Deputies and other Senators have had their reputations called into question and one Supreme Court judge, one Circuit Court judge and several judicial officials have also had their careers damaged in this way. One may not lose anything by supporting a Bill of this nature. There is also an expectation that this type of pressure will merit a response from our officials and our civil servants, putting them in a very difficult position *vis-à-vis* their political masters. The need for this type of representation to be made public might have the effect of discouraging some of the more inappropriate cases. Trying to stamp it out will be difficult but we should at least cast light on it.

A US Supreme Court judge, Louis Brandeis, stated almost a century ago that: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman...”. Mr. Justice Brandeis made these comments about the American banking system in 1913. One can only speculate if the wisdom of those timeless remarks had been taken on board by the leaders of our political system, banking system and banking regulatory system 90 years later, it might have had a profoundly beneficial effect on the more recent history of our country. It is not too late to learn that lesson with respect to this issue.

Those of us who may feel we are in the House but not necessarily of the House, those of us who until recently would have been somewhat critical spectators rather than participants in the actual political process, will be aware that the reputation of Irish politics is not very high right now among the electorate. Obviously in times of economic distress this can occur but there has also been a well evolved body of evidence over several years showing systematic dysfunctions in the political process. This is one opportunity to look at one little dysfunctional aspect of the political process and to fix one little problem which would not only will help the problem, but enhance the reputation and standing of these Houses and of the system of democratic government. I ask Members to support the Bill.

**Senator Feargal Quinn:** I second the Bill. I welcome the Minister of State, Deputy Kathleen Lynch. I am convinced the Government will accept the Bill because it is short, simple and easy to understand and it does not go nearly as far in the direction in which it could go.

We have a tradition in Ireland of trying to influence decisions in many ways. When I became chairman of An Post, I could not believe the number of letters I received in the first week or two seeking all sorts of things, such as jobs in the post office or whatever. We said “No” and that we would stop it. The Minister at the time came back to me and asked that I be less blunt about my replies, saying that all he wanted was to send them on the constituents when he got them. I once wrote a letter to a judge in a foreign country — before the decision was made — to seek a non-custodial sentence for a very well-known case here. The person who had been

accused publicised the letter and I was quite happy about that because it was likely to do good if it could be heard. Senator John Crown has covered all this. He said it is all right to write letters as long as one makes it public.

In 1997, in a debate on reform of the Seanad, I spoke about lobbyists and asked how we could ensure that this was above board and that everyone knew about it. Senator Crown is not attempting to solve the big question of all lobbying but, as the Bill states, lobbying of members of the Judiciary only. Given that it is a simple and concise Bill, I am convinced the Minister will be able to accept it.

It is a worthwhile initiative and one that is long overdue as politicians have, for too long, interfered and intervened in matters where they should not have done so. There were promises in 2002 and 2008 that something would be done about the situation but a code of conduct has not been established. As Senator Crown proposes, if these representations are made in public there is little wrong as often this means that those involved can take account of relevant information. In 2007, the Irish Council for Civil Liberties reported that politicians should be banned from attempting to influence judges' decisions and from making adverse comments outside the Oireachtas that undermine the independence of the Judiciary. The judicial appointments process was also criticised. It claims that this is tainted by allegations of political bias and intense private lobbying of senior politicians, including Cabinet Ministers, for promotion to the Bench. We must also remember that the Judiciary exists to keep the Government in check and take a firm stand on important matters that affect peoples' human rights. Therefore, the separation of powers is essential.

While I understand we are talking about judges being lobbied by politicians, we must address the issue of lobbying in general at some point as a matter of urgency. We have often heard talk of the establishment of a national lobby register but that has yet to see much movement. In the UK, an initial voluntary register of lobbyists was made available earlier this year. The EU made a register of lobbyists available online to improve transparency. This is interesting. The Comptroller and Auditor General reported that 17% of public bodies ignored a survey on the €15 billion annual procurement bill. This is ridiculous. The lazy attitude must change and issues must come out into the open.

Senator Crown is not attempting to open up of the entire lobbying movement, although that is something we should do. The Bill relates solely to the lobbying of members of the Judiciary. In terms of overall lobbying, we should consider the model of the US register. Under the lobbying disclosure Act of 2005, all companies and individuals engaged in lobbying in the US must register with the clerk of the House of Representatives and the secretary of the Senate. Otherwise, they risk a fine of up to \$50,000. All lobbying activity must be logged and the amounts spent must be noted. The American register is also searchable online, which makes it simple. Not only can the results be filtered using all sorts of criteria from the client's name to the affiliate organisation to the branch of government contacted, but each act of advocacy is recorded along with the date on which it happened and the amount spent. The forms used to register this activity are electronically stored and publicly accessible. For instance, one can find out that Exxon Mobil spent over \$3.2 million in the fourth quarter of 2010 on direct lobbying activity in Washington. I mention this as a reminder that such logging is possible.

If we are to have a record of lobbying by politicians on judges, let us not stop there. For all the talk of a new republic, let us undertake measures that will make us completely open. I suggest the lobby register that is in place in the US, but we should also build a national public spending website. There is so much we can do and it is possible to achieve a great deal.

I welcome Senator Crown's proposal. An overdue step, his initiative should sit in a wider framework of registering lobbyists and a system of governance that could be made more trans-

[Senator Feargal Quinn.]

parent through straightforwards steps. This proposal is the first step towards ensuring that all lobbying becomes open and transparent. Senator Crown has taken a simple approach. The Bill is short, concise and easily understood. On this basis, I hope the Minister of State will tell us it would be no bother to her to accept it. I get great pleasure from seconding Senator Crown's proposal.

**Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch):** I reply as someone who has had some little experience of this issue. Like Senator Crown, my speech will use slightly exaggerated language, but we will balance each other out. I wish to express my appreciation and that of the Government to Senator Crown for publishing the Reporting of Lobbying in Criminal Legal Cases Bill 2011. Through the Bill, the Senator has put on the agenda once more the fraught issue of lobbying.

It goes without saying that lobbying is part and parcel of our lives as public representatives. Representative democracy has at its core the concept of us representing our constituents, those who in a general sense put us in these Houses to represent them and their interests. Beyond that, there is lobbying by various interests, representative bodies and associations, as Senator Quinn correctly highlighted. The Government is an active lobbyist in its own right, in particular, on the international stage.

Lobbying has got a bad name in some quarters, particularly from those who believe that Members can function in a sealed bubble, immune from the realities of everyday life and concerned only with their role as legislators. As we all know, the reality is different. The making of representations, that is, lobbying, is part and parcel of the democratic process everywhere that democracy is practised. It is not unique to Ireland and there is nothing intrinsically wrong with it. In certain circumstances, it may need to be regulated, but this does not make it wrong.

There are bounds to acceptable lobbying and both sides of the lobbying process must be conscious of the boundaries, particularly where professional lobbying is concerned. The Government committed in the programme for Government to introduce a statutory register of lobbyists and to introduce rules to regulate lobbying. This is a priority for my colleague, the Minister for Public Expenditure and Reform. Our commitment is proof of the seriousness with which we approach the issue of lobbying. The public has a right to know who the lobbyists are and to have their activities regulated. There can be no sense that professional lobbying can provide a covert inside track to power.

It is in this context that I welcome the Bill. Its underlying principles are noble and to be commended. They echo the philosophical underpinning of the Government's view of lobbying generally. As I hope I have made clear, neither I nor my Government colleagues see anything intrinsically wrong with lobbying, provided that it is available to all and not the preserve of the few. To be fair to Senator Crown, he appears to share this opinion. What the Bill seems to aspire to achieve is an open, transparent regime where representations in the criminal justice system are made public by both the lobbyist and the lobbied and where the Minister for Justice and Equality is advised that the lobbying has taken place.

While transparency in lobbying is something to which the Government is committed, we are committed to it in clearly defined circumstances where it is required. We have never envisaged regulating lobbying where it does not already exist and, more particularly, would never countenance providing for or regulating lobbying that is already unlawful or, if made lawful, would undermine well established constitutional and legal principles. The Judiciary, the Office of the Director of Public Prosecutions and the Garda Síochána are three cornerstones of the criminal justice system. They are independent in the performance of their functions and that independence is a fundamental underpinning of our democracy.

Article 35 of the Constitution enshrines the independence of the Judiciary. Its independence has served the nation well since 1937. As one of three arms of the State, the Judiciary's independence is at the heart of our democracy. The boundaries of that independence are at their most acute at the interface between the Executive, the Parliament and the Judiciary. Any encroachment by one on the other disturbs the delicate balance on which the edifice is constructed and undermines the separation of powers, the doctrine at the core of our democratic State.

In this Bill, Senator Crown is proposing to legislate for an encroachment on this independence that is unconstitutional. He is proposing to legislate for the lobbying of the Judiciary by Members of the Oireachtas. The only brake, if brake it is, on this lobbying is that the lobbyist and the lobbied must make the lobbying public and, in the case of lobbyists, inform the Minister for Justice and Equality of the fact of the lobbying. Once they have complied with this, the wall of independence comes crashing down and Oireachtas Members are free to make whatever representations they wish to make to the Judiciary.

Rather than being free as at present to conduct their courts as they see fit and to administer justice without fear or favour, members of the Judiciary would be subject to a legalised lobbying regime with no boundaries. The independent Judiciary, a cornerstone of our democracy, would be no more. It would be replaced by a Judiciary whose every decision would be parsed to see if it accords with any of the representations made to it by Members. While I have every faith in the capacity of the Judiciary to ignore such representations and to continue acting independently, to allow the perception to take root that outside influence could be brought to bear on the Judiciary would fatally undermine its independence.

Judicial independence and the separation of powers are the bedrock of our democracy. The suggestion that we should blithely legislate them away is breathtaking. I am not aware of any previous legislative proposal whose effect, if not its intent, could be so injurious to the institutions of our State. Judicial independence is not just a legal or constitutional nicety. It is fundamental to our constitutional construct. To tamper with it, even with the best of intentions, is to undermine it. It is independent or it is not; there is no halfway house. There is no regulated independence. The Judiciary is constitutionally independent and must be allowed operate independently and without interference from Members of the Oireachtas. To allow regulated interference is to undermine independence.

In addition to falling foul of the constitutional provision in regard to the separation of powers, the Bill, if enacted, would conflict with the common law offence of perverting or attempting to pervert the course of justice as well as the offence of criminal contempt of court. I fail to see how the legal precepts contained in these two offences can be reconciled with the regulated interference in the judicial process provided for in this Bill.

In saying all this, I am not questioning for one minute Senator Crown's bona fides. As he rightly points out, he is a new Member. I am sure that at the end of his term here, whenever that will be, he will be far more familiar with the niceties and definitions required in legislation such as this. I understand what he is trying to achieve and believe he is motivated by good intentions. It is unfortunate that these good intentions have been undermined by an attack on judicial independence, which I accept cannot have been his intention.

Let me turn now to other aspects of the Bill which are almost as undermining of our system of justice as the attack on judicial independence. The Office of the Director of Public Prosecutions and An Garda Síochána are, with the Judiciary, key elements of our prosecution service. This was recognised in the enactment of the Prosecution of Offences Act 1974, which states in section 6(1)(a):

[Deputy Kathleen Lynch.]

Subject to the provisions of this section it shall not be lawful to communicate with the Attorney General or an officer of the Attorney General, the Director or an officer of the Director, the Acting Director, a member of the Garda Síochána or a solicitor who acts on behalf of the Attorney General in his official capacity or the Director in his official capacity, for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

Section 6(1)(b) states: “If a person referred to in paragraph (a) of this subsection becomes of opinion that a communication is in breach of that paragraph, it shall be the duty of the person not to entertain the communication further.” Under section 3(1) of the Reporting of Lobbying in Criminal Legal Cases Bill 2011, which is before the House, a member of the Oireachtas may communicate with the prosecution services, which in Schedule 1 includes An Garda Síochána and staff of the Director of Public Prosecutions, provided he makes the communication public and addresses it to the Minister for Justice and Equality. This major legislative change is to be enacted without any reference to the Prosecution of Offences Act 1974. The least one would expect is that section 6 of that Act would be amended, if not repealed. Instead, if the Bill were to be enacted, we would have on the Statute Book two entirely contradictory legislative provisions in regard to the making of representations to the Director of Public Prosecutions and An Garda Síochána.

The Prosecution of Offences Act states it is unlawful for anyone, other than specified interested parties — Members of the Oireachtas are not among those interested parties — to make representations to these institutions. The Bill before the House would meanwhile legislate for the making of representations by Members of the Oireachtas. The legal quagmire that the existence of two entirely contradictory Acts on the Statute Book would create is not, of itself, a reason to dismiss the proposals in this Bill in regard to the institutions concerned. If there were merit in the proposition, then the Bill could be amended to allow for the necessary amendments to the Prosecution of Offences Act to be brought forward.

Is there merit in legislating to allow for Members of the Oireachtas to lobby An Garda Síochána and the Director of Public Prosecutions with the safeguards of disclosure provided in Senator Crown’s Bill? Is it now time to amend the Prosecution of Offences Act to allow Members of the Oireachtas to lobby our prosecution services? Are there grounds for believing the 1974 Act has not worked and that wholesale interference with the prosecution services by Members of the Oireachtas is the order of the day? There have been instances in which Members have made representations that were considered inappropriate and there have been resulting resignations in a small number of cases. However, the small number of such instances and the fact that they ultimately come to light do not provide a sound basis to legislate in the manner proposed.

No more than in the case of the Judiciary, an independent prosecution system is at the heart of our system of justice. The people who drafted the Prosecution of Offences Act 1974 were seized of this fact and legislated to protect that independence. Save for in a small number of high-profile cases, I am convinced that the law is observed by Members of the Oireachtas and that in the rare case where it is not, the Garda Síochána and the Director of Public Prosecutions are sufficiently robust to apply the provisions of section 6(1)(b) and not “entertain the communication further”.

I cast no aspersions on Senator Crown’s motives. I have no doubt that he is motivated by the best of intentions. Like us all, he wants the highest standards to be observed. I am quite certain his intent is not to encourage or facilitate lobbying in our criminal justice system but to

regulate it by making it public when it happens. That is fine up to a point. However, in seeking to do this, he runs the risk of unintended consequences.

The controversy that the relatively few cases of interference in the prosecution system gives rise to is entirely related to the fact that they are so rare. If, as a result of the enactment of this Bill, lobbying of the prosecution services were to be made legal, it is possible that rather than deterring the practice, it would give it legal underpinning and encourage it.

It is not fanciful to imagine that the vast majority of Members of the Oireachtas who, as matters stand, would never countenance making representations of the type concerned could now be forced by competitive electoral considerations to be seen to do so. Senator Crown referred to people being put under pressure regarding constituency colleagues. This Bill would encourage that further.

The scale of potential representations is demonstrated by the fact that just under 500,000 offences were dealt with in the District Court in Ireland in 2010. In trying to deal with, and presumably eliminate, the relatively rare phenomenon of contact with the prosecution services, this legislation could have the unintended effect of making such representations mainstream, and on a scale that the Senator can hardly have envisaged or intended. However, even if we take the benign view and assume the fact of disclosure will dissuade the would-be lobbyist, we must question whether change is necessary or desirable? No more than in the case of the Judiciary, to tamper with the independence of the prosecution services is to undermine their independence. At present, it is unlawful to make representations to An Garda Síochána or the Director of Public Prosecutions. What is proposed here would, allowing for the need to amend the 1974 Act, make such representations lawful, once they were disclosed. Is that what we want? An alternative approach, if there is a problem to be addressed — I do not believe there is — would be to strengthen the 1974 Act to make provision for an offence of unlawfully communicating with the prosecution services, with attendant sanctions. The route proposed in this legislation is to make what is unlawful lawful and to regulate it.

We are not prepared to do anything that would have the perverse result of making lawful that which is currently unlawful and entirely undesirable. Given what I have said already, I am not sure that it would serve any useful purpose for me to engage in a detailed analysis of the Bill. The flaws are so fundamental and the outcome, if not the intent, so undermining of our democratic structures and prosecution system that there would be no point in highlighting technical or drafting deficiencies in the Bill. I accept fully we all make such mistakes in our first attempt at drafting a Bill.

It will come as no surprise to Senator Crown or the House that the Government is opposing this Bill on Second Stage. This Government has shown itself to be open to legislation emanating from the Opposition benches. It is not given to the knee-jerk rejection of ideas on the sole grounds that they come from the other side or, in this case, an independent Member, a practice which characterised previous Administrations. This is a new Government with a new approach. However, the Government parties would be in dereliction of their duty as legislators if they were to stand back and permit the onward journey of legislation that strikes at the heart of the democratic institutions of this State just because it is a Private Members' Bill.

As countries around the globe embrace democracy and work to build up the democratic institutions we sometimes take for granted, it would be perverse of the House to give fair wind to a Bill which, if enacted, could only severely damage our democracy. I say this with the greatest respect for Senator Crown and reiterate that I welcome his initiative in bringing forward the Bill. I encourage him and other Members of the House to bring forward Private Members' Bills in the future. I can assure them that provided they address a problem or gap in the law and are constitutional, they will get a fair hearing. Unfortunately, this is not the case

[Deputy Kathleen Lynch.]

with the Reporting of Lobbying in Criminal Legal Cases Bill 2011, and for this reason, the Government will oppose it on Second Stage.

**Senator Thomas Byrne:** I regret to state this, but methinks the Minister of State doth protest too much. She thought it was appropriate to give a character reference to a rapist, a disgraceful exercise which most of us assumed was already illegal.

There is no doubt there are flaws in Senator Crown's Bill but the humiliation the Minister of State heaped upon him in her attacking statement, belittling a Private Members' Bill, is a new low in the House. I am shocked to read the Minister of State's speech. I wonder whether she read it prior to delivering it. It is not like her to read such a speech. It is also not true that the Government has a new approach to Private Members' Bills because it has voted down every such Bill that has come before the House, including the Registration of Wills Bill on which everybody had previously agreed and the Family Home Bill, which many——

**Senator Paul Bradford:** That was not voted down. It is still on the Order Paper.

**Senator Thomas Byrne:** It was withdrawn by Senator Leyden because the Minister indicated it would be opposed. Many of the Minister of State's colleagues were in favour of the Family Home Bill.

Senator Crown has identified a very serious issue but unfortunately the Minister of State concentrated only on two aspects of the Bill, which are contact with the Garda Síochána and the Office of the DPP. I assumed it was already illegal to contact a member of the Garda Síochána or the DPP on criminal matters and I have never done so. I state to Senator Crown that I believe very few Members have contacted the DPP; I cannot imagine why I would ever do so and I have never been asked to do so. I have contacted the Irish Prison Service on several occasions with regard to humane conditions for prisoners and that is fair enough. I am concerned about Senator Crown's requirement that this be made public at the time. The fact of an Oireachtas Member's representation is already subject to freedom of information legislation. The Bill goes slightly further than this by requiring all details of it to be public at the time. Perhaps this goes too far.

However, there is merit in the Bill and merit in discussing the issue. Fears have been expressed by people and it has occurred that Members of the Oireachtas have inappropriately tried to interfere in the criminal system. This is not right and it is correct that some form of regulation or type of openness is put in place. I would not extend this openness to the Garda or anyone involved in prosecuting a crime. This would be wrong. However, a legitimate case can be made with regard to the Probation Service, the Prison Service and the parole board. The only one of these I have ever contacted is the Prison Service. I have never had cause to contact An Post about a criminal matter. I must admit I once wrote to Iarnród Éireann about a lady who had been fined for not having a ticket and felt it was unjust. It never occurred to me that I was interfering in a criminal process but I can see the point. The matter involved a fine of €60.

Once, I was asked to request a local authority to drop a prosecution. I thought the approach to me was highly inappropriate and I declined to do it. I thought it was wrong that I would be asked to contact a local authority about a criminal offence with regard to dumping and I did not do it. In fairness I think this would be the attitude of most people. If I was asked to do it, who else was also asked and who made representations in these cases? Therefore, there is merit in Senator Crown's Bill.

The Bill also covers the Competition Authority and the Financial Regulator. Many representations were made to the Financial Regulator when investigations were taking place with regard to Quinn Insurance. While most were done openly, perhaps the independence of the Financial Regulator came second to the issue of jobs in the area.

The Government has not shown itself to be open to Private Members' Bills. The speech by the Minister of State was insulting to Professor Crown, who is an eminent surgeon and who has taken on this issue with the utmost seriousness.

**Senator Sean D. Barrett:** Hear, hear.

**Senator Thomas Byrne:** I doubt very much that the Minister of State, Deputy Lynch, gave the speech huge thought because she is not the type of person to state such things and I acknowledge this. However, it is open to me to criticise her for past actions when she speaks on this matter because many of us would never have done what she did.

The Bill has many flaws but this side of the House is willing to support it and let it pass Second Stage. If it comes before us on Committee Stage, Fianna Fáil will suggest substantial amendments. We believe that under no circumstances should somebody contact the Garda or the DPP and in most cases contact should not be made with the courts. However, we believe circumstances do exist where private representations can be made with regard to the humane treatment of prisoners and other issues.

Many of the representations made by Oireachtas Members are subject to freedom of information legislation and it is possible to find out what representations we have made. It is likely the relevant Department or agency would hide information relating to the personal details of the person when releasing information under freedom of information legislation.

It is possible to pass Private Members' legislation, but the Government has not done so yet in the Seanad and I challenge Government Members on this. When the Minister of State, Deputy Brian Hayes, came to the house to debate the Family Home Bill he stated the Government was not responsible for Private Members' business in the Seanad and that Members could vote in accordance with what they believed. They did not do so on that occasion. I urge them to do so today. We must give the impression that we are open, transparent and above approach. As the Provost of Trinity College stated recently, point an accusing finger at me and I will answer. This is the right approach for anyone in a position of power or authority.

We should acknowledge that Senator Crown has presented the Bill with serious intent. Do not insult him for bringing forward serious work. Let the Bill pass Second Stage and bring forward amendments. If the Bill passes Second Stage, Fianna Fáil will table substantial amendments on Committee Stage. We support the Bill and urge the Government parties to do so also.

**Senator Paul Bradford:** The Minister of State said this is a new Government with a new approach. It has been in office for only six months and it is much too soon to cast final judgment on its approach. Senator Crown has brought forward this Private Members' Bill because he saw what he felt was a gap in the law which needs to be addressed. It is welcome — I do not state this in a patronising fashion — that Members of the Opposition bring forward Private Members' legislation. Historically, in the body of Irish politics few Private Members' Bills have passed into law. Ironically, as this is a Bill for the Minister for Justice, Equality and Defence we must recognise that the Minister for Justice and Equality, Deputy Shatter, is one of the few Deputies who has succeeded in having a Private Members' Bill passed. I hope such events will not be rare in future if we all genuinely try to bring about a new type of politics.

The legislation before us in the name of Senator Crown asks us to take a new departure and put into law a system whereby the Garda and Judiciary can be lobbied by politicians. Our

[Senator Paul Bradford.]

friends in Fianna Fáil ask that the Bill be allowed to pass Second Stage and that party's spokesperson stated it will table amendments on Committee Stage. I must ask whether he is in favour of allowing politicians to lobby the Garda and the Judiciary because this is the core of the Bill. The Bill would put in place a system which would allow such lobbying to take place, albeit in a regulated fashion. What we have heard from the Minister of State — I am sure her senior colleague agrees — and what is the firm message from this side of the House is that the separation of powers is sacrosanct and there can be no deviation from it. We cannot have any system, registered or unregistered, whereby politicians are in a position to make representations to the Garda or the Judiciary. This goes to the core of the speech by the Minister of State and why the Bill cannot be accepted.

I listened with interest to what Senator Crown stated. Historically, there have been relatively few occasions when a difficulty has occurred with regard to lobbying of the Judiciary or the Garda by elected politicians. Irish politics can sometimes get a little carried away with hearsay. From time to time the message has gone out that politicians spend all of their days lobbying gardaí and officials in order to secure favours. That is not the case. The vast majority of Oireachtas Members have had no occasion to engage in such lobbying, not simply because it was illegal but because such requests were not made of them. I do not think we have a problem which needs to be resolved.

The message must go out loud and clear from the House again that the law as it stands prohibits each and every one of us from engaging directly or lobbying the Garda or Judiciary on behalf of our constituents. That is the law and that is the position which has served the State well since, as the Minister said, 1937. I do not think we should set about fixing a problem when the current legal position is the best one.

The Minister of State, Deputy Kathleen Lynch, has been unfairly accused of using harsh language and speaking in strident tones. She has simply clearly outlined the current position, the reason why it is deemed to be the most favourable and advantageous. She has clearly highlighted what she and her colleague, the Minister, Deputy Shatter, and all of us feel are the problems with what Senator Crown has produced. If we accept his Bill, I cannot see how it could be amended by the Opposition. We would then be actively encouraging the lobbying of the Garda and the Judiciary by politicians.

One of the interesting comments by the Minister was that when one constituency representative is contacted, he or she feels obliged to do his or her bit and then a second and a third politician gets involved and there is almost be a competition as to how many politicians a prospective defendant has lobbying on his or her behalf. I do not wish to patronise Senator Crown. I welcome the fact that an Independent Member of the House feels the problem can be best addressed by bringing forward Private Member's legislation. I look forward to many more Bills being introduced, not just from Senator Crown but colleagues on all sides of the House, including perhaps some on the Government side. However, if there is a problem with the lobbying of the Judiciary and the Garda it is best solved by each of us stating clearly that such efforts to intervene are illegal, will remain illegal and should not be practised.

I support what the Minister of State has said in her decision to reject the legislation. She also said — it is important to put on record — that where there is a gap in the law and where a suggestion on something that is unconstitutional a Private Member's Bill will receive a fair hearing from the Government. That is the key phrase, "Where there is a gap in the law". In this case when we reflect on it Senator Crown would recognise that there is not a gap in the law. It is surely desirable that there would be a clear bar and ban put on elected politicians improperly lobbying the Garda or the Judiciary. In this case there is not a gap in the law, which is best left as it is.

I regret to say to Senator Crown that on this occasion his Private Member's Bill should not be accepted. The situation as it is has served us well and will continue to serve us well. If we wish to do our bit politically we should ensure that the message goes out loud and clear that any attempt by a politician to interfere with the course of the law must remain illegal and highly improper.

**Senator Susan O'Keeffe:** I thank the Minister for coming to the House and presenting in a clear way the core reasons why the Government will not accept the Bill. I am reminded of a statement made by the former Minister for Transport, Noel Dempsey, who said that the business of Government should be done as if it were behind a pane of glass. I hope I am attributing it correctly.

**Senator Darragh O'Brien:** It was John Bruton — another Meath man.

**Senator Susan O'Keeffe:** Okay. It is fair to say that the aspiration was a fine one and that Senator Crown, in bringing forward the Bill, will have had that in mind, as I and all the Members of the Government do. If it were at all possible to have a pane of glass we would do so.

Senator Thomas Byrne said that the Government is not behaving in a new fashion and that we do not understand the concept behind the Bill. He should bear in mind that in 1998 a Private Member's Bill was introduced by the Labour Party for the introduction of a register of lobbyists, which failed. In 2011 there is a commitment to such a Bill in the programme for Government.

**Senator Thomas Byrne:** We were still at school then. Times have changed.

**Senator Susan O'Keeffe:** I beg your pardon.

**Acting Chairman (Senator Paschal Mooney):** Senator O'Keeffe should be allowed to speak without interruption.

**Senator Susan O'Keeffe:** The registration of lobbyists Bill will be introduced. All Members on this side of the House will push for that but I do not believe we will need to push it hard as it will come forward. The essence of the Bill is to continue to support free and open access to Government but to it in a way which is properly scrutinised and where there is accountability. The essence of Senator Crown's Bill was in some way to make people accountable, but unfortunately in so doing it would appear to give us the right to do things we have no right to do currently and we would not wish to have that right.

I question the suggestion by Fianna Fáil that the Bill should be allowed to go to Committee Stage. As my colleague, Senator Bradford, said, first I do not know how one would amend the Bill. It would require such amendment as to reach a point at which it would be unrecognisable. To allow it to go to Committee Stage perhaps would give rise to the suggestion that somewhere in this House we in some way agree with the idea that we would be allowed in some way, shape or form to make representations to the Judiciary, the DPP or the Garda. That is not the case. We do not wish to do that. Therefore, that is why, in essence, we must oppose the Bill even though we could not be more welcoming of the spirit behind it. I hate to oppose anything that appears to remove some lack of transparency. As the Minister indicated clearly, while that may not be the intention of the Bill it is the effect of it. While we look forward to the introduction of a Bill for the registration of lobbyists it is not the Government's intention to give ourselves as parliamentarians any additional powers of influence, particularly not the sort of powers which are not legal.

[Senator Susan O’Keeffe.]

Senator Crown has spoken about the many people over the years both at home and abroad in powerful positions who sought to influence decisions and outcomes. Many would say that was completely wrong. They were wrong and they remain wrong but to try to correct it with this Bill will not assist in any way the correction of those wrongs or any future wrongs.

I thank Senator Crown for allowing us the chance to remind the Government and ourselves of the importance of the commitment we made in the programme for Government of the need for the registration of lobbyists and the continuation of anything that will encourage that pane of glass approach to Government, such as freedom of information legislation. On this day, unfortunately, we will have to oppose the Bill.

**Senator Sean D. Barrett:** We are approaching the third anniversary of the most successful lobbying ever accomplished in any country, namely, the bankrupting of this country by the banks. I would like to see the Government treat the matter more urgently. We cannot allow that to continue, given the damage it has done to everybody in society.

This Bill attempts to bring situations like that out into the open. We do not know the answer to any of the questions about the successful lobbying of the banks in the Department of the Taoiseach on 29 and 30 September 2008. It is strongly believed that the construction sector has a track record in doing that, as well. What else was the Galway tent for?

When one thinks of Basil Chubb’s book, which described politicians going around persecuting civil servants, maybe we should redefine political activity as to what goes on in Parliament, including the discussions we are having now, rather than placing the emphasis on lobbying. Parliamentarians have a duty to make laws and engage in these kind of discussions and debates.

While I appreciate the Government’s *bona fides* in introducing whistle-blower legislation, we have also had legislation that was designed to prevent things coming out into the open. We all want to see parliamentary reform and more open politics, but I sometimes fear that the permanent Government still rules. Certainly, the document prepared in this case reads like that and the Minister of State looked ill at ease reading it out. We have elections to change things and the last election was the greatest vote for change ever, as all commentators have pointed out. I am disappointed, however, that we are being told yet again that the Government will bring forward proposals some time. There should be a more open attitude to legislation from the Government side of the House.

I believe that having a record of representations that are made is useful, yet it was almost categorised in the Minister of State’s reply as an offence in itself and a form of legalising lobbying. The crime is in the lobbying, while the solution is to have a record of that lobbying. There should be scope for more dialogue than we saw between the Minister of State and Senator Crown.

**Senator Colm Burke:** I welcome Senator Crown’s initiative in drafting this Bill. It was not drafted overnight and much effort was put into it. I thank him for doing that. I pay tribute to any Member of the House who makes the effort to bring forward a draft Bill. Unfortunately, however, I cannot agree with the proposal for a number of reasons. One reason is that section 6 of the Prosecution of Offences Act 1974 clearly makes it illegal to make representations to the Garda Síochána and the Director of Public Prosecutions. The Bill before us does not take cognisance of that, although section 6 of the 1974 Act makes it unlawful to do so. There is no reference in this draft Bill to deal with that issue.

The other issue, which the Minister has comprehensively covered, is Article 35 of the Constitution which concerns the clear independence of the Judiciary. As someone who has practised as a solicitor for over 25 years, I understand the independence of the Judiciary. I will cite a

simple example in this regard. A Circuit Court judge was dealing with appeals from the District Court and on his way into court someone rubbed up against him and said, “You remember me. You know me from our previous involvement”. The person obviously would have been involved in the same political party. When the appeal of the person who had run into the Circuit Court judge came up in court, the judge said “I think it would be inappropriate for me to deal with this matter and I am adjourning it until the next term”. In all my dealings in the courts I have always found the Judiciary to act totally independently, regardless of any previous involvement they may have had when in private practice. They have always given fair decisions and hearings. In addition, they have always protected their independence and ensured that their decisions are arrived at without political or Government influence.

We have had a few example of bad judgments or bad decisions being made where the issue was not thought out — or the consequences of the way they had dealt with it were not thought out — but that does not mean we should tar everyone with the same brush. Over the last 50 years, the number of errors that were made is extremely small given the volume of activity going on in the courts, including the District Court, Circuit Court, Court of Appeal, High Court and the Supreme Court. The number of cases where something went very wrong is extremely small, despite the sheer volume of prosecutions and civil work involved.

Paragraph 3 of the Bill refers to communications. While it is a technical issue, it means that if the legislation is implemented I, as a legal practitioner, could no longer act in a family law matter. That is because my communication, if I was acting in a legal capacity, would be to the judge. Family law matters are in private, however, and therefore any representation I made would not be in the public domain. That is a technical question I have concerning the Bill. Any Member of the Oireachtas who is also in the legal profession could no longer act in a family law matter. I may be incorrect in saying so, but that is a technical interpretation of it.

I welcome anyone who comes forward with a draft Bill to highlight an issue. If legislative loopholes need to be tidied up in this legislation we should look at them, but I do not consider that the Bill before us is the way to deal with that. I am strongly of the view that section 6 of the 1974 Act should not be interfered with in any way. It is a powerful piece of legislation that is already in place and concerns the independence of the Judiciary, the Director of Public Prosecutions and the Garda Síochána. It ensures that they cannot be interfered with by the Government or public representatives generally.

Unfortunately, on this occasion I will not be supporting the draft Bill. I agree with the Minister of State, whose speech was comprehensive in setting out why it is not possible for the Government to support it on this occasion.

**Senator Jillian van Turnhout:** I am sorry I could not be here earlier, but I wish to support this Bill. It is a welcome initiative and I commend Senator Crown on bringing it forward. Having followed the discussion, I agree that elements of the Bill should be examined on Committee Stage, particularly concerning communications with the Judiciary, the Garda Síochána and the Director of Public Prosecutions. The Bill’s principle is that when and where they are made, communications should be transparent and publicly available. It is an important principle that warrants a statutory footing. This is a question of making parliamentarians, such as ourselves, accountable for the representations they make.

I strongly support the Bill although I hear people saying that while they accept it, it should be put aside for the time being. We should pass it on this Stage. We will have plenty of opportunity to make amendments, as appropriate, to ensure that we make ourselves accountable and act transparently, which is the intention of the Bill. I wish to support it.

**Senator Darragh O'Brien:** I welcome this discussion of the Bill and I welcome the Minister of State, Deputy O'Dowd to the House. He did not make the statement earlier and I am certain that the Minister of State, Deputy Lynch, did not write the response. There are elements in this response which are, frankly, insulting and beggar belief. I refer to the Minister of State's contribution which states:

The suggestion that we should blithely legislate them away is breathtaking. ... It is unfortunate that these good intentions have been undermined by this fatal attack on judicial independence. ... We are not given to the knee-jerk rejection of ideas, on the sole grounds that they come from the "other side" or in this case from an independent Member, that characterised previous Administrations ... it would be perverse if this House were to give fair wind to this Bill.

It is obvious an official woke up this morning in bad form because I have never heard such a response to any piece of legislation or any Private Members' Bill. I know the Minister of State, Deputy Lynch and I am certain she would not have written this response. I wish to put on the record of the House my disgust at this response.

Senator Crown has put a lot of work into this Bill. I spoke with him about it last Friday. It is also unfortunate that the Department or the Minister in this instance has focused on only three elements of the Bill where it deals with the Judiciary, the Garda Síochána and the Director of Public Prosecutions. I note the Schedule to the Bill lists 16 other areas in which, in my view, it is only right and proper that representations which are made — whether people like it or not — would be made public. For example, it is permissible to give character references in a court case, although I have not done so myself. Why should those character references not be made public? I agree that some elements of this Bill would require amendment and I am certain Senator Crown would be amenable to some amendment of the Bill. However, while the Government response thanks the Senator in this way for bringing forward legislation it then effectively kicks him out the door for doing so. This is highly inappropriate.

The Bill deals with the Irish Prison Service and the issue of the transfer of prisoners. It is only right and proper that those representations be made public as there is nothing wrong with making such representations, in my view. Members on all sides of the House have made such representations and I, too, have made representations on humanitarian grounds. There will be instances when Members of this House or the other House will regard it as their duty to make representations on behalf of an individual, be that to the Irish Prison Service in this instance. I ask what is the harm with such a letter being made public. This removes the argument that the media have to act as whistleblowers and, as Senator Crown said, in many cases, many well-intentioned representations are turned into something regarded as wholly inappropriate.

I suggest the Government study this Bill in more detail rather than dismissing it out of hand as shown by the Minister of State's response on behalf of what Senator Barrett termed the permanent government and with which I agree. At the very least the Bill should be allowed proceed to Second Stage. If one discounts the provisions relating to the Judiciary and the Garda Síochána, the other areas of the Bill are well worth discussion. The Government has stated this legislation is not worthy of consideration and it has reiterated that the Bill is an attack on judicial independence. This is an insult to the person who has drafted and presented the Bill. In my view, the departmental official who was asked to prepare a response to the Bill did not read it and did not seek to understand the intentions of the Bill. I ask the Cathaoirleach if the Seanad could make a formal complaint about this type of response being read into the record of the House. I have never seen anything like it. I have only been a Member of the Seanad for seven months but I was a Member of the other House for nearly four years and I have never seen the like from any Minister.

Fianna Fáil will support this Bill. I have no doubt that amendments will be made. Senator Bradford welcomes the fact that Private Members' Bills are put before the House. My group has used our Private Members' time to bring forward legislation but I have never seen a government in such a short period of time dismiss every Bill that has been introduced from this side of the House and deem them to be unconstitutional in some way. I hope someone will consider this Bill in the clear light of day and consider the intention of the Bill instead of just dismissing it out of hand.

**Senator Cáit Keane:** I am pleased to speak on this Bill. I compliment Senator Crown on bringing it forward. However, more research should have been undertaken with regard to it and in particular with regard to the constitutional implications. The only way to address a constitutional matter is by way of referendum.

**Senator Thomas Byrne:** That is what the Government says about every Bill brought forward.

**Senator Cáit Keane:** I disagree.

**Senator Thomas Byrne:** It says that every single Bill is unconstitutional. We have a world record for unconstitutionality.

**An Cathaoirleach:** Senator Keane without interruption, please.

**Senator Cáit Keane:** This proposed legislation relates to lobbying in criminal cases. I know it was out of the goodness of Senator Crown's heart that he thought it necessary to put forward this Bill as many a fine politician has fallen on the sword of lobbying in criminal cases. We all remember a few such politicians. I can see Senator Crown's reasons for presenting this Bill which I have read in detail. The general rationale of the Bill is to be commended as the process of lobbying is completely unregulated both in criminal as well as in the wider area of law. However, the Bill is fundamentally flawed in a number of ways.

Some speakers have made different comments. I refer to section 3 of the Bill, which provides for the permitting of communication by a Member of the Oireachtas with a member of the Judiciary or any employee of the State's prosecutorial or custodial service, with the intention of influencing decision-making in criminal proceedings. There is no other way of reading this provision. I ask why there is a need to lobby if one does not have an intention to make the person act in one's favour. There is no other point. The Bill further states:

(3) It is not an offence pursuant to *subsection (1)* if the communication concerned—

(a) is made public at the time of the communication,

(b) is also addressed to the Minister for Justice and Equality,

This does not make it right, however, because the separation of the Judiciary and the State cannot be interfered with. By permitting such communication, the Bill would run in direct conflict with Article 35 of the Constitution and the principle of the separation of powers which protects the administration of justice.

Section 6 of the Prosecution of Offences Act 1974 outlaws communication with the Attorney General, the Director of Public Prosecutions, members of the Garda Síochána. Senator Byrne has made the distinction but lobbying a judge is 110 times worse, in my view, than lobbying the Garda Síochána, with the aim of influencing decisions to stop or initiate criminal proceedings.

The Minister of State, Deputy Lynch, raised this point. She stated this was in conflict with the common law offence of preventing or attempting to prevent the course of justice. The

[Senator Cáit Keane.]

practice of lobbying in criminal legal cases should not be allowed under any circumstances. As the Minister of State said, when the water is muddied and a little bit of lobbying is permitted, so long as one tells the boss or the Minister, this will open the floodgates and the judges would be right to throw out every single letter they receive from any Member of the Oireachtas. Moreover, even if the communications were not taken into account by those being lobbied — which I doubt they would be and which might even result in a heavier sentence for the person — the public would still perceive there had been interference and a lack of fairness. There should not be lobbying for one and not for the other.

In addition to its shortcomings in respect of the anomalies it presents with existing legislation, the Bill is narrow in its scope because it deals solely with lobbying in criminal cases while it is clear that a Bill which addresses lobbying in a broader policy-making process is needed. The Minister of State outlined the Government's action on the register of lobbies.

The concept of lobbying requires definition. A definition of what lobbying is has proven problematic, as academics have failed to find consensus on a definition. However, we all know what lobbying is in so far as the role of lobbyists in the public policy area is concerned. Its role is to influence decision making among policy makers. Although the public perception of the lobbyist is often negative, throughout the democratic world, the role of lobbyist is essential when policy is formulated. Lobbyists are an acceptable element of society — but not in this society because we have seen too much bad lobbying — as they provide a necessary input and feedback into the political system. It is vital that openness and transparency are promoted within our political system. Senator van Turnhout referred to this and I will not repeat what she said. The purpose of this Bill is not to provide openness and transparency. Those issues can be better addressed in the register of lobbyists. That is the place to address the openness, transparency and accountability to which all politicians and lobbyists should adhere and where these should be regulated.

The integrity of Government decision making is imperative and measures to ensure accountability and clarity are essential. Nine political jurisdictions in the democratic world have lobbying rules in place, including, Germany, Hungary, Poland and the USA. Of the nine, both the USA and Canada have had regulation in place for more than 50 years. Therefore, we are behind the door in coming forward to provide for even a register of lobbyists. I can understand why Senator Crown finds it necessary to seek regulation, particularly considering the media attention given to all the cases coming to the fore here.

I commend Senator Crown on putting forward this Bill as a Private Members' Bill. Reference was made to the speech of the Minister of State and some cheap shots were made at the Minister of State herself.

**Senator Thomas Byrne:** We were stating the facts.

**Senator Cáit Keane:** The comments may have been factual, but there is not a register for lobbyists or anything else. Many people have pleaded ignorance here on account of being only a short time in the House. The Minister of State should also been given due process as she was only a new Deputy at the particular time.

I have a question for the Minister on lobbying. Has the Department reconsidered the distinction between “paid” and “unpaid” lobbyists for the purpose of registration? It should consider the possibility that this could leave a legal loophole for lobbyists acting on behalf of large corporate or private interests. I know the issue of “paid” versus “unpaid” lobbyists does not affect this Bill because it concerns Oireachtas Members only, but it is a serious question.

**Senator David Norris:** I welcome the Minister of State and congratulate Senator Crown on his initiative in producing this timely and useful Bill. I know how difficult it is to draft legislation and think the Senator has done a remarkably good job in a relatively short space of time. The Senator has done an important service for the Seanad because he addresses an issue that is relevant and immediate and which shows the relevance and immediacy of Seanad Éireann. I hope the Government will at least accept the Bill in principle.

I do not know how much lobbying goes on around here, but I am aware that during my time former Members accepted jobs lobbying and had access, as former Members, to this House. I had serious qualms about that. In America, the cigarette lobby, for example, was under the radar and this country we have the drinks lobby. Both these lobbies do damage. Sometimes it is difficult to resist the temptations of those two attractive consumable items, but the lobbies should be in the open.

What I welcome most about this Bill is that it gives clarity to a position which was previously not quite clear. This provides protection for all of us. Once this Bill is passed, everybody here will know exactly where he or she stands with regard to Oireachtas stationery and every aspect of the situation. I am an Independent and am not firing a cheap shot, but I share the disappointment and was very surprised to hear Senator O'Brien to say that the Minister's response was prepared in advance of the Bill. I find that astonishing because if that is the case, it could not possibly be a coherent response. One cannot make a response to something which one has not read. For that reason, I think the speech should be withdrawn. I am not sure it is possible to state that something is unconstitutional when one does not know the provision. How could it be known? I will leave it at that.

**Senator Paul Bradford:** On a point of order, the Minister's speech was in response to a Bill which was published and made available to us some days ago.

**Senator David Norris:** I accept the correction. I was responding to what was said. I am very grateful to Senator Bradford for making that point, because I would not wish to be unjust. I thank him for making that clear.

The principle of openness is extremely important. We are accountable. I wish to God that this legislation, or something like it, had been published and passed by the Houses of the Oireachtas ten, 20 or 30 years ago. I wish that was the case because it protects all of us. Everybody in both Houses is protected if this measure is passed and I hope it is. However, I would like the opportunity to be able to lobby outside this country. We have all heard of the case of the man about to be executed in Georgia. Perhaps he has already been executed today. Nine witnesses say his execution is a miscarriage of justice. We know that a number of people have been electrocuted in the United States of America despite the fact that they were subsequently shown to be innocent. Lobbying in such cases should be possible, but everybody should know about it and there should be a clear record of the lobbying.

Everybody knows it is wrong to influence the Judiciary in the course of a trial. However, there should be some room for open, clear and accountable lobbying by people who know the character of a person. They should get the opportunity to put their knowledge of the character on the record so that it can be taken into account. That should be just one other item in the case. I do not share the suspicion of the Judiciary. I believe we have a good Judiciary, whose members come from all parties and have been appointed by all parties. By and large they do a good job and are able to sort out the issues. I have great respect for the Judiciary. If the Government does not like this Bill, will it provide a timescale for amending it or for introducing such legislation to protect us? I would give that legislation a hearty welcome.

[Senator David Norris.]

With regard to lobbying in foreign jurisdictions, such lobbying should be open and accountable. In the case of the man in Georgia, I would like to have been able to write on that because I feel it is terrible to kill a person, particularly when there is any doubt. A great authority, Professor William Schabas, has indicated that when somebody writes to another court, there is no question of infringing the separation of powers. There have been cases in which, for example, the attorneys general of certain countries have written letters. The Swedish Foreign Minister has written these kinds of letters. As far as I am concerned, it is all right to write them as long as they are written openly. Let this be the case.

I listened with great respect to what was said on all sides of the House and I feel there is clear agreement that something needs to be done. The Government may remain immobile and it appears it will reject this Bill. There will be a vote on the Bill and I will vote for it. If it has flaws, let the Government amend it. Otherwise, I urge it to please introduce legislation now that will protect all of us and the good name of the Oireachtas and each individual Member. I had some questions and put them to Professor Crown earlier today and he satisfied me on them. I did not know, for example, why the Luas or An Post was involved, but now I understand. I am sure he has explained that here. His responses showed that something that did not occur to me and which I did not understand has a logical, clear, rational and legal explanation. Far from this Bill being a rushed and sloppy piece of work, it is extraordinarily fine. I congratulate the Senator who is a new Member of the House on having the initiative to introduce legislation on such a serious matter in such a considered way, one that can only benefit the respect the public feels for the Oireachtas.

**Senator Martin Conway:** Like other colleagues, I take my hat off to Senator Crown. This is a very important issue. I must admire the Senator who is only in the Seanad for as long as I have been, but has had the courage of his convictions to introduce such a Private Members' Bill. The motivation behind it is noble. I believe we need regulation on lobbying. In the US, as Senator Keane, such regulation has been in place for 50 years but the country does not have a good reputation in this regard. For example, former Senator, Chris Dodd, is heading up a sophisticated lobbying operation. Unless regulation is implemented correctly, it will not work.

It is not right to make representations to a member of the Judiciary. The separation of powers between the Oireachtas and the Judiciary is important. There have been examples of members of every political party, some of whom fell on their swords, making representations for leniency in regard to prison sentences. Two of my constituency colleagues did so and that was wrong. It was acknowledged by the parties that it was an error of judgment and that it should not have happened. Representations should be as transparent as a pane of glass. Representations regarding any legislation that emanates from the Oireachtas to govern this area must be in the public domain and be open to scrutiny. No Oireachtas Member should make representations unless he or she is prepared to do it in the full glare of the public eye and is prepared to live with the consequences. We do not live in a secret society or, for example, in Russia where things are done that should not be done. Whatever we do, we should do openly in the full glare of the public eye.

The definition of "lobbying" varies and it can be interpreted in myriad ways but the bottom line is if one is lobbying, one is looking for something. Most of the time, people are seeking something noble, right and proper such as when they lobby on behalf for the underprivileged or for equality or the rights of the people with disabilities and minority groups. We are lobbied on a daily basis properly and correctly and we, in turn, also lobby on a daily basis properly and correctly but when it comes to the separation of powers, there is a fine line and if the legislation

facilities that, it has to be done in the glare of the public eye. People should tread cautiously and carefully.

Regulation of lobbying is needed and legislation is necessary. It is wrong that we do not have it and I hope something emanates in this regard from the Government in due course. Consultation with Senator Crown and other Members would be useful. This House is playing a useful role in highlighting the issue through this debate and the Bill has led to a healthy exercise and discussion. At least we have had it out in the House. There is disagreement on the road we are taking but there is no disagreement about where we are going, as we all want proper, effective regulation in this area. We also want the good and noble name that politics had restored and it is only fitting and proper that we introduce whatever is needed in legislative terms to do that.

**Senator John Crown:** I thank almost the entire Government for attending the debate. My mother would be proud that so many distinguished Ministers attended. I also thank my colleagues for the courteous way in which the debate has been conducted and, in particular, the Minister of State, Deputy Lynch, and her officials for a detailed and vigorous defence of their position and critique of the Bill. I am grateful to my colleagues in opposition who were defensive of my psyche and I reassure them I will not seek counselling following the debate.

I am troubled because there is a disconnect from reality. The clear implication of the Government's response to my proposed legislation is that there currently exists a clear wall of separation between Parliament, on the one hand, and the Judiciary and the police, on the other. It was stated that this legislation would facilitate, legitimise and legalise a practice which is not only currently illegal but which is not currently occurring, a practice which, were this legislation to pass, would apparently become commonplace with a nightmare scenario of several hundred thousand potential interventions being made per year. This alleged wall of silence or Berlin Wall-like edifice is a pile of rubble because it is apparent to anybody who reads a newspaper that interference in one form or another occurs. It may be as gentle as a well noted character reference provided for someone who is wholly unknown to the parliamentarian in question but who happens to be a constituent. If such lobbying is illegal and is in danger of being rendered legal by my humble legislation, for which I would like to thank Shane Kenneally who did Trojan research in facilitating it quickly, where are the people in prison? It is a matter of common record that a former Taoiseach, two former Ministers, a current Minister and multiple parliamentarians have made interventions in the sentencing process or in regard to the duration of custodial sentences on behalf of people who had gone through the process. If it is illegal and we do not need to fix it, where are the prisoners? I would like to see these cases and criminal records and I would be prepared to visit those former and current parliamentarians to tell them that I did not know they had been locked up.

There may well be technical inconsistencies between this legislation and legislation on the Statute Book. I do not believe the Bill is unconstitutional, although I do not claim to be a constitutional lawyer. However, an important and bad message could be sent from the House. At a time of unprecedented scrutiny of the way politics is conducted in Ireland and when there is a widespread opinion that it is rife with patronage and clientelism, an attempt to block this legislation will be seen as an attempt to defend the *status quo*, which has failed. That is why I am pressing for the House to proceed with the legislation and I earnestly seek the support of my colleagues on all sides in attempting to see it advance.

Question put.

The Seanad divided: Tá, 18; Níl, 28.

Tá

Barrett, Sean D.  
Byrne, Thomas.  
Crown, John.  
Daly, Mark.  
Leyden, Terry.  
MacSharry, Marc.  
Mooney, Paschal.  
Mullen, Rónán.  
Norris, David.

O'Brien, Darragh.  
O'Sullivan, Ned.  
Ó Clochartaigh, Trevor.  
Ó Murchú, Labhrás.  
Quinn, Feargal.  
van Turnhout, Jillian.  
Walsh, Jim.  
White, Mary M.  
Wilson, Diarmuid.

Níl

Barrett, Sean D.  
Bradford, Paul.  
Brennan, Terry.  
Burke, Colm.  
Clune, Deirdre.  
Coghlan, Paul.  
Conway, Martin.  
Cummins, Maurice.  
D'Arcy, Jim.  
D'Arcy, Michael.  
Gilroy, John.  
Harte, Jimmy.  
Hayden, Aideen.  
Healy Eames, Fidelma.

Heffernan, James.  
Henry, Imelda.  
Keane, Cáit.  
Kelly, John.  
Landy, Denis.  
Moloney, Marie.  
Moran, Mary.  
Mulcahy, Tony.  
Mullins, Michael.  
Noone, Catherine.  
O'Keeffe, Susan.  
O'Neill, Pat.  
Sheahan, Tom.  
Whelan, John.

Tellers: Tá, Senators John Crown and Diarmuid Wilson; Níl, Senators Paul Coghlan and Susan O'Keeffe.

Question declared lost.

**Senator John Crown:** On a point of order, I ask the Leader to clarify what the timetable will be for the proposed legislation on the registration of lobbyists.

**An Cathaoirleach:** The Senator can ask that question on the Order of Business in the morning.

**Senator Thomas Byrne:** That is all they spoke about during the debate.

*Sitting suspended at 4.55 p.m. and resumed at 5 p.m.*

### **An Bille um an Naóú Leasú is Fiche ar an mBunreacht (Luach Saothair Breithiúna) 2011: An Dara Céim**

### **Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011: Second Stage**

Tairgeadh an cheist: "Go léifear an Bille an Dara hUair anois."

Question proposed: "That the Bill be now read a Second Time."

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank the Members for agreeing to consider this legislation at an early stage. The terms of the 1994 Referendum Act require that a referendum Bill pass both Houses of the Oireachtas no later than 30 days prior to polling.

I am grateful to the Senators for their co-operation. I published the Bill at the beginning of August with a view to everyone having adequate opportunity to consider it ahead of our debates in the Oireachtas. This facilitated a full debate on the Bill last week in the Dáil when I was glad to note the significant degree of support on all sides. It is a relatively rare occurrence to seek to change the Constitution so I very much look forward to today's debate and to listening to the views of contributors.

It is important to say that all the Deputies who contributed to the debate supported the need to ensure that the independence of the Judiciary as the cornerstone of our constitutional democracy is vindicated and upheld. I was glad to provide reassurance that the proposed amendment is designed to ensure that there is no erosion in this fundamental principle and I will repeat that assurance here today.

As Senators will appreciate, this Bill honours a commitment in the programme for Government. I am happy that we are in a position to proceed with this referendum at this early stage of the Government's term and at the same time as the presidential election. The Government's main objective in bringing forward this proposed amendment to the Constitution is to put before the people an option which would allow the pay of judges to be reduced on the basis of certain conditions and in very exceptional circumstances. The proposal will protect the independence of the Judiciary whilst also maintaining its good public standing following a period during which, through no fault of their own, judges have found themselves in a very difficult position.

As I have previously observed, the safeguarding of judicial independence is of value to every citizen. It means that people can be assured that judges' decisions are taken solely on the basis of law, independent of any fear or favour, whether personal, political or media driven. The power of judges to uphold the Constitution and strike down aspects of our law is a fundamental bulwark against the risk of tyranny and oppression which we have seen too often in other jurisdictions. Impartial judicial decision making and public confidence in that impartiality when disputes occur between the State and-or State agencies and individual citizens is an essential corner stone of our constitutional democracy. Guaranteed this independence, the judicial system in a democracy serves as a safeguard of the rights and freedoms of all the people. We have been well served by our independent Judiciary and I have not, nor will I ever be, found wanting in ensuring its independence is strengthened and secured.

In early 2009, the Fianna Fáil-Green Party Government introduced legislation to apply a public service pension levy on all public servants. The Judiciary was specifically exempted from this levy or deduction, because, it was stated, of the constitutional ban in Article 35.5 on reducing their salaries. In November 2009, when Fine Gael spokesperson on justice, I tabled a Private Members' Bill to amend the Constitution which, had the then Government seen fit to accept it, would have ensured that judges were in a position to accept the same pay reductions which had then been imposed on the public service.

The Fianna Fáil-Green Party Government did not accept my Bill and instead specifically excluded the Judiciary from a levy applied to everyone else paid from public funds. This action put the Judiciary in a difficult position, not of its own making. It resulted directly from the previous Government's interpretation of the terms of Article 35.5 of the Constitution, an interpretation with which I always disagreed. I do not believe that this interpretation was the original intention of the protection afforded by the Constitution to the Judiciary. Such a total blanket protection is inherently unfair and this unfairness has been dealt with by some other common law countries by allowing judicial remuneration decrease in real terms by not applying increases afforded to others paid from the public purse. This, of course, has not been the case in this country and partly as a consequence Irish judges are among the best paid judges internationally.

[Deputy Alan Shatter.]

However, given the importance of the Judiciary to our constitutional democracy, this in my view is not a valid approach. Instead, it is more appropriate to take a measured and coherent approach to judicial remuneration.

While the proposed changes will result in savings of approximately €5.5 million per annum, this amendment is not primarily about money. It is all about fairness and the need to ensure that judicial independence is no longer undermined, through no fault of its own, by the perception of judges as an elite group who are not contributing their fair share at a time of unprecedented economic difficulty. I firmly believe the proposed amendment will strengthen and uphold judicial independence while also striking a proper balance between the traditional protection afforded to judges' pay and allowing for the very difficult position in which Ireland now finds itself.

The Bill is short and contains just three short subsections. It proposes that Article 35.5 of the Constitution be amended by the substitution of the following:

35.5.1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

35.5.2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

35.5.3° Where, before or after the enactment into law of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.

As is evident from the proposed wording the general protection afforded the Judiciary in most countries is retained. The proposed Article 35.5.1° restates the existing general constitutional protections afforded to judges' remuneration while allowing for certain constitutionally based exceptions to this protection. It is important that this measure be retained. As I have noted, judicial independence exists, not for the protection of the Judiciary but for the protection of citizens. This proposed wording will continue to afford judges full constitutional protection from arbitrary or maliciously motivated reductions by any Government. It was argued in the O'Byrne case in 1959 [IR 1] that the constitutional protection in Article 35.5 extended to exempting judges from the payment of income tax. This argument was rejected by the Supreme Court, with the Chief Justice Maguire noting, "To require a judge to pay taxes on his income on the same basis as other citizens and thus contribute to the expenses of government cannot be said to be an attack on his independence." The proposed wording of subsection 5.2o simply acknowledges that judges are, like any other citizen, subject to the imposition of taxes and levies.

The substantive change is contained in subsection 5.3o, which is drafted to allow that when, and only when, reductions have been made or are in future made by law to public service pay on the basis of the public interest, these reductions can be applied "by law" to judges' remuneration. Any such reduction must be proportionate. The provision clearly limits the reduction in judges' pay to cuts applying to others paid from the public purse. It also guards against any danger of successive reductions being made to judges' pay alone as it can only be done where reductions are being made to public service pay. I included the term "proportionate" as a Dáil Committee Stage amendment to ensure that no misunderstanding of any nature whatsoever as to the purpose of this provision can arise, and that its intent is clear.

It is important to understand that the proposed amendments will allow for the application of the reductions which have already been imposed on the public service on serving judges. The draft wording adheres, in effect, to the test outlined in a leading Canadian judgment, *Queen v. Beaugregard* 1986 2SCR 56, in which it was stated that:

If there were any hint that a federal law dealing with these matters was enacted for an improper or colourable purpose, or if there was discriminatory treatment of judges *vis-à-vis* other citizens, then serious issues relating to judicial independence would arise and the law might well be held to be *ultra vires*.

There is nothing punitive or excessive envisaged in the draft text. Instead it is proposed that the pay of serving judges will be reduced by the same percentage as public servants on equivalent earnings. To that extent their salaries will be treated proportionately in the same way as the lowest paid officials. In effect, the Judiciary cannot be targeted for reductions and any such reductions can only be made in exceptional circumstances. If the referendum is carried, the reductions will apply from the date the legislation is enacted, it cannot be applied retrospectively.

I should mention that on Committee Stage I will be putting forward a minor technical amendment to the text of the proposed section 35.5.3°. This amendment, which proposes to remove a superfluous expression, that is, “into law” from the first line of that section, is being introduced in order to preserve the norms generally adhered to in the text of the Constitution and to ensure no possible confusion.

The Minister for the Environment, Community and Local Government, Deputy Phil Hogan, has made orders establishing a Referendum Commission for both this referendum ballot and the Abbeylara referendum. The eminent retired High Court judge, Mr. Justice Bryan McMahon has been nominated as Chair for both commissions. As with previous referenda, my Department is required to make a budget available to the commission for the necessary public information campaign. The provision up to a maximum of €750,000 will, if necessary, be the subject of a technical Supplementary Estimate later in the year.

I will outline why this amendment is being put before the people by this Government. Judges are not public servants, they are constitutional office holders. They are, however, paid from public moneys and operate within the public service environment. As the Chief Justice has observed, judges are daily witnesses to the difficulties which the current economic crisis brings — whether in family law, criminal proceedings or civil and bankruptcy cases. I believe it is essential that they themselves are seen to be subject to the very different circumstances which now prevail. The Judiciary itself recognised this through the arrangement entered into by the then Chief Justice with the Revenue Commissioners, which facilitated judges to make a voluntary contribution equivalent to the pension levy introduced in the first of the Acts to which I have already referred. I understand a majority of judges have made this voluntary contribution in respect of the pension levy deductions. However, I am not aware of any judge making a voluntary contribution in respect of the pay cut. There was however, considerable leadership shown by the new Chief Justice, Susan Denham in foregoing the pay increase due upon her recent appointment.

The current provisions of Article 35.5 have, in effect, led to an anomaly that puts judges pay out of line with pay in the public sector at a time when that pay has been the subject of financial emergency measures that have been approved by the Oireachtas. It is worth noting that the 2009 report of the review body on remuneration in the public sector, which recommended pay cuts for higher paid public servants, stated that the review body would have considered a cut in judges' pay in line with those borne by senior public servants but was precluded from doing

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so by virtue of the provisions in Article 35.5 of the Constitution. This objective and independent report recognised the duty of judges to contribute proportionately, that is to say, on the same basis as others paid from the public purse, to tackling our financial emergency.

In view of the inequity of the situation and cognisant of the difficult position in which judges found themselves, this Government, as part of our agreed programme committed to hold a referendum at the earliest opportunity on this matter so as to allow the people determine whether the Oireachtas should have the power to cut judges pay on the same basis as it has cut the pay of others paid out of the public purse. By enabling judges to pay their fair share I believe public confidence in the administration of justice will be maintained and enhanced in the eyes of many of our citizens.

I wish to turn to the draft implementation Bill. The proposed wording will facilitate the application to serving judges of the reductions provided for under the two Financial Measures in the Public Interest Acts of 2009. It allows for the type of reductions that have been made or are made “before or after the enactment into law of this section”. I have published and circulated informally to all Members of this House the draft heads of an Implementation Bill which, if the referendum is passed, the Government intends to publish with a view to applying the provisions of the two Acts of 2009 to the Judiciary.

In order to be clear about the implications of the referendum, the draft Bill sets out the percentage reductions — replicating exactly the provisions of the 2009 Acts — which would be applied to serving judges. For the convenience of Members I have appended to my script a table setting out the effect of these reductions to serving judges' pay. As Senators will see, the effect of the reductions would be to reduce the pay of the Chief Justice from its current authorised level of €295,916 to a new salary level of €227,168. This level is net of the pension levy which is applied to gross pay. Proportionate changes are proposed for the other serving judges. For example, the level applicable to a judge of the Supreme Court would decrease from €257,872 to €198,226. The salary level of the President of the High Court would reduce from €243,080 to €186,973, a reduction of 23%. Reductions of 20% would be applied to the salaries of the President of the District Court and ordinary judges of the Circuit Court while District Court judges would see a reduction of just over 16% from €147,961 to €123,881.

The referendum will be about the pay of serving judges. However, the Government is also moving to reduce the salaries of future judges and my colleague, the Minister for Public Expenditure and Reform, Deputy Howlin, will shortly publish legislation to impose a further 10% pay reduction in respect of future members of the Judiciary.

The draft implementation Bill includes all the provisions and protections that have applied to the public service. For example, the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 introduced at section 3(1)(b) a grace period for public servants who retired before 31 December 2010 or a later date set by ministerial order. This provision means that pay reductions will be disregarded for the purpose of calculating pension entitlements, including gratuities, for persons retiring before the relevant date. This provision will be applied in an identical manner to members of the Judiciary.

Two ministerial orders have since been made in respect of members of the public service to fix the operative date now applying as 29 February 2012. This means that judges who choose to retire prior to that date may do so unaffected by the proposed reductions.

The approach we have adopted with regard to judges' pay in the context of the substantial fiscal difficulties that confront the Government is fair and proportionate. The fundamental constitutional safeguards of judicial independence that the Government and I, as Minister for Justice and Equality, hold central to our democratic constitutional architecture as prescribed

in Bunreacht na hÉireann remain and the proposed amendment does not in any way impinge on them. The amendment will, if the people approve it, make a small but important contribution to the reduction in State expenditure, which we must all achieve to ensure the country is put back on a firm and stable economic footing.

I hope Senators will support the Bill and the constitutional amendments proposed and I commend the Bill to Seanad Éireann.

**An Cathaoirleach:** I remind Senators that the motion pursuant to section 23 of the Referendum Act 1994 on the prescribing of a formal statement for the information of voters to be included on the polling card will be debated in conjunction with Second Stage of the Bill and will be formally moved when the debate on the Bill is concluded.

**Senator Jim Walsh:** Ba mhaith liom fáilte a chur roimh an Aire chun an Bhille tábhachtach seo, a dhéanann leasú ar Bhunreacht na hÉireann, a phlé. Aontaím le mórán den mhéid atá ráite ag an Aire mar gheall ar an leasú seo.

Presumably, this Bill has arisen because of a failure by some judges. Some 126 of 147 judges accepted the voluntary scheme set up by the Judiciary and the Revenue Commissioners to meet the pension levy and the reduction in public service salaries. In principle, I concur with the constitutional amendment, which is necessary to ensure an across-the-board equalisation of these measures. No one, no matter how privileged his or her position, can avoid the imposition of a necessary Government policy, given the poor state of our public finances.

It should be recognised that the Judiciary has served us well since independence. It has acted with impartiality, which is essential under the Constitution. As the Constitution recognises the separation of powers, anything that might infringe upon this separation deserves careful and thorough consideration.

I have two complaints. The first concerns the speed with which these important issues are being pummelled through both Houses. Members on the Government benches were right, when on this side of the House, to be strong advocates of ensuring that all legislation received thorough and careful scrutiny by the House and that superior numbers are not used to sideline the input of others.

Second, this is an important issue and could be seen to impinge on the independence of the Judiciary. There should be a meeting of minds between the parties, yet it is my understanding that there was no consultation on the wording of the amendment between Government and Opposition parties. This is all too reminiscent of the partisan politics seen in particular in the Lower House. I am not pointing a finger at the current Government but this approach does nothing for democracy. We can attribute some of our economic difficulties to the failure of a more mature approach to politics, in particular where issues of national importance are concerned.

The impartiality and freedom from influence of the Judiciary is essential. In this context and returning to my reservation regarding the wording of the amendment, the protection of judges' pay is an essential part of the separation of powers and their independence. The Minister referred to the former Attorney General. I am familiar with his opinions on the necessity of the referendum. I have no legal qualifications but I probably share his opinion. The former Attorney General was of a certain view and advised the Government of the day that it could not unilaterally reduce the remuneration of judges without a constitutional amendment.

Reference has been made to a 1958 case in which the widow of a former Supreme Court judge took a case against the deduction of taxes from her pension. The Supreme Court found that the purpose of the Article was to safeguard the independence of judges and that to "re-

[Senator Jim Walsh.]

quire a judge to pay taxes on his income on the same basis as other citizens and thus to contribute to the expenses of government cannot be said to be an attack on his independence". This is an important point.

In 1996, the Supreme Court held that a judge's remuneration also included his or her pension entitlements. While we are correct to realign judges' remuneration with adjustments made in the public service, other areas of the judicial package should be examined, in particular the pension entitlements of judges. Many of those who assume judicial office are in their late middle ages and have already accumulated considerable personal wealth due to the failure to have an effective competitive system within the legal profession. In just 15 years, they can acquire attractive pension entitlements that do not apply to anyone else in the public service. This situation should be fairly and equitably examined. The Minister said that, under the Constitution, the Oireachtas shall regulate the number and pay of the Judiciary. This fails to take account of the fact that our system of democracy in these Houses has a very rigid Whip system. Any Government, not just the current one, with a majority that imposes the Whip imposes its own view on the Houses. This should be examined. Our Houses' system is very rigid by comparison with that in other countries. Our democratic decision-making process is affected as a consequence of the rigidity. A very small proportion of Members of the Houses, in the order of 7%, can effectively make the decisions of the Houses. This should be examined.

Let us consider the changes to salaries. I referred in this House on a number of occasions to the exorbitant salaries paid to members of the Judiciary. At present, the Chief Justice of the US Supreme Court is paid €130,000 less than the Chief Justice in Ireland. Even after making our adjustments, our judges will be remunerated well in excess of those in the United States.

Some members of the Government to whom I have spoken are concerned that reducing salaries across the board at higher levels may lead to some difficulties in recruiting people to various positions. I do not know whether that will turn out to be the case. Salaries are so high because of the State's failure to control legal fees properly. The failure over many years of successive Governments to tackle the issue is almost unconscionable. It is interesting that the Competition Authority, of which I would have been critical for being so dilatory and slow in dealing with this area, did not produce its recommendations much earlier than December 2006. They have still not been implemented.

There are many issues that could be examined. I have been critical of the failure to set up a judicial council. The Minister is on record as saying this will happen. There has been some dragging of feet within the Judiciary in this regard. It is absolutely essential that it be set up. Consider the case of a High Court judge who had to resign. While most fair-minded people believed that he may have deserved some admonishment for his action, they did not believe it warranted resignation. In another case, a judge who was in the process of being impeached has lumbered the taxpayer with a bill of approximately €3 million for his legal expenses. This is absolutely atrocious in the current climate. In good times, it would have been bad; in bad times it is absolutely appalling. There are a number of issues such as this to be addressed.

On the wording of the referendum, the Minister was at pains to mention the proportionality of the reductions. While I have no difficulty with clauses one and two of the referendum wording to be put to the people, I must draw attention to the third, which states clearly:

Where, before or after the enactment into law of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons [I presume this means public servants, although "classes" is not defined.] whose remuneration is paid out of public money and such law states that those reductions are in the public interest [There is

nothing to say it is proportionate.], provision may also be made by law [It is discretionary rather than mandatory.] to make proportionate reductions to the remuneration of judges.

Will the Minister address that specific point? In so far as we will support this, it is essential that any changes made be proportionate and do not discriminate against judges. If they are not proportionate, it would certainly fly in the face of our Constitution.

**Senator Paul Bradford:** I welcome the Minister to the House once again. It is almost becoming a second home for him. He would have been interested in the debate this afternoon on the Private Members' Bill in the name of Senator Crown, the Reporting of Lobbying in Criminal Legal Cases Bill 2011. One of the central arguments running through that legislation concerned the need to be absolute in our protection of the separation of powers and the rights of the Judiciary to act independently of the Legislature and others. We must keep this to the fore in our thoughts when we debate the Minister's legislation and the proposed referendum wording. Many speakers said we have been served very well by our Judiciary since the foundation of the State. We must ensure this level of service continues.

It is important that the always Judiciary be respected. It is not important that it be popular with the citizens but it is in everybody's interest that the people have full confidence therein and respect therefor. Unfortunately, over the course of the past 18 months, the debate on judges' pay and the pension levy caused some disquiet among the public, as far as I could learn. The Minister referred to it as unfortunate. Perhaps the status of our Judiciary has fallen to some degree as a consequence of that debate. The referendum, if passed, will bring into law a provision that will, once again, show clearly that the Judiciary is treated no differently from anybody else. That will help to address any difficulties that may have arisen unintentionally.

In the Minister's speech, he highlighted the fact that he had originally published the Bill at the beginning of August, thus giving people an opportunity to reflect on the legislation. I commend him in that regard. He would, I am sure, be the first to concede that August is a pretty silent month where politics and political debate are concerned. The timescale could have been different. It is obviously very opportune, appropriate and correct that the referendum, or referenda, take place on the date of the presidential election. The latter is required to be held before the end of October and, therefore, the referendum will occur on the same day. It would have been preferable had there been more time and had the Minister been in a position to wait another month or two, but it is not practical on this occasion. It would make no sense whatsoever to have a presidential election in October and ask the people to go to the polls again in November or December to vote in one or more referenda. I accept that the timescale has been forced upon the Minister. The little opportunity to reflect in August and September was useful.

The Joint Committee on Justice, Defence and Equality is currently holding hearings on the national vetting bureau Bill. The Minister's approach of sending legislation to the committee in advance is good and I hope we will all benefit from it.

Let us consider the provision to allow for the referendum. I support what the Minister is doing and what he said. It was a suggestion he made when he was in opposition and it was not accepted by the Government at the time. Judges' pay cannot be treated in any sense as being different from the pay of any other public servant. We have a profound, deep and unprecedented economic crisis in the country and huge difficulties with the public pay bill. Nobody has highlighted this more often or more stridently in the House than the previous speaker, Senator Walsh. The problem is being addressed through levies and pay cuts, but it will take some time before it is resolved. It would not be appropriate for one group of people to remain beyond pay reductions or the imposition of levies.

[Senator Paul Bradford.]

The wording of the proposed amendment mentions proportionate reductions and this is the appropriate language to use. It will send a clear message that this is not an attack on the Judiciary; it is simply putting in place legislation to allow for the Judiciary to be treated no differently — no better or no worse — from any public servant.

I read the submissions we received from the Oireachtas Library and Research Service and I commend it on its work. I also saw the interesting comment from the broadcaster, Vincent Browne, who challenged us to take the simple response of the Oireachtas passing an Act to provide for a reduction in the pay of judges under precisely the same terms as enactments on the reduction of pay of other public servants and only change the Constitution if this is challenged in the High Court or the Supreme Court, and the Supreme Court decides judges are immune from pay cuts to which other public servants are subject. This is one argument, but the constitutional amendment will put to bed the issue once and for all and is the more careful way to resolve the problem.

My party supports what the Minister is doing and we look forward to the Bill being passed and the referendum taking place. It would be ideal if the referendum campaign was engaging and constructive and grabbed the attention of the public. Another referendum will take place on the same day, as will the presidential election. Unfortunately, we will not have a major national debate on this issue but the referendum commission will be obliged, and no doubt will fully comply with the regulations, to ensure both sides of the argument are put before the public by way of documentation and information, and the referendum will be carried out in a fair fashion. I expect it will be carried and, once carried, we will have one law for all in the country, be they judges or other members of the public service.

The Minister also addressed the issue of future salaries and this is also worthy of reflection. The Minister outlined the current pay and the prospective pay of the Judiciary after this change is made. It must be stated that judges are not badly paid. It is important that we recognise the quality of the work required of judges. We need our very best legal minds seeking positions in our courts and even with this proposed reduction, the salaries, incomes and pensions remain very strong and positive. I support the Minister's proposals.

**An Cathaoirleach:** I call Senator Bacik.

**Senator Ivana Bacik:** I believe Senator van Turnhout is next to speak.

**An Cathaoirleach:** I apologise. I call Senator van Turnhout.

**Senator Jillian van Turnhout:** I thank the Minister and I greatly appreciate the openness in his approach to his work. I will make a brief point on the national vetting bureau Bill, which was mentioned by Senator Bradford. I welcome the Minister giving us some holiday work and I welcome his office being so open with regard to the questions I have had on the Bill. I thank the Minister.

To turn to the Bill before us, I welcome the Minister's initiative to introduce constitutional and legislative mechanisms through which judges' pay can be reduced in line with that of other public sector employees. It very much echoes public feeling, which the Minister has caught, and it is good that we will put this to a vote of the people. I wholeheartedly agree it is imperative to ensure that no echelon of the public sector or Irish society is immune from contributing to the betterment of the public finances. I hope a similar principle of fairness and proportionality is adopted by other Departments in their considerations for the budgets for 2012 to 2016.

Like the Minister, I commend the recently appointed Chief Justice, Susan Denham, on her decision to forego the €38,000 pay rise she is entitled to as Chief Justice until the issue of judges' pay has been resolved. Nevertheless, I echo the concerns of a number of leading academics, practitioners and the Judiciary itself with respect to the implications of the proposed amendment as formulated on judicial independence, which forms part of the bedrock of the doctrine of separation of powers in Ireland. In its recent response to the Bill, the Judiciary maintained it is not opposed to the holding of a referendum on judges' pay but rather with how the salary reduction should be achieved with the least interference with the principle of judicial independence. Presuming, and with no doubt about, the sincerity of this contention I ask the Minister to explain why the Bill does not incorporate a safeguard whereby a decision regarding judicial remuneration and a reduction in judicial pay is taken at least on the advice of an independent body.

In light of the debate raised about judicial independence, I also ask the Minister whether he intends to move on his previous commitment to review the system of judicial appointments.

These are the two questions I would like to put to the Minister. I will support the Bill but I ask that the Minister addresses my questions.

**Senator Ivana Bacik:** I welcome the Minister to the House. As Senator Bradford stated, he is spending much time here and he is always very engaging in debate with us, which I welcome.

Like other speakers involved in the Joint Oireachtas Committee on Justice, Defence and Equality I also welcome the opportunity for the committee to hear submissions from organisations on the national vetting bureau Bill. We heard a series of submissions today which were hugely informative. I learned a great deal about how the Bill could be improved. What we learned is that organisations such as the GAA, Swim Ireland, the ISPC and Barnardos already have in place vetting procedures which are ahead of the procedures set out in the statutory framework provided by the Bill. There will be a good deal of improvement to be made to the Bill following submissions to the committee. It is a very good model for working on the heads of a Bill and improving a Bill.

I will now turn to an issue raised by Senators Bradford and Walsh on the Bill before the House, which is timing. It is important that the referendum be held soon and I am glad it will be held in October, because this debate has gone on rather too long and has been damaging to the relationship between the various wings of power in the State, namely, the Judiciary, the Executive and the Legislature. It is time it was put to rest. I am one of the lawyers who did not believe this referendum was necessary, and I think the Minister outed himself as another member of this group. A large number of lawyers thought there was authority in the 1959 case, *O'Byrne v. Minister for Finance*, to which the Minister referred and in the wording of Article 35.5 of the Constitution which would have allowed for the imposition of a general public service levy on judges in the same way that income taxes are allowed.

**Senator Rónán Mullen:** Yes.

**Senator Ivana Bacik:** I am glad to hear Senator Mullen also agreed. Many of us had agreed on this. I accept the previous Attorney General and, I assume, the present Attorney General did not share this view. I looked again at Chief Justice Maguire's judgment, and all of the Supreme Court judgments, in the *O'Byrne* case in advance of today. Chief Justice Maguire stated: "To require a judge to pay taxes on his income on the same basis as other citizens and thus to contribute to the expenses of Government cannot be said to be an attack on his independence.". This is widely quoted and the Minister quoted it earlier. Chief Justice Maguire's judgment contains extensive quoting from earlier case law, including Judge Holmes's famous dissent in the *Evans v. Gore* case in the US, which has now been widely approved.

[Senator Ivana Bacik.]

However, having said all that, given that the referendum was viewed as necessary it is imperative that it would be held sooner because we have seen a rather unpalatable development of hostilities between the Judiciary and Government over this. They have been largely calmed by the announcement that the referendum will be held and by the publication of the heads of the Bill and then the Bill and by the new Chief Justice, Mrs. Susan Denham's well publicised and commendable decision not to take the extra allowance on her appointment as Chief Justice.

On the Bill and its wording, misgivings were expressed about the third clause within it being too broad. My colleague, Estelle Feldman, published an article last week in *The Irish Times* about that. Professor Gerry White also expressed doubts on it. The amendment made by the Minister in the Dáil last week answers much of that concern. I am pleased to see an amendment to include the word "proportionate" in clause 3 of the new Article 35.5. The Minister referred to it as the "to be sure to be sure" amendment. He did not feel it was necessary but it was there to copperfasten the assurances that have been given that no revenge attacks would be made on the Judiciary. He quoted the Beauregard judgment and the idea that reductions in judicial pay should never be capable of being seen as some sort of colourable device to pay back a Judiciary which was seen as over-interventionist in the decisions of the Executive. Tomorrow we will debate whether judges were over-interventionist in curbing the powers of the Oireachtas in the context of the Abbeylara referendum Bill. We will also refer to the Callely case in this House which is a *bête noir*. That is perhaps a different issue. Certainly issues around the separation of powers were raised about the original wording of Article 35.5.3°. The insertion of "proportionate" was an important and useful safeguard. In particular where a climate of distrust had developed it was useful to include an extra provision and safeguard.

It occurred to me when I was reading some of the material around the debate that the provision stipulates only reductions. No provision is made for increasing judges pay where they are deferential to the Executive. Concerns have been raised that judges can be overly deferential to the Executive. It would be an appalling vista if increases were to be permitted.

One other concern has also been expressed about the wording of 35.5.3°. It is one that was raised by my colleague, Professor Gerry White, about the before or after the enactment into law of the section, the provision that appears to allow retrospective application of the section. The Minister clearly set out the detail in the implementation Bill but that is specifically there to allow the pre-existing public service levy of 2009 to apply to the remuneration of judges so that there is no need to pass a whole new tranche of legislation so that a similar public service levy might be applied. I wonder whether there was another way of doing it. The Minister said in the Dáil there is no unique wording. I thought that the wording he produced in 2009 was good but I wonder whether there was a more elegant way of achieving the same result that would not have required retrospective application. That is a relatively minor point.

A point raised by Senator van Turnhout that has come up in the debate in recent months has been the issue of an independent body to determine judicial pay. I am not sure whether that is necessary. If judges' pay is determined by reference generally to public sector pay scales, I am not sure whether it would be required to have an independent body evaluating it, but where I entirely agree with her — I made the point previously — is the need for reform in judicial appointment procedures to make sure that there is greater independence around those and that they are more immune to political intervention. There may be something in that regard in the legal services Bill. I might be wrong about that but I thought there was a reference to reform of the Judicial Appointments Advisory Board.

Others have pointed out the importance of the Bill. It is relatively rare to have constitutional referenda. The Bill has implications for the separation of powers. In the light of legal advice

that has been received by the Government and the previous Government, both sides of the House accept that the Bill is necessary, that the change to enable reductions to be made in line with the public service levy could not have been done through legislation, and it was not being done on a voluntary basis, although it is fair to acknowledge that 85% of judges have made the voluntary contribution. Given that we accept its necessity we must ensure that the wording is right. The technical amendment proposes to delete the words “into law” in the first line of subsection (3) and is in keeping with the desire to make sure the wording is watertight.

To return to the words of Judge Holmes and the language used in the O’Byrne case, clearly, this is not just a money-saving device. The Minister indicated that approximately €5 million is at issue. Much more importantly, it is an issue of fairness to ensure that judges are seen to contribute proportionately and fairly in the same way that other citizens must do. That is important at a time of great financial crisis. I welcome the Bill.

**Senator Rónán Mullen:** Ba bhreá liom fáilte a chur roimh an Aire, an Teachta Shatter. The Minister is very welcome to the House. I note his gratitude to us for our co-operation in facilitating the debate at this time and pace. I understand the Government’s need to get the Bill through the Houses in time for the referendum. I agree with what Senator van Turnhout said on the approach taken with the national vetting bureau Bill and the fact that we have had early sight of that and a chance to discuss it. Given that this is about a constitutional referendum, it is regrettable that the Bill is being pushed through quickly. The fact that it is a constitutional referendum Bill is all the more reason for us to give careful consideration to it. Giving careful consideration means time to allow people to change their minds. I do not say the Minister’s mind is closed but it is more likely that a governmental mind will be closed if legislation is put through at this rate and pace. That must be said.

Article 35.5 of the Constitution appeared to be about judicial pay. It says that the remuneration of a judge shall not be reduced during his continuance in office. However, as Estelle Feldman has pointed out, and our own constitutional jurisprudence testifies, it is not in fact about judges pay; it only seems that way. Article 35 of the 1937 Constitution is about judicial independence. Senator Bacik has mentioned the case of O’Byrne v. Minister for Finance. In that case Chief Justice Maguire held that the purpose of the article is to safeguard the independence of judges. He further stated that requiring a judge “to pay taxes on his income on the same basis as other citizens and thus to contribute to the expenses of Government cannot be said to be an attack upon his independence.” Unfortunately, the former Attorney General and Government did not appear to have accepted that as a statement of law and they excluded the Judiciary from the general income levy citing the article as a constitutional barrier. That is of course the reason the Minister is seeking to remedy that by way of a constitutional amendment.

I have concerns about the wording that is proposed in the referendum. I have drafted an amendment which offers a clearer wording that is less open to misunderstanding and possible abuse in the future. It has been said that the majority of judges have accepted cuts. I note the comment in the Minister’s speech that they have accepted one cut but they have not necessarily accepted the other. An issue arises about how the reduction is to be imposed on judges as a class. The Minister set out the legislation that will apply not retrospectively in terms of cutting back into the income already received, but in terms of applying reductions which were decided and imposed on others previously. In the case of public sector unions, they have long-established mechanisms for meeting Government and making submissions in respect of their remuneration either through a formal multilateral process such as the Croke Park negotiations or through meetings with the relevant Minister.

The Minister has ruled out of the use of an independent commission to examine the issue. It is understandable that the Government may not wish to overly complicate the matter by

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setting up yet another independent body when it would be easier to treat judges like senior public servants but as the Minister said himself in his speech there is a difference between judges and other public servants in that those working in the Civil Service are working directly for the Executive branch of Government while judges are constitutional officeholders.

This must be addressed where there is no such mechanism to consider any judicial submissions.

It was this matter that led the supreme court of Canada to consider that any reduction of judicial salaries had to be referred to an independent body. The Canadians have held that if this condition is met, judicial salaries can then be reduced as part of an overall economic measure affecting all of those paid from public funds, much in the same manner as the Government is considering here.

According to the eminent Australian judge, Sir Anthony Mason, “The principle is increasingly accepted that direct negotiation by the judiciary with other branches of government over judicial remuneration is open to manipulation and is incompatible with judicial independence”. I cite that in light of what the Minister said in his speech and what was said in the previous debate over Senator Crown’s Private Members’ Bill, concerning the importance of the independence of the Judiciary. Everybody seems to want to say how much value they place on the importance of judicial independence, but we must examine what is being proposed and consider its implications for judicial independence.

Since no independent commission is being proposed, where does that leave the possibility for judges to have an input into any future decisions on pay? Earlier this year, the Chief Justice met with the Taoiseach to discuss various matters, but it was not long before certain concerns of the Chief Justice were leaked. That was very embarrassing to the Judiciary, as well as being inappropriate. I suggest that it contributed to a certain poisoning of the atmosphere between the Government and the Judiciary. What will happen in future when the Chief Justice meets with the Taoiseach? Will that be the Chief Justice’s only opportunity to make certain submissions about pay? Could discussions about pay therefore become some part of a *quid pro quo* arrangement in which the Executive seeks certain things from the Judiciary and *vice versa*? There is a real need for transparency and the only way one can achieve that is by having some class of independent body.

I will now turn briefly to the wording of the Government’s proposed amendment to the Constitution. Hopefully, we will get a chance to discuss it in more detail on Committee Stage. I note that the Government has already amended its proposal by introducing the word “proportionate”. The Minister is to be congratulated for doing so, as that clearly improves the proposal. I consider, however, that other amendments are necessary and that without them this proposed constitutional amendment would be seriously flawed.

The first two parts of this proposed section are unproblematic. The proposed Article 35.5.2o is mostly a statement of already established law. On a plain reading of what is proposed, however, it allows for more than the current law. The entirety of the clause does not clearly prohibit the levying of a tax on a class of persons that comprises judges alone. Therefore my amendment to the paragraph, proposing to delete the phrase “persons belonging to a particular class”, is necessary. It is not a question of any suspected *mala fides* on the part of the Minister — it is a question of setting out clearly what is to be the position in future, regardless of what future Governments might propose.

I also wish to mention the wording in this proposed amendment which states that the law in question proposing a reduction must state that such reductions are in the public interest. I regard this as a very worrying constitutional development. If the Legislature and the Executive

says that the law is in the public interest, then there is no appeal to say that it is not. That is the effect of the proposed wording. It is basically to avoid the possible supervision of the courts. I wonder whether there has ever been a piece of legislation which did not say, implicitly or otherwise, that it was in the public interest. That is a serious problem.

We now have confirmed intentions to abolish the Seanad, strengthen the investigatory powers of Dáil committees, allow a reduction in the remuneration of judges, and reduce the number of Deputies. These changes have one thing in common: they strengthen the hand of the Dáil and weaken the hand of those with an essential role in acting as a brake on the powers of the Dáil. This trajectory reduces transparency and accountability, while increasing Cabinet power and radically changing our constitutional balance.

Judges have been paid too much but the solution to this is not a baldly-worded constitutional provision of the kind that is proposed. New pay levels for newly appointed judges are possible and I have no problem with an element of retrospectivity. I seriously believe, however, that because of the importance of judicial independence the wording that we put into the Constitution needs to be much tighter than it is. I hope to discuss that further with the Minister on Committee Stage.

**Senator Colm Burke:** I again welcome the Minister to the House. I also welcome this legislation. Previous speakers have already covered many of the issues I wanted to raise. Earlier today, I referred to the independence of the Judiciary. In my experience over the years, I have found that at all times judges have ensured a clear line is drawn as regards their independence and how they arrive at their decisions.

I have checked the figures concerning the number of Supreme Court appeals that have been lodged. The current Chief Justice published a paper in 2006 on the need to establish a court of appeal. Rather than raising the matter on the Order of Business, the Minister might indicate where we are going on that issue. Over the last three years, for instance, the number of appeals to the Supreme Court have been as follows: 443 in 2008, 499 in 2009 and 466 in 2010. The number of cases dealt with in the respective years as follows: 230 in 2008, 228 in 2009 and 233 in 2010. Therefore, only half the cases appealed are being dealt with in any one year.

I am raising this issue because not too long ago I was involved in a family law matter which involved a judicial review of a Circuit Court judge's decision to the High Court, with an appeal to the Supreme Court. Being a family law case it went on longer than it should have. The problem of delays in the Supreme Court process needs to be examined. In particular, when one looks at the figures I cited it appears that there will be no improvement on how appeals will be dealt with in the Supreme Court because of the volume of appeals.

The paper produced by the current Chief Justice in 2006 concerned the need for a court of appeal. We have a Court of Criminal Appeal, but many other issues go to the Supreme Court which raise serious questions of whether they should ever come before that court. We should have another process for dealing with them. At the time, Mrs. Justice Susan Denham was of the view that there was not a need for a constitutional amendment to deal with the issue. The question is, however, whether or not we should have examined that and catered for a change in this area involving the establishment of a court of appeal, rather than all matters going on appeal from the High Court to the Supreme Court. The time factor involved is also important. That issue is relevant now due to the volume of commercial law that is ending up in the Supreme Court. As a result, there are many other areas which, unfortunately, cannot be given the same priority.

There is specific provision that constitutional issues must be dealt with in a particular period of time, but some matters are being put back and not dealt with within the required period. I

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know that the main issue before us is the constitutional amendment on judges' remuneration, but perhaps in his reply the Minister could touch on the issues I have raised.

**Senator Sean D. Barrett:** I welcome the Minister to the House. I do not claim any expertise in legal matters but I do have some questions to pose. Could the legal advice that the referendum is necessary be placed in the Oireachtas Library, as constitutional lawyers may wish to consult it at some future stage?

In his speech the Minister said he was not aware of any judge making a voluntary contribution in respect of the pay cut. That is surprising. I thought there was a response. Apparently they were willing to accept the pension deduction but nothing — subject to confirmation by the Minister — as regards the pay cut. I note the cost of the referendum at €750,000. I ask the Minister to clarify if this is the cost per referendum. How much will be saved by holding the presidential election and the referenda on the same day? I thank the Minister.

**Senator David Cullinane:** I welcome the Minister back to the House. I have a question for the Minister and then I wish to make some comments. I was somewhat confused earlier when the Minister said that if the constitutional amendment is passed, the reductions in payments could not be made retrospectively. I assume from what the Minister said that the pay cuts applied to the public service in 2009 will be applied but that the money cannot be clawed back. If this is the case I am quite happy with the provision. I was leaning towards supporting Senator Mullen's amendment but I will await the Minister's response. Some of what the Minister has said in his contribution has already reassured me regarding some of my concerns.

The constitutional amendment is targeted at equality between the judges and other public servants and I support such a provision. The Minister rightly points out this is not just about saving money, but rather achieving equality in how pay cuts and levies are applied across the public sector. I refer to the 2009 Acts which provided for these pay cuts. Many argued at the time, including the Labour Party and I also supported the view, that those pay cuts were not applied fairly because those at the top of the public sector did not take the kind of share of the pain they should have taken. The conditions set down in the budget for some very senior public servants were subsequently changed in the Finance Bill. This decision annoyed and shocked many people.

We are discussing judges' pay today but there is also a public concern about the levels of pay for very senior public servants. I refer to the recent revelations that county managers across the country stand to receive pension packages of between €340,000 to €500,000. We also know that many former Ministers who lost their seats in the general election walked away with very generous pension payments of between €350,000 and €500,000. People on low pay see these kind of payments being made and they ask why can the Government not take action regarding these kind of payments not just to politicians, but also to those at the very top of the public service who still earn very significant salaries. I would also include the senior bankers who were in receipt of very generous lump sum payments, so-called bonus payments and performance-related payments. There was understandable public anger when bankers in nationalised banks were still receiving significant payments from the State in the form of salaries and other payments.

I hope the Minister and the Government will look at all of these issues. We cannot say to low-paid workers who are working under the JLC, joint labour committees, systems that they should take pay cuts to bring them into line with similar workers in Europe while not making the same comparisons in the case of politicians, senior public servants and judges. Senator

Mooney hinted at this in his contribution when he made the point that judges in this country were overpaid compared with their counterparts in the US or Europe or anywhere else.

In today's economic climate it is essential that leadership is shown. Before the election Sinn Féin proposed that no public servant should be in receipt of a salary in excess of €2,000 a week or €100,000 a year. I do not see how anybody can take any more than three times the average industrial wage, given the current circumstances.

The Minister's party suggested a pay limit of €200,000. I support the Minister in his attempts to deal with judges' pay and it is a very welcome initiative. However, much more needs to be done if the public are to have confidence that those at the top, both in the public and private sector, will take their fair share of the pain which others are taking. If the Government and the Minister and his Cabinet colleagues, including those in the Labour Party, are going to take money from the pockets of those on very low pay by way of changes to the JLCs, then the start should be made with those at the top. I support the Bill and my party will support the referendum. I am sure if Paddy Power were taking bets on the referendum being passed it would be a significant odds-on bet. I do not think the referendum will pose any danger for the Government. It is an important amendment and I hope the Government will go much further. The programme for Government was specific that this legislation was required and many people will be watching to see the action the Government will take to cap the pay of very senior public servants and chief executive officers of semi-state bodies and of those in the banking sector.

**Senator Darragh O'Brien:** It has been reported in the media that a number of judges have indicated their intention to retire although this is not to say this will be as a result of the referendum. Has the Department received any indication of the number of judges who are due to retire between now and next February? Are the media reports true? Following on from the point made by Senator Cullinane, how will the Referendum Commission deal with this referendum considering it is required to put the argument equally for both sides. The commission might be hard pushed to find people who will argue against this amendment.

**Senator Ivana Bacik:** Like the referendum on the death penalty.

**Senator Darragh O'Brien:** Yes.

**Minister for Justice and Equality (Deputy Alan Shatter):** I thank Senators for their contributions. In response to Senator O'Brien when he said he does not think anyone will oppose the amendment, I have no doubt *The Irish Times* will find a couple of people to write articles in opposition, whether those articles are well-informed or ill-informed.

**Senator Darragh O'Brien:** That is true.

**Deputy Alan Shatter:** I will deal with the specific issues raised by Senators and I hope they will forgive me if I do not necessarily deal with them in the order in which they arose but there is a conjunction of some issues.

I thank Senators for their general support for the measure and I appreciate this support. Senator Mullen has an issue with the wording which perhaps we can deal with on Committee Stage. However, in my view, there is general support for the wording of the amendment. Some Senators raised the issue of the need for the judicial council and what might be happening in that regard. I confirm that this is part of the programme for Government and legislation will be enacted to provide for the judicial council. Legislation was drafted within my Department and the previous Government had some engagement with the Judiciary on the issue. I would

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hope the legislation will be published next year as the Government has other priorities ahead of it. However, work is being done on that legislation.

It is most unfortunate that legislation to establish the judicial council was not enacted many years ago. There is a range of reasons this legislation is needed but because of limitations on time today I will not deal with them now. However, I reiterate it is part of the programme for Government.

As regards the issues that have been raised, I wish to be very clear on what is the basic principle behind the Bill and which I have repeated in different ways in the course of my speech. The provision will apply to members of the Judiciary similar salary reductions as have been effected by persons within the public service on similar salary levels paid out of public funds. This measure is to ensure there is no remaining issue about the pension levy. Senator Bacik accused me of coming out on the pension levy. Indeed, I came out on that issue a long time ago when in opposition when the previous Government said there was a constitutional obstruction to applying the pension levy, by legislation, to the Judiciary. I disagreed and still disagree on that issue. However, there is clearly a constitutional prohibition on applying a salary reduction. The O'Byrne case eloquently describes why I believe the previous Government was wrong on the pension levy, but able lawyers can argue each way on that issue. In the context of it being clear that we need a referendum to deal with the remuneration issue, it is important that we remove any doubt about these matters.

The form of wording we propose deals with the two areas. It deals expressly with the income tax issue, which was dealt with many years ago in the O'Byrne case by the Supreme Court, and with the levy issue about which there are differences of opinion. While the majority of the Judiciary has voluntarily contributed to the pension levy, a minority has not and that minority cannot be required to do so other than by the referendum being successful to remove the doubt about it, followed by the application of the legislation.

Senator Barrett asked about the legal advice with regard to remuneration. Mention was made of the view expressed by a well known broadcaster that we should just legislate and ignore the Constitution. We cannot ignore the Constitution. No Government can stand over publishing legislation that is unconstitutional and we cannot simply enact legislation without a constitutional change to reduce the salary of judges, even if the reduction is, as intended, confined to similar reductions to those of others paid out of the public purse. That would, under the current Constitution and no matter how one looks at it, be a clear violation of Article 35.5. It does not take a legal scholar to know what the current Article says. All one need do is read it. It is clear that we cannot reduce the salary of judges in any circumstance during their period of holding judicial office. This is paraphrasing it, but that is what it says.

The idea that a Government can, gung-ho, enact legislation through both Houses and apply it to the Judiciary is nonsense. Should a Government attempt to enact such legislation, the President would be right to refer it to the Supreme Court under Article 26 of the Constitution. Then, after the expenditure of large sums of money for a solicitor and Counsel to argue the toss either way before the Supreme Court, the case would be lost and we would be back to the first stage. I find it extraordinary that people who engage in public commentary should propose such a way of approaching matters. I assure Senator Barrett that there is no detailed piece of legal advice that needs to be laid before the House on this issue. The Constitution is clear. The Senator should read the seminal work by John Kelly who deals with the issue and some of the works by others who have written about the Constitution.

Senator van Turnhout and others suggested we should set up an independent group to assess what the salary of the members of the Judiciary should be. If we do that, we do the exact

opposite of what we intend. Setting up an independent group to assess what the salary of sitting judges should be would seriously violate judicial independence. We would be appointing a group that was unaccountable to anyone, including Parliament, to pronounce from a height on what we should pay judges. The judges could not be part of that group because they would not be independent. Who could be part of that group? If the group reached a decision that judges currently in receipt of "X" should now be paid "Y", on what basis could that be explained other than that the Judiciary was being targeted separately from everybody else? This is not about targeting anyone. It is about ensuring that we continue to protect judicial independence, but it also provides for a system that is fair and applies readily identifiable criteria to ensure the Judiciary has applied to it the same salary reductions that have applied across the public service.

What is the litmus test of this being an independent, non-targeted approach? The litmus test is the provisions contained in the 2009 Act and the financial figures I have provided which are readily, independently identifiable as not targeting the Judiciary in some separate way rather than being the decision of some body conducting a value judgment on what we should pay sitting judges, which would be undesirable and would be an attack on judicial independence. I was surprised that was a proposal contained in a document that appeared on the Courts Service website.

It is important that we are very careful how we proceed on this issue and we must be careful to ensure that we recognise the huge importance of judicial independence. In an economic crisis, it is important that judges are not immune from the impact of that crisis and that the public do not perceive them as inhabiting a world different from that of the rest of us and different from the world inhabited by those on whose lives they adjudicate. It is also important that in so far as there are fiscal problems being experienced by the State at a time of economic crisis, the reductions in salary that have applied to others paid out of the public purse apply to the Judiciary proportionately and fairly, no more and no less. That is the intention of the legislation before the House.

I was asked about the costs involved in the referendum. There are savings in having two referenda and a presidential election on the one day. Some of these savings are obvious, such as, the personnel involved in counting. The personnel are assembled on one rather than on three occasions. Perhaps the counting will go into a second day on some issue, but this happens in general and by-elections on occasion. Also, the ballot takes place in a location that holds the boxes for the presidential election and for two referenda.

I will refer now to my note on the finances of the matter. The position is that the Minister for the Environment, Community and Local Government, has made an order establishing the Referendum Commission. This means the same commission will act for both referenda and we will not need two separate commissions, the workings of which incur some expense. It also means the costs will be split proportionately between the two referenda.

As I mentioned, my Department is making available a budget of up to €750,000 for the judicial referendum. It is a matter for the commission in its independent judgment to determine how to present the case. Senator O'Brien wondered how anyone would present the case against us. No doubt, someone will and there will be arguments to be included. It is for the commission to decide on the necessity to spend all or a portion of the moneys in the context of the manner in which it believes and determines the public should be informed.

There are also some costs associated with running the poll. These refer to the printing of ballot papers or referenda papers, the circulation of the Bill and the printing and distribution of the statement furnished to voters as to the nature of the referendum taking place, which is normally furnished by the State. The estimated cost charged to central funds in that context is approximately €430,000. It might be of interest to note that some of the staff costs associated

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with distribution of ballot papers and boxes for the second Lisbon treaty referendum amounted to approximately €800,000. That was for a far more complicated issue than the judicial referendum. I am hopeful that communicating the message as to what this referendum is about — dealing with judges' pay — will prove to be a good deal less expensive and controversial.

The estimated cost of the referendum is between €1.1 million and €1.3 million but the savings in a full year will be €5.5 million. Members can see it might be a small sum in the overall realm where we now no longer talk in millions but in billions but, nevertheless, within my Department, a saving of €5.5 million in a year would make available funding for other purposes that may assist groups and organisations for which money is tight at the moment or could release moneys to be put into the legal aid system in circumstances where the Legal Aid Board and the law centres are under huge pressure. It may be a small sum in the overall scale of the world but it is an important sum and it will introduce a sense of fairness into the system.

I hope I have largely covered issues raised. The issue of the backlog in the Supreme Court was raised by Senator Burke. It is a concern that a substantial backlog has developed. It can take in excess of two years for an average appeal to be heard unless there is a reason for the court determining an appeal has exceptional and particular urgency, in which case it may be advanced. A number of years ago, the membership of the court was increased by the Government with the Courts Service allowing for additional appointments and it was envisaged at that time that there would be a development whereby the court, which must operate independently of Government and politicians, because of the number of judges appointed to it, would identify appeal cases that could appropriately be heard by a division of the court.

The court, in hearing appeals when I started off as a lawyer, had five members and, frequently, cases that were not seen to be particularly onerous were determined by a three-person court and the five members would only preside over cases of particular difficulty or public importance. When the number of judges in the court was increased, it was anticipated that would facilitate two divisions of the court. We might have had two courts of three judges able to hear appeals in respect of which there were not major, complex legal issues to be addressed but, in practice, that has not emerged. It is a matter for the Chief Justice as to how she orders the court in the new legal term but there is a concern at the time it is taking for appeals to be processed.

It is part of Government policy that we provide for a civil court of appeal. Legislation is necessary for that and serious consideration is being given to provide constitutionally for a court of civil and criminal appeal in order that important courts such as this should be referred to in the Constitution. That may be an issue for the next round of referenda in the context of the substantial constitutional reform agenda of the Government, which has been signposted in the programme for Government. A public consultative process will be undertaken in respect of other constitutional issues which people have concerns about and believe might be addressed. It is something we will come to. As Minister, I have to be conscious, again with limited resources, from the legal perspective, that the establishment of a civil court of appeal would be of great benefit. I believe many cases that would otherwise go to the Supreme Court could finish at that level. It may ensure appeals are heard a good deal sooner and ensure only cases of great complexity go through an appellate system to the Supreme Court.

However, establishing a new court structure would generate additional expense. Within the context of the justice envelope, I have an obligation to reduce the spend by approximately €340 million by 2014. There will be a difficulty reconciling the establishment of a new court, which I favour with the fact that I am restricted regarding resources. I would also like to see a separate, independent family court structure, which will also generate expense. Some of these developments will happen in the second part of the Government's term rather than the first

part, during which we hope to further stabilise the public finances and be in a position to implement some of the reforms to which additional costs attach. We can proceed with many reforms now, which either do not give rise to additional costs or which are in the public interest and will reduce costs. I put this referendum in that context.

I hope I have responded to all the various queries raised by the Senators. Some more may arise as we take Committee Stage but I am conscious we are having a restricted exchange. I thank Senators for their contributions.

Cuireadh agus aontaíodh an cheist.

Question put and agreed to.

**An Bille um an Naoú Leasú is Fiche ar an mBunreacht (Luach Saothair Breithiúna) 2011:  
Céim an Choiste agus na Céimeanna a bheidh Fágtha**

**Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Bill 2011: Committee and Remaining Stages**

**Acting Chairman (Senator Darragh O'Brien):** In accordance with the Order of the House today, Committee Stage will be taken now. Before Committee Stage commences, I would like to deal with a procedural matter relating to Bills to amend the Constitution. The substance of the debate on Committee Stage relates to the wording of the proposed constitutional amendment, which is contained in the Schedule to the Bill. The sections of the Bill are merely technical and, therefore, in accordance with long-standing practice, the sections are postponed until consideration of the Schedule has been completed.

I move in accordance with precedent and Standing Order 122:

“That consideration of sections 1 and 2 of the Bill be postponed until the Schedule has been disposed of.”

Is that agreed? Agreed.

**AN SCEIDEAL**

**SCHEDULE**

Tairgeadh an cheist: “Gurb é an Sceideal an Sceideal a ghabann leis an mBille.”

Question proposed: “That the Schedule be the Schedule to the Bill.”

**Acting Chairman (Senator Darragh O'Brien):** Amendments Nos. 1 and 2 are alternatives to each other and must be discussed together.

**Senator Rónán Mullen:** Tairgim leasú a 1:

In Part 1, page 6, to delete lines 5 to 14 and substitute the following:

“2° Tá luach saothair breithiúna faoi réir gearradh cánacha, tobhach nó muirear eile a ghearrtar le dlí ar aicmí i gcoitinne.

3° Más rud é, an 1 Márta 2009 nó dá éis sin, go ndearnadh nó go ndéantar laghdúithe le dlí ar luach saothair aicmí daoine a íoctar go díreach as airgead poiblí agus gur ar mhaithe le leas an phobail an dlí sin, féadfar socrú a dhéanamh freisin le dlí chun laghdúithe coibhéiseacha a dhéanamh ar luach saothair breithiúna, i gcás go dtagann na breithiúna sin, nó go

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dtiocfadh na breithiúna sin, faoi réim na n-aicmí sin daoine murach forálacha an Airteagail seo.”,

I move amendment No. 1:

In Part 2, page 6, to delete lines 18 to 27 and substitute the following:

“2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on classes generally.

3° Where, on or after March 1st 2009, reductions have been or are made by law to the remuneration of classes of persons paid directly out of public money and such law is in the public interest, provision may also be made by law to make equivalent reductions to the remuneration of judges, where such judges come or would have come within these classes of persons but for the provisions of this Article.”.

My amendment proposes a number of changes. It is clear from it that I have no objection at all to the principle of retrospectivity and the effect of pay cuts which have been imposed on sections of the public sector and the pension levy should apply prospectively from the enactment of the legislation following the referendum. It is retrospective without applying the loss of income retrospectively. However, there is a vagueness about the proposed wording, which is troubling, given this is a proposal to amend the Constitution and the vital issue of the independence of the Judiciary is in play. While I do not doubt the Government's sincerity in saying it had no desire to tamper with the Judiciary's independence, we must proceed cautiously and with great precision in the wording of what we propose to allow, particularly because there is a retrospective dimension to the legislation that will follow the referendum, if passed. That is a rare phenomenon and, therefore, gives all the more reason for caution.

The proposed Article 35.5.2o refers to the remuneration of judges being subject “to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.”. I have concern about the vagueness of this paragraph because it seems to import the notion that judges could be singled out as a particular class and, for that reason, I propose the following wording: “...that are imposed by law on classes generally.”.

It is clear from this that we must achieve through this wording the idea that the pay of judges may be cut where they fall into a wider category of people, properly speaking. Although they are constitutional office holders their salaries would nonetheless be pegged to particular public service rates of salary.

I accept that the Minister has set out in legislation what he proposes to do but that should not be enough for us in the circumstances. The referendum should seek to delimit what is permissible so that it is not just a matter of what is chosen in legislation but what must be done in legislation. It would be more happily worded to leave the term as “are imposed by law on classes generally”.

Moving on from that, the proposed Article 35.5.3° is very problematic. The wording “classes of persons whose remuneration is paid out of public money” leaves the possibility that cleaning staff under contract with a public institution, for example, might fit into such a class. It seems that a stipulation is required that the persons involved who are comparators be paid directly out of public money; in other words they should be people directly in State employment. That is the reason I am proposing the use of the word “directly” and indicate that the people targeted would be paid directly from public money.

I am not taking these points in the order of appearance in the proposed wording. I will deal with the public interest point, on which I spoke on Second Stage. I will try not to labour it here. If a law is passed reducing the pay, for example, of departmental managers and judges, and it is said to be in the public interest, under what is proposed no court would be in a position to say that the law is unconstitutional based on the new Article 35.5.3°. In effect, judicial review is prohibited and the Executive is bringing about a power grab. Without my amendment, the Legislature has no standard whatever to meet in order to decide that a law in this context is in the public interest and it merely must state it in law, which is unacceptable.

One may argue that it is not at all desirable that the matter of whether a measure which proposes a reduction in judges' pay should go before judges for them to decide upon. However, if we are to maintain trust in our Judiciary and proclaim our belief that there ought to be trust in the Judiciary, matters like this must be left within their purview. It is only in the case of emergency powers that the scrutiny of the Judiciary is bypassed and the alternative is not happy, as it is left to politicians to merely state that an issue is in the public interest for it to be in the public interest. It is no argument to say that politicians are elected public representatives, as the reason we have a separation of powers is to ensure the Executive and Legislature do not overstep the mark.

It is asking too much of people to request that they insert a wording like this into the Constitution. They are being asked to accept the automatic constitutionality and acceptability of legislation simply because the Legislature argues that it is in the public interest. What else would be stated other than the legislation is in the public interest? A negative value is achieved by inserting this into the Constitution, and the value of what is attempted is to take the matter out of the hands of any kind of scrutiny whatever by the Judiciary, which is a problem.

Another issue of serious concern is the potential for the unqualified retrospective act of the Government's proposal to be manipulated and abused. There is no lack of good faith now but in changing the Constitution we must anticipate, embrace and prevent future problems. My amendment stipulates that the Government cannot tie reductions in judicial pay to decreases made to public servants prior to 1 March 2009. In other words, although I am not in any way disputing the principle of retrospectivity, a measure like this is so unusual that we must be crystal clear that what we are dealing with are certain pay cuts which have taken place in recent memory, which we are all agreed should apply to the Judiciary, and similar possible pay cuts and levies that might apply in future.

This is reasonable as judges' pay can be reduced in line with the public service pension reduction levy and the various pay reductions that have come into effect. What I am trying to avoid is an unhelpful vagueness. Is it possible that a future Government could or would identify some nearly non-existent class of persons receiving public money in this regard? As I mentioned, these people may not need to be public or civil servants. On this pretext, extreme cuts could be made to judges' pay, which would certainly be an unacceptable attack on the important principle of judicial independence, bringing the issue of judges' pay within the scope of negative political influence. We must cater for a future where there will be a temptation to populist politics; some would say we have already succumbed to the temptation to point to other classes of people and make them the scapegoats. For that reason we must be precise and we must be clear on what is being permitted.

I am proposing a linkage where reductions have been made to the pay of classes of persons paid directly out of public money. There should be a requirement for an objective test that such a law would be in the public interest. Equivalent reductions to the remuneration of judges should be allowed, where such judges come or would have come within these classes of persons but for the provisions of this article. In other words I wish to make clear that the cuts in judges'

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pay should be permissible where they would have fallen into that class of pay from which cuts were already made after 1 March 2009, were it not for the fact that this constitutional protection exists to bar reductions in judges' salaries. That is a clearer link between judges and the salary class into which they fall.

All the current wording requires is that some class of people receiving some class of public money need to have had a pay cut; that would justify some cut in judges' pay. The Minister deserves credit for including the word "proportionate" and this is an improvement. There would be further improvement if the term "equivalent" could be used, as it would guard against any attempt to indirectly manipulate judges' pay.

That is a quick summary of one amendment which incorporates a series of proposed changes. It is not a sufficient response to my proposals to say that it is extremely unlikely that a Government will act against the spirit of the constitutional amendment and target judges' pay in an arbitrary or unethical way. As I have already mentioned, constitutional design is about setting the parameters of governance in such a way as to ensure that these kinds of rupturing scenarios, such as *mala fides* on the part of a future Government, simply cannot arise, notwithstanding the good intentions of the Minister as set out in proposed legislation to follow this referendum. On that basis I ask the Minister to consider carefully the changes I have proposed and I look forward to his response.

**Minister for Justice and Equality (Deputy Alan Shatter):** We are discussing amendments Nos. 1 and 2 together. In amendment No. 2 we will effectively delete "into law", as I referred to in my opening speech. Those words are being deleted in the context of what will be Article 35.5.3°. If that amendment is accepted, it will read, "Where, before or after the enactment of this section, reductions ...", and the words "into law" are therefore superfluous. That is why we are making the proposal. I hope there is no great difficulty about that.

I listened with interest to what Senator Mullen had to say. Before I deal with the specifics of his amendments, I stress that it is important to understand that the Government's proposed change to the wording is only a microscopic element of the Constitution and, if it is successful, what will be the new Article 35. It will be placed within a constitutional architecture that expressly provides for the separation of powers and continues to assert the independence of the Judiciary. The overall content makes it clear that the Judiciary cannot, as a class, be targeted individually. It would be in violation of the overall constitutional architecture, the spirit of the Constitution and the other provisions within it for another Government with malicious intent to follow the route that Senator Mullen suggests might be followed if the proposal we have brought before the House is not amended. I do not believe the problems he foresees will arise in practice. A Government must apply the constitutional provisions in their totality. It is clear how the amendment will be applied and it will work in the manner that I described in my speech on Second Stage.

I appreciate that Senator Mullen has gone to some trouble to tease out the matter and that he proposed his amendments with good intention. I want to give some specific reasons his amendments cannot be accepted. He seeks to simplify the Government's wording of the proposed amendment provided for Article 35.5.2. I understand what his amendment seeks to achieve, but it would actually have the opposite effect and broaden the provision beyond what is intended. Specifically, it refers to "classes generally". The difficulty with this term is that it is not clear what classes it applies to. The term "classes" requires to be linked to some object. In this instance, the amendment needs to refer to persons, as the Government's proposed text does. An additional difficulty that arises with the Senator's proposal is that even if the term "classes generally" was acceptable, such a broad term would apply to everyone. The article

refers to the imposition of taxes and levies, which are not applied to everyone. For example, those on low incomes or social welfare may be exempt from them. It is for this reason that the Government's wording for the constitutional amendment specifically refers to persons belonging to a particular class. As I said earlier, the Government's wording also ensures that a class cannot be picked out in a discriminatory fashion, for example, by virtue of their profession or the fact they are judges. We cannot say: "We are going to target this class for a pay reduction because they are paid out of the public purse". Another group that is paid out of the public purse has to be identified, and the reductions must be proportionate.

Senator Mullen proposes a similar amendment to the proposed wording of Article 35.5.3. That is the one to which the proportionate issue applies. Again, I understand the intent of his proposed amendment to this Article. It is proposed to set out a date from which reductions have been or are made by law. I accept that the Senator seeks to capture the reductions that have been applied since the commencement of the Financial Emergency Measures in the Public Interest Act 2009. However, it would be very unusual to amend the Constitution and insert a specific date reference. It would go against the norms that are generally adhered to in the text of the Constitution. I do not consider such an approach is desirable, nor is it necessary. The Government's text already encompasses the financial emergency measures taken since that date by virtue of the phraseology contained within them. The amendment refers to cases in which "such law is in the public interest". This terminology is ambiguous and would open the section to challenge. If the wording was accepted, it would be a matter for the court to determine whether a law was in the public interest or otherwise. The Government's proposed wording is clear. The section applies only to a law that the Oireachtas has passed and which is stated to be in the public interest. Senator Mullen asked whether the Houses of the Oireachtas could do anything at all simply by stating that it was in the public interest. That would require a serious breach of faith by the Houses, but it would also require both the Government and the Houses to ignore the other provisions in the Constitution that delineate the separation of powers.

The Senator's proposed amendment also refers to "general classes". The use of this term would change the intent of the article, which seeks to apply the same measures to the Judiciary that have been applied or may in future be applied to public servants who are subject to the financial emergency measures. The term "general classes" applies to a much greater range of persons than is intended. It applies to anyone who receives remuneration from the public purse, and not merely public servants. If I accepted the amendment it would mean that a person employed in the private sector who takes any work for which he or she receives remuneration from the public purse would be subject to the provisions of the Financial Emergency Measures in the Public Interest Act 2009. Thus, the private sector electrician who is employed by the Department of Justice and Equality or the Department of Defence to carry out some minor electrical repairs would or could be subject to the provisions of the 2009 Act. I do not think this is what the Senator intended when he proposed his amendments, and it is for that reason that I must oppose them.

I assure the Senator that the concerns he expresses about the possible interpretation or application of the Government's proposed wording are not valid. The Government's proposals are based on acceptance of the proposed changes by the people in the referendum, the specific wording of the amendments that are before the House and the general constitutional architecture into which they are to be inserted. They will be specifically applied to the particular circumstances intended and I do not believe there is any likelihood they will be abused by this Government, any future Government or either or both of the Houses of the Oireachtas.

**Acting Chairman:** Senator Mullen, is the amendment being pressed?

**Senator Rónán Mullen:** Yes.

Cuireadh an cheist: “Go bhfanfaidh na focail a thairgtear a scriosadh.”

Question put: “That the words proposed to be deleted stand.”

**An Cathaoirleach:** On that question a division has been challenged. Will the Senators claiming a division please rise?

*Senators Rónán Mullen and Seán D. Barrett rose.*

**An Cathaoirleach:** As fewer than five Members have risen I declare the question is carried. In accordance with Standing Order 59 the names of the Senators dissenting will be recorded in the Journal of the Proceedings of the Seanad.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Question declared carried.

Faisnéiseadh go rabhthas tar éis diúltú don leasú.

Amendment declared lost.

**An Cathaoirleach:** Ós rud é go bhfuil sé a seacht a chlog, ní foláir dom an cheist seo a leanas a chur de réir Ordú an lae seo ón Dáil: “Go n-aontaítear leis seo i gCoiste leasú an Rialtais a leagadh síos don Choiste ach nach bhfuil curtha de lámh, go n-aontaítear ailt 1 agus 2, an Sceideal, mar a leasaíodh, an Réamhrá agus an Teideal agus go dtuairiscítear an Bille, mar a leasaíodh, don Teach dá réir sin; go gcríochnaítear leis seo an Ceathrú Céim; agus go ndéantar leis seo an Bille a rith.”

As it is now 7 p.m. I am required to put the following question in accordance with an order of the Seanad of this day: “That the Government amendment set down for Committee Stage and not disposed of is hereby made to the Bill, that sections 1 and 2, the Schedule, as amended, the Preamble and the Title are hereby agreed to in Committee and the Bill, as amended, is accordingly reported to the House; Fourth Stage is hereby completed; and the Bill is hereby passed.”

Cuireadh an cheist.

Question put.

**An Cathaoirleach:** On that question a division has been challenged. Will the Senators claiming a division please rise?

*Senators Rónán Mullen and David Norris rose.*

**An Cathaoirleach:** As fewer than five Members have risen I declare the question carried. In accordance with Standing Order 59 the names of the Senators dissenting will be recorded in the Journal of the Proceedings of the Seanad.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Question declared carried.

**Ráiteas faoi Eolas do Vótálaithe: Tairiscint****Statement for Information of Voters: Motion**

**Senator Maurice Cummins:** Tairgim :

“GO ndéanfar an ráiteas a leagtar amach sa Sceideal a ghabhann leis an Rún seo a fhorordú mar fhaisnéis do vótálaithe de bhun alt 23 d’Acht an Reifrinn 1994 (Uimh. 12 de 1994), i ndáil leis an togra chun Airteagal 35 den Bhunreacht a leasú, ar togra é atá sa Bhille um an Naoú Leasú is Fiche ar an mBunreacht (Luach Saothair Breithiúna), 2011 agus atá ina ábhar do reifreann bunreachta.

**AN SCEIDEAL****Reifreann a bhaineann le Luach Saothair Breithiúna**

Is é atá beartaithe leis an mBille um an Naoú Leasú is Fiche ar an mBunreacht (Luach Saothair Breithiúna), 2011 alt 5 2011 d’Airteagal 35 den Bhunreacht, lena ndéantar socrú nach cead laghdú a dhéanamh ar thuarastal breithimh an fad is a bheidh an breitheamh in oifig, a scriosadh agus an t-alt seo a leanas a chur ina ionad:

“5 1° Ní cead laghdú a dhéanamh ar luach saothair breithiúna an fad is a bheidh siad in oifig ach amháin de réir an ailt seo.

2° Tá luach saothair breithiúna faoi réir gearradh cánacha, tobhach nó muirear eile a ghearrtar le dlí ar dhaoine i gcoitinne nó ar dhaoine a bhaineann le haicme áirithe.

3° Más rud é, roimh an alt seo a achtú nó dá éis sin, go ndearnadh nó go ndéantar laghduithe le dlí ar luach saothair daoine a bhaineann le haicmí daoine a n-íoctar a luach saothair as airgead poiblí agus go luaitear sa dlí sin gur ar mhaithe le leas an phobail na laghduithe sin, féadfar socrú a dhéanamh freisin le dlí chun laghduithe comhréireacha a dhéanamh ar luach saothair breithiúna.”.

MÁ THOILÍONN TÚ leis an togra, cuir X os coinne an fhocail TÁ ar an bpáipéar ballóide.

MURA dTOILÍONN TÚ leis an togra, cuir X os coinne an fhocail NÍL ar an bpáipéar ballóide.

Is féidir cóip den Bhille a iniúchadh nó a fháil saor in aisce in aon Phost-Oifig.

I move:

THAT the statement set out in the Schedule to this Resolution be prescribed for the information of voters pursuant to section 23 of the Referendum Act 1994 (No. 12 of 1994), in relation to the proposal to amend Article 35 of the Constitution which is contained in the Twenty-Ninth Amendment of the Constitution (Judges’ Remuneration) Bill 2011 and is the subject of a constitutional referendum.

**SCHEDULE****Referendum relating to Judges’ Remuneration**

The Twenty-Ninth Amendment of the Constitution (Judges’ Remuneration) Bill 2011 proposes to delete section 5 of Article 35 of the Constitution which provides that the remuneration of a judge shall not be reduced during the continuance in office of the judge and to substitute the section here following:

[Senator Maurice Cummins.]

“5 1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

3° Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.”.

IF YOU APPROVE of the proposal, mark X opposite the word YES on the ballot paper.

IF YOU DO NOT APPROVE of the proposal, mark X opposite the word NO on the ballot paper.

A copy of the Bill can be inspected or obtained free of charge at any Post Office.”

Cuireadh agus aontaíodh an cheist.

Question put and agreed to.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Maurice Cummins:** Maidin amárach ag 10.30 a.m.

### **Adjournment Matters**

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#### **Job Losses**

**Senator David Cullinane:** I asked for this debate to focus on the situation in Waterford and the south east. The Minister for Jobs, Enterprise and Innovation was in the House last week to speak on innovation and job creation. During that discussion, Waterford and the south east featured heavily and, in fairness, the Minister gave some commitments that he would work with the enterprise agencies and the Department of Social Protection to ensure the workers who lost their jobs in TalkTalk recently were given the support they need and the broader issue of the lack of job creation in the south east, and the underinvestment in and underperformance of the local and regional economy, and the heavy hits the region has taken in recent years, would be rectified by the enterprise agencies being redirected to deal with the issues and problems facing the region.

I spoke to representatives from all parties and there is a lack of faith in any of the enterprise agencies to deliver for Waterford or for the region. There is a sense that the IDA wants to bring jobs to Ireland and is not bothered about where the jobs go. There is a perception that Waterford and the south east must do things for itself by establishing enterprise fora to examine what we can do in the region. Would the Government support such agencies if they were put in place? The regional assembly in the south east will look at some of these issues.

We cannot allow the situation to disappear from the agenda once the glare of publicity from the job losses is gone. We have seen that happen before when there were major job losses in Waterford Crystal and in GSK in Dungarvan. There was a high media profile and the poli-

ticians, Ministers and enterprise agencies had a lot to say. After the focus moves on, however, there is a fear nothing will happen and it is only when more jobs are lost that the focus returns.

Since the Minister for Jobs, Enterprise and Innovation visited Waterford and met public representatives and gave clear commitments, what has been put in place and what action has been taken by Government? Have any specific proposals been put in place? Also, as per the commitment given, has the Department of Social Protection provided support to the workers of Talk Talk? If so, what types of supports have been put in place and is the employee representative forum of Talk Talk satisfied with what has been put in place by the Minister?

It is important that all public representatives from Waterford and the south east continue to raise the issue of the need for a university for the region. I spoke recently with representatives of the friends of the university of the south-east campaign, representatives of which the Leader will recall, protested outside this Parliament two years ago. A clear commitment was given at that time by all political parties, with the exception of the parties in government, that Waterford IT would be designated as a university.

Waterford city is the only gateway city without a university. The south-east region, with a population of 460,000, is the only region without a university. Some €300 million has been invested over the course of the past ten years in Waterford IT. In terms of the application made, many hurdles have been put in place. The Minister of State might recall the process put in place by the previous Government, namely, an expert group was established. The group was overseen by Dr. Port and subsequently published a report. That report stated that in comparison with universities in Ireland and abroad Waterford IT had the academic maturity to be a university and was performing as such in all but name. In my view, that report endorsed the need for a university for the south east.

We then had the Hunt report and clear commitments in that regard from Government. I have no doubt that the public representatives from the Labour Party and Fine Gael who are in government are committed to a university for the south east. Can the Minister of State tell us what the Government has done up to now to help Waterford and the south east and can he provide any further information in regard to Waterford IT's application for university status?

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry):**

I thank the Senator for raising this matter on the Adjournment.

The Minister, Deputy Bruton, understands the huge blow this is for Waterford, in particular for the workers concerned. The Minister was first informed of this decision on Wednesday, 7 September, the day it was to be announced. He was dismayed, as was the IDA, at the manner in which this was handled. In discussions with the CEO, local management and the representatives of head office in Waterford on Monday, 12 September the Minister continued to press for a longer period of operation to allow workers to adjust and also to give the IDA every chance to market the company effectively as a going concern. A plant with workers and skills is much more saleable while in operation than if closed.

The Minister had a series of meetings with public representatives and business. He met the workers, management and the city manager and business interests in Waterford. The clear message was that Waterford had not benefited from advances in the good times and has been of late badly affected in the more difficult times. On foot of that, the Minister instructed the relevant agencies to put together an action plan for Waterford and the south east region which will intensify how they are being supported and to identify the strengths and weaknesses of the region. This was reflected in the discussions the Minister had with local representatives. There was a sense that there needed to be a hard analysis of the reasons Waterford, given its strengths,

[Deputy John Perry.]

has not been more successful. That is the task that the Minister has set the State development agencies to complete within one month.

When that analysis has been completed the Minister will look afresh at what action can be taken and whether there are further, deeper issues that need to be assessed in some other way. The Minister is determined to give Waterford the priority it rightly deserves. It is important to put on the record at this point that the Leader has since the date of the announcement by Talk Talk been raising this issue with the Minister. A casual view of unemployment numbers and the history of industrial performance in recent times indicates there are things that are wrong. The Minister is committed to having an effective action plan to address these. There are issues of a long-term and short-term nature which can be addressed in the near future. We need to take a hard look at how we can better support the enterprise sector in Waterford and to set out the actions we can take in the short and longer term.

The Minister has acknowledged the support of Cabinet colleagues. The Minister for Social Protection responded immediately and staff from her Department have spoken with staff of Talk Talk. The Minister for Education and Skills also responded immediately and the support of FÁS is in place. In addition, the Minister for Education and Skills indicated that work on the proposal for a technological university, which is to be explored as part of the programme for Government, is being accelerated. This issue has also been raised with Government on an ongoing basis by Senator Cummins. Clear criteria will be developed for that opportunity, which arose in discussions.

We need immediate action in the enterprise domain, but the Minister also recognises that this assessment of strengths and weaknesses will throw up issues that are relevant for other Departments. On foot of that, the Minister will bring to the attention of other Departments areas of action in respect of which they have the potential to assist. The Minister accepts that IDA Ireland has been meeting its target for 50% activity outside Dublin. However, for whatever reason, Waterford has not been doing as well as other regions outside the capital. The Minister acknowledges there is an issue as to why Waterford, despite its offerings and significant strengths, is not performing as well. That is why it is important to examine this matter to see what items we can correct in the short term to enhance that performance. It is our ambition to see Waterford doing better from overseas investment and indigenous companies. We need to create an engine of indigenous growth in this country and it is disappointing to see that the indigenous sector's contribution to our exports has not grown very significantly. We must re-examine weaknesses in that regard.

In this context, the Minister has directed the relevant agencies under his remit to report back to him before the end of this month with an audit of their activity in the region and proposals on what additional efforts can be made to reverse the disproportionately negative trend in employment. This feedback will contribute to and allow the Minister to oversee the preparation and implementation of a south-east employment action plan to investigate the causes of the problems facing Waterford city and its hinterland and will outline a list of actions to be taken by Government over the short, medium and long term to seek to address these.

**Senator David Cullinane:** I welcome the commitment to develop a south-east employment action plan. It is hoped that plan will be delivered across a number of Departments and will have the support of Cabinet. While not wishing to be sceptical similar reports and plans put in place have not been followed through. It is hoped that the Minister of State can give a commitment that this plan will be.

On the university issue, the Minister of State referred in his response to clear criteria having to be developed. The point I was making earlier is that this has been a long, almost tortuous

process, for Waterford IT. I fail to see what more in terms of criteria needs to be put in place. We have been hearing the word “criteria” for far too long. It is about time the Government published this criteria.

**Acting Chairman (Senator M. Mullins):** I have given the Senator a great deal of latitude and must ask him to conclude now.

**Senator David Cullinane:** It is an important issue.

**Acting Chairman (Senator M. Mullins):** I know that. The Minister of State has given a commitment on the matter.

**Senator David Cullinane:** I will continue to raise the matter until the Government delivers on it.

**Deputy John Perry:** The Government is only in office since March of this year. The previous Government may have given a commitment on a proposed action plan but this is this Government’s first commitment on an action plan for the south-east region. The Minister has clearly indicated that the relevant Ministers and Departments must devise a plan within a month. I have no doubt that the Minister will meet with all public representatives when that timeframe is up. We must await identification of the weaknesses and strengths of the region.

On the university issue, the Minister for Education and Skills is currently engaged in a review process. Agencies such as Science Foundation Ireland and Enterprise Ireland have continued to provide support to the many excellent research developments taking place in Waterford IT, which have enhanced its reputation. The process has been accelerated. The Government is conscious of the disproportionate lack of investment in Waterford from the State agencies, despite their successes. Indigenous Enterprise Ireland companies have never had higher export levels and the IDA is consistently attracting foreign direct investment. Our job will be to prioritise Waterford in every way we can. The action plan will be formulated in discussion with every parliamentarian in the region and the voluntary and private sector employees and staff. The entitlements of staff will be at the forefront of Government’s thinking.

### **General Medical Services Scheme**

**Acting Chairman (Senator Michael Mullins):** I welcome the Minister of State, Deputy Shortall, to the House.

**Senator Fidelma Healy Eames:** I am pleased the Minister of State is present to listen and respond to this Adjournment matter. This is my first time speaking with her in her ministerial capacity. I congratulate and wish her the best of luck.

My request is for the HSE to enable registered nurse prescribers, RNPs, from the private and voluntary nursing home sector to prescribe general medical services, GMS, products for medical cardholders who are nursing home residents. Nurse prescribing was introduced by the then Minister for Health and Children, Ms Mary Harney, and was initially only open to the public sector. The criteria have been changed to allow all nurses to apply, including those from the private and voluntary sectors. Strict criteria, mainly concerning governance and supervision, were put in place.

It has become apparent that there is an issue with RNPs who have completed the course and are registered with An Bord Altranais prescribing for patients with medical cards. This makes no sense, as there is no issue with prescribing to private patients under the same roof. RNPs

[Senator Fidelma Healy Eames.]

can prescribe to these patients once they fulfil the terms of an approved collaborative practice agreement but they cannot prescribe using GMS pads in private practice. What is the rationale?

RNPs working in elderly care services in the private sector cannot prescribe for 95% of residents. The number of long-term places for older people in the public sector are limited. Since the introduction of the fair deal, older people can choose where they are placed. Technically, this means that people in private nursing homes are at a disadvantage, as they cannot be treated by RNPs even if their GPs have agreed to that treatment. Circular SO222-NCO-09, of May 2009, alignment of community drug schemes to incorporate nurse and midwife prescriptions, did not reference restrictions to RNPs in the private and voluntary sectors, although it alluded to further circulars to be issued to clarify the policy decision on the GMS scheme. This circular reiterates that the legislation allows registered nurses and midwives who have completed an approved education programme, appropriate clinical experience, registered with An Bord Altranais as RNPs and authority from the health service provider employing them to prescribe a range of medications within their scope of practice. Nowhere within this clarification of the legislation does it refer to restrictions on RNPs in the private or voluntary sector. If so, why can they not prescribe in practice?

In July 2011, circular 01/311, community registered nurse prescriber primary care prescription pads, outlined specific criteria to apply to community RNPs in the HSE's voluntary and statutory services. RNPs from the private and voluntary nursing home sectors fulfil four of the six, yet the circular states that RNPs in private nursing homes will not be issued with primary care prescription pads. It does not provide a rationale for this decision.

The majority of residents in private and voluntary nursing homes hold medical cards and receive medical services from GPs who are under contract with the HSE. Furthermore, a number of these residents are in beds that have been contracted by the HSE under the contract bed or delayed discharge initiative. When responding to a parliamentary question from Deputy Stanley on 12 April 2011, the Minister for Health, Deputy Reilly, stated:

It is important to note that a person's eligibility for the medical card and drugs payment schemes is unaffected by the nursing homes support scheme. In other words, a person can continue to receive goods and services in accordance with the terms of these other schemes regardless of whether they are in a nursing home or elsewhere.

Given the stress under which the HSE is operating, this issue needs a common sense approach. RNPs offer a vital and cost effective service to older people. Without them, doctors need to be called for emergencies and transfers need to be arranged to accident and emergency departments. The RNP could examine, diagnose and treat people in the interim. The current situation does not make much financial sense.

The HSE should enable RNPs in the private and voluntary nursing home sector to prescribe GMS products for residents who hold medical cards. While the preference would be for RNPs to have primary care prescription pads with their own GMS numbers, it would be acceptable, albeit more difficult in the interim, were the Primary Care Reimbursement Service to issue a circular to GPs concerning GMS prescription pads for RNPs who provide services for the former's patients in private and voluntary nursing homes, as per the practice outlined for practice nurses in the circular to which I referred. I look forward to the Minister of State's reply.

**Minister of State at the Department of Health (Deputy Róisín Shortall):** I thank the Senator for raising this issue and for her good wishes.

The introduction of nurse and midwife prescribing is a significant change in nursing and midwifery practice. There is strong international experience that supports such prescribing as

being effective and safe and as improving services to patients. Regulations specifying the legislative requirements and conditions for prescribing of medicinal products by nurses and midwives were signed into law in May 2007. The legislation allows registered nurses or midwives to prescribe a range of medications within their scope of practice provided that they have completed an approved education programme, appropriate clinical experience, been registered with An Bord Altranais as a registered nurse prescriber and authority from the health service provider employing them.

I welcome the initiative shown by the nurses and midwives who have undertaken training as part of the nurse prescribing education programmes. Since the legislation came into effect in May 2007, 662 nurses and midwives have been funded by the HSE to undertake these programmes. Some 322 RNPs are in practice and prescribing in 106 health service providers. The remainder are in training or are preparing to register as nurse and midwife prescribers with An Bord Altranais.

The implementation of nurse prescribing in the community is progressing. Of the 322 RNPs, 211 are from acute hospitals, 97 are from primary and continuing care and 14 are from private organisations.

The HSE issued a circular in July 2011 outlining that GMS prescription pads will be made available to nurse prescribers employed by the HSE who are approved at local level and work in collaboration with GPs who are contracted under the GMS. The HSE considers it appropriate to restrict access to GMS prescription pads to this group of nurses at this time. In this regard, it should be noted that there are other restrictions on access to GMS prescription pads. For example, medical practitioners who do not hold GMS contracts with the HSE do not have access to GMS prescription pads, nor do hospital prescribers.

Turning to the position of patients in private nursing homes, general practitioners are contracted by the HSE under the GMS scheme to provide services to medical card and GP-visit cardholders. Such a patient is registered with his or her chosen GP, who acts as a gatekeeper for prescribing choices for his or her panel of patients. Medical cardholders are entitled to retain their medical cards when they move into private nursing homes. They also have the right to retain the GPs of their choice in the same way as if they were living in the community.

GPs receive a significantly enhanced capitation rate for medical card patients in private nursing homes in view of the additional medical care required by such patients. This includes the prescribing of drugs and medicines for such patients. It is clear, therefore, that the restriction on access to GMS pads does not serve to prevent patients in private nursing homes having appropriate access to drugs and medicines.

Any proposal to provide GMS prescription pads to private nursing home employees would require a very significant policy evaluation, involving a full assessment of clinical, patient safety, contractual and financial implications. I regret to inform the Senator there are no plans to make those changes.

**Senator Fidelma Healy Eames:** Is the reason, therefore, that the GPs are already receiving a significantly enhanced capitation rate, as stated? Is it a matter of cost rather than making best use of the resources? The GP has, apparently, approved the nurse prescriber to do the work. Can it not be arranged between them?

**Deputy Róisín Shortall:** I envisage a very strong role for nurses in the roll-out of health reforms. They will be critical to the development of primary care. As regards chronic disease management in the community, bearing in mind that we want to see a considerable shift in activity from the hospitals to the community, nurses will be the key professionals involved in

[Deputy Róisín Shortall.]

delivery. I want far more nurses involved in prescribing. They have a critical role to play in primary care.

With regard to people in nursing homes, there is a real difficulty. As matters stand, the GP is the gatekeeper to GMS services, doctor services, practice nurse services and drugs covered under the GMS. It would be extremely complex to bring about an arrangement whereby a GP responsible for the medical care of a patient in a private nursing home would also have some other professional with prescribing rights working for that patient.

**Senator Fidelma Healy Eames:** It is a private issue.

**Deputy Róisín Shortall:** It is. As I stated, GPs are very well recompensed for providing the additional enhanced care for people in nursing homes. When an issue arises and where the patient needs medication, it is the GP that is paid to provide what is required.

**Senator Fidelma Healy Eames:** I thank the Minister of State for the clarification.

### Hospital Services

**Senator Brian Ó Domhnaill:** I want to raise the provision of X-ray services at two community care hospitals in my constituency, Donegal South-West. I raise this in a week in which there was much controversy surrounding the €6 million in debt being written off by HSE west as a result of not making a claim for insurance money available from private companies. That is a separate issue.

Up to the summer of this year, the community hospital in Killybegs, the country's primary fishing port, and the community hospital in Donegal town provided an X-ray service two days per week to people living in the catchment area in south Donegal, the southern end of my constituency. The service was provided because local community groups in both Donegal town and Killybegs collected almost €300,000 to provide the equipment being used for the X-rays. The HSE made a decision in the early part of the summer to reduce provision in the two locations from two days per week to one day per week, effectively halving the service. Two weeks ago, the HSE made a decision to have the service withdrawn with immediate effect. The service as we know it today is withdrawn. There is no provision of service at Killybegs or Donegal town because the radiographer responsible for providing the service in the two towns was transferred to Letterkenny General Hospital due to staff shortages there. That is what I have been told by the HSE officials.

I understand, on the basis of having liaised with HSE officials, that there is movement. The service must be restored in each of the community hospitals for two days per week. Anything less would be very unfair to both communities which collected the money to provide the equipment.

The only solution to this issue is the full restoration of service for two days per week in both Killybegs and Donegal. If there are staffing issues at Letterkenny General Hospital, they need to be dealt with on their merit and in the context of the moratorium. If there is to be an application made for additional staff at Letterkenny hospital it should be processed, if at all possible, through the Minister of State's Department and then submitted to the Department of Finance. The people in the other part of the county should not have to pay for any staff shortages in another hospital. It is totally unacceptable. I call for the HSE to restore the services not back to one day per week in each community hospital, but to two. I ask that Dungloe Community Hospital, which is in the same constituency, retain its current X-ray service, which is being provided two days per week. I hope the Minister of State can provide some clarifica-

tion. The issue is pressing and of great concern, particularly to the communities that collected so much money to provide equipment for X-ray services.

**Deputy Róisín Shortall:** I thank Senator Ó Domhnaill for raising this issue. It provides me with an opportunity to update the House on this matter and to outline the background to the current situation and the action taken by the HSE. As the Senator is aware, the HSE has operational responsibility for the delivery of health and social services, including those at facilities such as community hospitals in Donegal town and Killybegs, County Donegal.

Donegal town community hospital is a HSE residential facility for older people and is located on the outskirts of the town. It is a two-storey building that was established in 1978. The residential unit is located on the ground floor and has a capacity of 29 beds. The unit provides palliative care, respite care, convalescence, rehabilitation, assessment and some continuing care. In addition to residential services, there are also day hospital services, outpatient clinics, child dental services, mental health services and a range of other health services.

Killybegs Community Hospital opened in 2001 and provides a range of services that includes a 41-bed residential centre, a day centre, X-ray facilities, blood testing clinics, physiotherapy and occupational therapy. The residential centre is located on the second floor of the hospital. Accommodation consists of four single rooms, two twin rooms and eight four-bedded rooms. A palliative care suite is also provided allowing family members to stay with their relative at the end of life.

There are 11 public residential care units in Donegal and the HSE has X-ray facilities in a number of these units. Almost 5,900 patients availed of X-ray services in 2010, and between January and May 2011 nearly 2,800 patients used this service. Some curtailment of the X-ray services is necessitated in the community hospitals when the number of radiography staff available to meet the clinical needs of patients attending Letterkenny General Hospital for X-ray services is reduced.

Letterkenny hospital has a complement of 27 radiography staff. Currently, two staff members are on maternity leave, four staff members are on sick leave and two posts are unfilled. The filling of vacant posts has been impacted by the moratorium on recruitment in the HSE. In order to ensure that there is an adequate level of radiographer cover in Letterkenny and to ensure continuity of service in the community, from next Monday, 26 September, the management of the hospital and community services will put in place the following arrangements, based on clinical priority. There will be a radiographer in Killybegs Community Hospital and Donegal Community Hospital one day each per week and there will be a service in Dungloe Community Hospital two days per week. The HSE will keep these arrangements under review depending on the needs of the service.

The Senator will appreciate that all developments have to be addressed in light of the current economic and budgetary pressures and any decisions taken by the executive must have regard to this and the current moratorium on the recruitment of nursing and non-nursing staff. The executive has been asked to make a rigorous examination of how existing funding might be re-allocated to ensure maximum service provision. In particular, we need to ensure the highest standard of care will continue to be provided to all residents in a safe and secure environment. It is a matter for the HSE to deliver services nationally and locally within its budget and overall health policy priorities in line with the overall resources available to it. The executive will continue to work closely with the Department in this context.

**Senator Brian Ó Domhnaill:** I thank the Minister of State for her reply. It is a move in the right direction that at least X-ray services will be restored to the level to which they were available during the summer, which is one day per week in each centre.

[Senator Brian Ó Domhnaill.]

I ask the Minister of State to ensure the HSE and the Department make every effort to try to fully restore X-ray services to Donegal and Killybegs. I am delighted that Dungloe Community Hospital will have an X-ray service of two days per week. I reiterate the importance of returning the other centres to a service of two days per week if it is possible.

The Seanad adjourned at 8 p.m. until 10.30 a.m. on Thursday, 22 September 2011.