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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Dé Máirt, 19 *Meitheamh* 2012.

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TUAIRISC OIFIGIÚIL
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IMLEABHAR 216 VOLUME 216

Dé Máirt, 19 *Meitheamh* 2012.
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Chuaigh an Cathaoirleach i gceannas ar 4.45 p.m.

Machnamh agus Paidir.

Reflection and Prayer.

Business of Seanad

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

The need for the Minister for Health to make a statement on reports in relation to the underfunding of the care of people with intellectual disabilities at Wisdom Services, Cregg House, Sligo; the reason the Government is pursuing an agenda to drive Wisdom Services out despite the services there being more cost effective than comparable services operated by the HSE directly; and to correct clear inaccuracies in the Minister's comments on this issue to the Oireachtas Joint Committee on Health and Children on Thursday, 14 June in relation to Wisdom Services and the Daughters of Wisdom.

I have also received notice from Senator Lorraine Higgins of the following matter:

The need for the Minister for Health to expand the primary care facility concept to Loughrea, Ballinasloe, Gort, Tuam, Portumna and Athenry, County Galway, in the interests of providing accessible community care facilities and to make the necessary arrangements in his capital budget to implement this programme over the next three years.

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

An gá don Aire Oideachais agus Scileanna athbreathnú láithreach a dhéanamh ar chás Pobal Scoil Gaoth Dobhair, Uimhir Rolla 91409A, agus go dtabharfaidh aitheantas di mar

[An Leas-Chathaoirleach.]

scoil DEIS arís agus lena chois go ndéanfaidh scoláireachtaí ar leith a thairiscint do scoláirí Gaeltachta mar atá luaite go sonrach sa Straitéis 20 Bliain don Ghaeilge.

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

The need for the Minister for Arts, Heritage and the Gaeltacht to ratify the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.

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

The need for the Minister for Finance to give an update on plans for a playground at Oldbride House, County Meath.

I have also received notice from Senator Ivana Bacik of the following matter:

The need for the Minister for Education and Skills to provide an update on the provision of additional multi-denominational school places in the Portobello area, on the basis of recommendation A4 of the report of the advisory group to the National Forum on Patronage and Pluralism in the Primary Sector; and if any progress has been made on the delivery of a new multi-denominational school in the Portobello area for September 2013, either through the transformation of patronage or divestment model, or through recognition of the Portobello group as a new multi-denominational school.

I have also received notice from Senator John Kelly of the following matter:

The need for the Minister for Justice and Equality to discuss the awarding of maintenance payments by District Court judges, particularly where people are relying on social welfare.

I regard the matters raised by Senators MacSharry, Higgins, Ó Domhnaill, Healy Eames, Bacik and Byrne as suitable for discussion on the Adjournment and I have selected the matters raised by Senators MacSharry, Higgins, Ó Domhnaill and Healy Eames and they will be taken at the conclusion of business. The other Senators may give notice on another day of the matters they wish to raise. I regret I have had to rule out of order the matter raised by Senator Kelly as the Minister has no responsibility in this matter.

Criminal Justice (Search Warrants) Bill 2012: Order for Second Stage

Bill entitled an Act to amend the provisions of the Offences against the State Act 1939, the Misuse of Drugs Act 1977 and the Criminal Justice (Drug Trafficking) Act 1996 relating to the issue of search warrants; and to provide for related matters.

Senator Paul Bradford: I move: "That Second Stage be taken today."

Question put and agreed to.

Criminal Justice (Search Warrants) Bill 2012: Second Stage

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

Minister for Justice and Equality (Deputy Alan Shatter): I am pleased to present the Criminal Justice (Search Warrants) Bill 2012 to the House. This is a short Bill, but an important one. As its Title suggests, it concerns search warrants, an essential tool in the effective investigation of crime. The primary purpose of the Bill is to restore, in updated form, the search warrant

provision in section 29 of the Offences against the State Act 1939, which was found to be repugnant to the Constitution by the Supreme Court.

The relevant judgment was delivered on 23 February this year in the case of AH Charaf Damache *v.* the Director of Public Prosecutions, Ireland and the Attorney General. I think it would help the House in its consideration of the Bill if I outlined the background to the judgment and its main elements. The proceedings challenging the constitutionality of section 29 were initiated by an individual awaiting trial on a charge of making threatening telephone calls in connection with an investigation into alleged international terrorism. The alleged terrorist activity related to a conspiracy to murder Lars Vilks, a Swedish cartoonist whose drawings depicted the Islamic prophet Mohammed with the body of a dog and which provoked serious unrest in a number of Islamic countries. The individual was charged on foot of evidence gathered under the authority of a search warrant issued under section 29.

For the information of Members, I will read the relevant part of section 29. It states:

> Where a member of the Garda Síochána not below the rank of superintendent is satisfied that there is reasonable ground for believing that evidence of or relating to the commission or intended commission of an offence [..] is to be found in any place [..] he may issue to a member of the Garda Síochána not below the rank of sergeant a search warrant under this section in relation to such place.

The warrant at the centre of the proceedings was issued by the superintendent who was not only in charge of the investigation but actively involved in it. It authorised the search of the individual's home. There is no suggestion that the investigation was not properly carried out. The investigators operated in good faith within the law as it applied at the time.

The case submitted on behalf of the applicant was that section 29 was repugnant to the Constitution as it permitted a member of the Garda Síochána who had been actively involved in a criminal investigation to determine whether a search warrant should issue with regard to his or her own investigation. The defence submitted that as a matter of constitutional justice a decision authorising interference with an individual's right to privacy should, at a minimum, be made by someone independent of the investigation. The Supreme Court, on appeal, granted the declaration that section 29 was invalid, on the ground that it permitted a search of a dwelling on foot of a warrant that was not issued by an independent person. The court identified a number of important aspects to the issuing of search warrants which have assisted in shaping the approach adopted in the Bill before the House today.

First, in order for the process of obtaining a search warrant to be meaningful, it is necessary that the person authorising the search is able to assess the conflicting interests of the State and the individual in an impartial manner. Of note in this regard is that the court accepted that the issuing of a warrant is an administrative act rather than the administration of justice and therefore is not required to be performed by a judge. Second, the court emphasised that the dwelling is afforded special constitutional protection. Article 40.5 expressly provides that the dwelling is "inviolable and shall not be forcibly entered save in accordance with law". As pointed out by the court, any such interference by law must adhere to the fundamental legal norms postulated by the Constitution. The court concluded that section 29 did not incorporate the fundamental principle of an independent decision-maker and accordingly fell foul of the Constitution.

The court also stated that it was deciding the matter on the case before it and that it had not considered or addressed situations of urgency.

This is an important statement, as the Statute Book contains a small number of other provisions which permit senior officers of the force to issue warrants. For the most part these other provisions can be distinguished from the impugned section as they are restricted to circum-

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stances of urgency requiring the immediate issue of a warrant that would render it impracticable to apply to a District Court judge. I will return to these provisions later.

In case there is a perception that the finding of unconstitutionality should have been anticipated and addressed proactively, I will say the following. It must be recalled that this particular search power formed part of the panoply of legislation designed to prevent terrorist groups from subverting the institutions of the State and indeed the State itself. It is regrettable that we have to have such provisions on our Statute Book but they are there as a response to a real threat posed by self-appointed, self-seeking groups and individuals who have no ambitions for the State or its systems apart from a destructive one. Members of this House may be aware that the Supreme Court referred in its judgment to the recommendation of the Morris tribunal with regard to section 29. The Morris tribunal did consider the proportionality of section 29. However, unlike a number of other recommendations in which Mr. Justice Morris recommended that specific action be taken, his recommendation for section 29 warrants called for "urgent consideration" to be given to changes in this area, rather than making an absolute recommendation that changes be made.

It is fully accepted that in fulfilling his role as a tribunal of inquiry, it was not a matter for Mr. Justice Morris to adjudicate on the constitutionality of legislative provisions. However, it is worth noting that in the relevant part of his report, not only did he not raise the prospect of the section being found unconstitutional; he pointed out that the issuing of a search warrant for a citizen's dwelling by a Garda officer rather than by a judge "is an exception allowed by our Constitution". The potential for section 29 to be found unconstitutional did not feature in the recommendation made by Mr. Justice Morris. The fact is that the provision had been operating for many decades, in its original form since 1939 and in its amended form since 1976. I acknowledged that Mr. Justice Morris recommended that "urgent consideration" be given to vesting the power to issue warrants under section 29 in judges of the District or Circuit Court. However, significantly, he also stated that a residual power could perhaps still be vested in a senior officer of the Garda Síochána to be used in exceptional circumstances. It would be quite wrong, therefore, to make any causal link between the provision being found unconstitutional and the action that was taken in response to that recommendation.

5 o'clock

Legislative amendment as recommended by Mr. Justice Morris was urgently considered by my predecessor. However, it was not proceeded with, as the Minister was advised by the Garda Commissioner that to change the system would undermine the operational effectiveness of the Garda Síochána, particularly in situations in which urgent action is required to save lives or to react rapidly to serious crime or terrorism. I must also mention that the Law Reform Commission, following a submission from the Department, included an examination of search warrants in its work programme. The commission published its consultation paper on search warrants and bench warrants in December 2009. That consultation paper, which was published after the Morris tribunal recommendation, dealt specifically with the question of the constitutionality of search warrants issued by persons other than judges. It concluded that:

> In light of . . . case law, it appears to be well established that issuing search warrants is an administrative, as opposed to a judicial, function. Therefore issuing can be carried out by a person other than members of the judiciary, such as peace commissioners and members of the Garda Siochana, and this does not offend the Constitution.

In the circumstances, there was clearly no basis for advising Ministers that there were grounds for concern about the constitutionality of section 29 warrants.

In the period since the judgment was handed down, my efforts have been directed towards seeking to ensure that the Garda Síochána has all the legislative back-up it requires to investigate terrorist activity and other serious crime. That is the aim of the Bill before the House. I take this opportunity to reassure Members that it is not the case that the Garda Síochána is without search powers following the court judgment. Gardaí can avail of other statutory powers which allow applications for search warrants to be made to District Court judges. In addition, the law allows gardaí to enter premises, including dwellings, for the purpose of carrying out arrests or to protect the lives of persons within. The absence of section 29 does, however, have the potential to hamper Garda investigations in situations of urgency in which there is insufficient time to contact a judge. It is for this reason that the Government and I have moved swiftly to replace the impugned provision with a constitutionally robust one which seeks to ensure that the proper balance is struck between the preservation of the security of the State and the constitutional protection afforded to an individual's dwelling.

Before turning to the provisions of the Bill, I will say a few words about its scope. In particular, I emphasise that it is focused on future investigations and does not — indeed, could not — have any effect on existing section 29 warrants. Members will be aware that there is no legislative option open to the Government to retrospectively address any concerns that may arise with regard to such warrants. Clearly, it is not possible for legislation to make something constitutional which the Supreme Court has declared to be unconstitutional. However, cases that might be affected by the terms of the judgement will be the subject of examination by the Director of Public Prosecutions and the Garda Síochána in order to decide how to proceed. In cases in which prosecutions are being considered, it is a matter for the DPP to decide whether to proceed. Where convictions have already occurred, it is a matter for the courts, in the event of a challenge to such convictions, to consider whether they should stand.

I acknowledge that for the victims of crime, the possible quashing of convictions that their evidence may have helped to secure will be distressing and difficult to accept. I acknowledge also that the possibility that they may be called on to participate in a retrial will bring further anxiety. But at the heart of any criminal justice system in a democracy is a requirement to try accused persons in due course of law. This necessarily includes a requirement to secure convictions on the basis of evidence gathered in conformity with our Constitution.

I will now outline to the House the main provisions of the Bill. Section 1 substitutes section 29 in its entirety in order to establish a new procedure for the issuing of search warrants under the 1939 Act, which will adhere to the principles set out by the Supreme Court. In addition, I have taken this opportunity to update the section by incorporating some elements that have become standard in more recently enacted search warrant powers. Before outlining the new procedure I must point out that the list of offences to which this section will apply remains almost unchanged and comprises the following: any offence under the 1939 Act itself; any offence that is for the time being a scheduled offence under Part V of the 1939 Act — that is to say, which may be tried before the Special Criminal Court, including such offences as directing an unlawful or criminal organisation; offences under the Criminal Law Act 1976, which include inciting or inviting a person to join an unlawful organisation or aiding a person's escape from prison; and treason. Also covered are the inchoate offences of attempting or conspiring to commit or inciting the commission of one of the principal offences. The only change is the inclusion of this latter offence, that of incitement. I have included it to ensure that all forms of secondary liability relating to the principal offences are covered.

The new procedure for the issuing of search warrants in connection with these offences is founded on the premise that, absent exceptional circumstances, applications for search warrants are best made to District Court judges. This is provided for in subsection (2). While, as I have said, the issuing of a search warrant does not constitute the administration of justice and need

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not, therefore, be restricted to judges, it is the case that judges are demonstrably independent of criminal investigations and their involvement provides the very necessary third party supervision emphasised in the judgment. That said, circumstances may arise in which a warrant is required immediately to prevent the destruction of vital evidence or the commission of a serious crime. In such urgent circumstances, and in the event that the District Court judge for the particular district cannot be contacted within the time available, subsection (3) allows a senior officer of the Garda Síochána to issue a warrant. By senior officer I am referring to a member not below the rank of superintendent. I emphasise that an investigating Garda will not simply be able to choose whether to apply to a District Court judge or a senior officer; he or she must apply to a District Court judge unless the very limited circumstances which permit an application to a senior officer are present.

Before detailing these limited circumstances, I should mention that the basic test for the granting of a search warrant applies to both judge-issued warrants and Garda-issued warrants under this section. In each case, before issuing a warrant to a sergeant, the issuer must be satisfied that "there are reasonable grounds for suspecting that evidence of, or relating to the commission of an offence to which the section applies is to be found in any place".

I have chosen the standard of "reasonable grounds for suspecting" as it mirrors the standard for obtaining search warrants contained in more recent statutes.

I have decided not to carry forward the wording of the original section 29, which allowed a warrant to be issued in relation to "the intended commission of an offence". Instead, warrants under the replacement section may only be issued in relation to the commission of an offence to which the section applies. Members will recall that the offences to which the section will apply include attempts, conspiracies and incitement. I am concerned that to go further than this and to retain the concept of intended commission would give rise to a perception that search warrants could be authorised in circumstances where no overt act in furtherance of an offence had been committed.

Search warrants relate to places. For the purposes of this section "place" is defined in non-exhaustive terms in subsection (12) and includes a dwelling. The language of the original section 29 regarding the meaning of place was the subject of some criticism. It referred to "any place whatsoever" and in doing so gave rise to the perception in some quarters that it was unusually broad. While that was not the case, I have taken this opportunity to update the language.

Returning to the limited circumstances in which a senior officer may issue a warrant, these are set out in subsections (4) and (5). Subsection (4) contains the key two-part test that must be met before a senior officer may issue a warrant. First, the officer may not issue a warrant unless he or she is satisfied that it is necessary for the proper investigation of an offence to which the section applies. Second, the circumstances of urgency giving rise to the need for the immediate issue of the warrant render it impracticable to apply to a District Court judge. The short duration of such a Garda issued warrant, 48 hours, when compared to the seven day duration of a judge issued warrant further emphasises that the option is restricted to exceptional circumstances.

Subsection (5) adds a further crucial condition and addresses the heart of the Supreme Court judgment. It requires the senior officer to be independent of the investigation concerned. I draw the attention of Members to subsection (12), which defines the meaning of "independent of" as it relates to an investigation. It is defined as "not being in charge of, or involved in that investigation". In the context of the command structures within the Garda Síochána this means an officer who is not in a position to issue directions on the investigation. Essentially, what will

be required in practice is that the investigating Garda will apply to a senior officer in a parallel chain of command to his or her own.

A final safeguard arising from the judgment is contained in subsection (11). This places an obligation on a senior member who authorises a warrant under the section to either record the grounds at the time or as soon as reasonably practicable thereafter. As noted by the Supreme Court it is best practice to keep a record of the basis on which a search warrant is granted.

The remaining subsections deal with the execution of the warrant and the conduct of the search. A feature that distinguishes a warrant under this section from other warrants is that members of the Defence Forces may accompany members of the Garda Síochána during the search. This is a long-standing feature of section 29 and is an example of the Defence Forces being expressly authorised to act in aid of the civil authorities.

As is generally the case with search warrants, a warrant under this section will authorise the entry of the place named in the warrant, the search of both the place and any person found there and the seizure of anything found at the place or in the possession of a person present at the place. The right to enter is subject to the obligation to produce the warrant or a copy of it, if requested. This requirement is new to the 1939 Act and is intended as an added safeguard. The entry may be achieved by use of reasonable force, if necessary. Again the qualification of the force permitted as "reasonable" is new.

As is also generally the case with search warrants, subsection (8) provides that a warrant under this section will allow members of either force acting under the authority of the warrant to require any person present at the place where the search is being carried out to give to the member his or her name and address. An arrest power is provided in the event that any person obstructs or attempts to obstruct a member in the carrying out of his or her duties, fails to give a member his or her name and address or gives a false or misleading name or address. The final element of section 1 that I would like to highlight is subsection (9). It creates an offence of obstructing or attempting to obstruct a member, refusing to give a name or address on request or giving a false or misleading name or address. The maximum penalties on conviction are a class A fine, which is a fine not exceeding €5,000, imprisonment for a term not exceeding 12 months or both. Members will note that the offence is summary in nature. This represents a change from the impugned section which allowed the offence to be tried on indictment with a maximum penalty on conviction of a term of imprisonment of five years. As this offence is ancillary to the search rather than a principal offence, I am satisfied that it is appropriate that it be summary in nature.

I conclude my remarks on section 1 by noting that its contents represent a very careful consideration of the Supreme Court judgment in consultation with the Attorney General. I am satisfied that the new procedures incorporate the fundamental principle of an impartial decision maker as required by the Constitution.

Members will have noted that sections 2 and 3 of the Bill concern search warrant provisions in suspected drug offences. As I mentioned earlier, a small number of other statutory provisions allow for Garda issued warrants, generally in circumstances of urgency. One important such provision is that contained in section 8 of the Criminal Justice (Drug Trafficking) Act 1996 which permits a member not below the rank of superintendent to issue a warrant under section 26 of the Misuse of Drugs Act 1977. Certain conditions must be met, including that circumstances of urgency requiring the immediate issue of a warrant arise such that it would be impracticable to apply to a District Court judge or a peace commissioner. The purpose of the amendments to the 1996 Act contained in section 3 of the Bill is to apply two further safeguards to the issuing of such warrants, first, to require the senior officer who issues a warrant to be independent of the investigation and, second, to require the issuing officer to record the

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grounds on which he or she issued the warrant. These amendments will bring Garda issued warrants under section 26 of the 1977 into line with those issued under the replacement for section 29. Section 2 makes a minor consequential change to section 26 of the 1977 Act.

Section 4 is the final section of the Bill. It includes the Short Title and the commencement arrangements. As Members will appreciate from my earlier remarks, I am anxious to ensure there is no undue delay in the commencement of this Bill once it has been passed. For this reason section 4(2) provides that the Bill will come into operation the day after its passing. No commencement order will be required.

Before concluding my remarks I would like to take the opportunity to refer to a general review of search warrants that is to be conducted by my Department. This Bill is limited to addressing the implications of the Supreme Court judgment. There is, however, a complex series of approximately 300 Acts and statutory regulations, some dating from before the foundation of the State, that confer powers of search and seizure. It is timely to conduct a general review of such powers. This review and any subsequent legislative proposals will be informed by the forthcoming report of the Law Reform Commission on the subject.

In conclusion, I ask for the co-operation of this House in the passage of this Bill as speedily as possible in order that it may become law before the summer recess. I commend the Bill to the House.

Senator Averil Power: I welcome the Minister to the House to discuss this Bill. Given the nature and public importance of the cases involved, I assure him that Fianna Fáil will co-operate in bringing it through the House before the summer recess. We fully understand the importance of providing certainty in this area. It is important that gardaí are given the powers they require to counter terrorism and firearms offences in particular and to ensure people are brought to justice. I know that is a sentiment all Members will share.

I hope the Bill receives all-party support. I say this in the knowledge that Sinn Féin has consistently opposed the Special Criminal Court and the use of section 39 of the Offences against the State Act. Although Fine Gael and the Labour Party in Government back the Bill, they have taken very different positions on previous legislation, such as the Criminal Justice (Amendment) Act 2009, which extended the use of the Special Criminal Court to gangland crimes in exceptional circumstances and which my party regarded as an essential measure in the aftermath of a trial in Limerick. Evidence from that case is that it is within the scope of terrorists and criminal gangs to intimidate juries and ensure defendants are able to evade justice. Our support for the Bill is consistent with our general support for the need to give the Garda Síochána and prosecuting authorities in the State, the DPP, the powers they need to ensure people are brought to justice, particularly those associated with terrorism, firearms offences and drug trafficking.

In all these matters, it is important there is a proper balance and the Minister outlined the balance in the Bill in his opening address. Conflicting interests are at play in respect of the common good, public interest, ensuring people are prosecuted and that the Garda Síochána can obtain evidence, particularly in a matter of urgency where it could be destroyed. Regardless of the offence someone is suspected of committing, everyone is entitled to constitutional justice and to have rights protected. In the context of this Bill, the protection in the Constitution regarding the inviolability of the dwelling is a key consideration. When talking about any restriction of rights, it is important the balance achieved is proportionate. Rights should be impaired as little as possible and the objective should justify the means. We are satisfied the Bill achieves that, which is why we support it. The Damache case highlights two considerations, one being urgency and the need for the Garda Síochána to act when there is a risk of the

destruction of evidence. A garda may be outside a house at 3 a.m. and may have reason to believe there are firearms inside the house and that, if he or she waits three or four hours for a warrant from a District Court judge, the evidence will be destroyed in the meantime. It is important gardaí have the ability to act if, in exceptional circumstances, they cannot get a warrant from a judge. The Damache case highlights how the previous legislation did not achieve the appropriate balance in respect of independence. In making sure an independent judgment is made on the exceptional nature of the circumstances and that urgency exists, it is important a judgment is made by a superintendent who is not part of the investigation. I welcome the fact that the legislation will address this point.

The Minister went through the scope of the Bill in his opening remarks. The Bill is restrictive and, if the Garda gets a warrant on this basis, the period of time in which it must be used will be much shorter, 48 hours compared with a week for a warrant from a judge. That is appropriate. A period of 48 hours is more consistent with an urgent need than one week. The Garda must be satisfied, on reasonable grounds, that it would be impractical to make an application to a judge and that there is an urgent need to enter the premises immediately. There must be genuine and real risk associated with not doing so.

Fianna Fáil supports the Bill, understands the urgency and hopes for all-party support. It is important the message goes out from the Seanad that Members of all parties stand united in tackling the types of crimes listed in the Offences against the State Act. The 2009 Act was directed at tackling gangland crime. Fianna Fáil will support the Bill passing all Stages as soon as possible. I share the concern of the Minister at the cases that may be affected by the weakness in the previous legislation. I hope the effect will be limited and that courts will find sensible policy grounds for decisions on those cases. We have an opportunity to make sure the system is right and we will co-operate in doing so as soon as possible.

Senator Paul Bradford: I welcome the Minister to the House and I wish him well in the promotion of this important legislation. I thank the Fianna Fáil spokesperson for her expression of support on behalf of her party.

Since the foundation of the State, 99.99% Garda Síochána activity has always put the preservation and safety of the State and its citizens first. With equal certainty, 100% of subversives and terrorists have put the destruction of the State first. We must reflect upon that balance. In its promotion of law and order, the State does best when it practises law and order. Therefore, where an anomaly is found, it must be corrected. When the Supreme Court finds an item of legislation to be improper, our duty is not just to respond to the Supreme Court but to set up the checks and balances to ensure order prevails.

The most important point the Minister made was that his efforts have been directed to seeking to ensure the Garda Síochána has all the backup it requires to investigate terrorist activity and other serious crimes. That is the aim of the Bill. The Minister goes on to say that the Government has moved swiftly to replace the impugned provision with a constitutionally robust measure to ensure the proper balance is struck between the preservation of security and the constitutional protection afforded to an individual dwelling. In this State more than any other across the globe, we put a ring of steel around a person's private property. Only in extreme circumstances is the ring of steel allowed to be breached. Legislation is now tackling the anomaly or difficulty found by the Supreme Court. I welcome the clarification brought about by the Minister. We welcome the safeguards. We can all be wise in hindsight but it is always preferable for District Court judges to adjudicate on the issuing of a search warrant. That will be the norm under the new legislation. As a previous speaker said, where urgent circumstances apply, such as at 4 a.m. outside a house, and where there is a genuine fear of evidence being disposed of and suspects disappearing, there must be an option for an immedi-

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ate issuing of a search warrant. Under these provisions, the search warrant will be decided upon by a neutral member of the Garda Síochána, described by the Minister as a parallel officer. That will provide the level of balance and fairness required.

The fact that the State is now more peaceful that it has been over the past 30 or 40 years and that the campaign of anarchy against the State by the Provisional IRA and others has almost disappeared, is welcome. Certain groups such as dissident republicans, as they like to term themselves, bear nothing but ill against the State. There is also an unprecedented number of people involved in the drugs trade. It is not a problem we envisaged in 1939 but it has grown dramatically and is of serious concern to all. While such concerns remain, we must have on our Statute Book the tough provisions required to maintain safety and promote law and order. Alongside those provisions, we must have balance and fairness and we must ensure the provisions are constitutionally sound. That is what the legislation is about and I welcome it. I welcome that the Minister is responding so quickly to the judgment because the first thing the Minister needs in respect of his portfolio and the broader law and order agenda is certainty and clarity. The passing of the Bill will provide these necessary qualities and therefore I welcome the Bill and wish it a speedy passage.

Senator David Norris: I welcome the Bill to the House. I wish to place on record my regret that there was not a proper Order of Business today. This was regrettable indeed. I also wish to state without any impertinent reference to the present Minister's beliefs that I have challenged on several occasions the saying of the prayer because I regard it as sectarian. Although I am a believing Christian myself I believe in these circumstances today it simply highlights the absurdity of the situation. I am not expecting the Minister to take one position or another but we should make an effort to separate church and State. I regret these two matters and I wish to put them on the record before I say my few words.

An Leas-Chathaoirleach: Neither matter is appropriate to the Bill.

Senator David Norris: I still got them on the record and that is what matters to me.

This is an interesting and significant Bill. As the Minister stated, it follows the case of Mr. Ali Charaf Damache *v*. The Director of Public Prosecutions and others. This is because a warrant issued under section 29 of the Offences against the State Act by a detective superintendent, whom I will not name but whose name is known to the Minister and published in the briefing document so excellently prepared for Members by the library staff.

I wish to correct one aspect of emphasis that might have appeared to emerge from the Minister's speech. The person was arrested on a charge of an attempt to commit murder. It related to the murder of a cartoonist in Denmark. How precisely he would have achieved that urgently from an address in Dublin is open to speculation. The charge, however, was subsequently mitigated to sending a threatening message by telephone, a very different matter indeed. I have not yet been murdered although eight or nine of my friends have been simply because they were gay. I have, however, frequently been threatened with it but I did not take any further action in most of those cases. Anyway, there is a difference relating to the application for the warrant and the question of urgency arises. Naturally, if there were a danger that someone was going to be murdered it would be very urgent that such an act should be interrupted and that the murderer should not be allowed to carry the act to completion. Although sending a threatening telephone message is regrettable, there are plenty of cranks around doing this all the time.

The ruling of the Supreme Court made three particular findings. The first related to the question of independence. The judgment was that a warrant should be issued by an indepen-

dent person. This is obvious. Section 29 of the Offences against the State Act was declared to be unconstitutional in the Damache case because of the complete lack of independence. Although I am not impugning the reputation of the superintendent, not only was he connected to the investigation but he was in charge of it. He was issuing a warrant to himself. I hold a strong view on this because I was involved in a situation where the Cathaoirleach of the Seanad brought me before a star chamber hearing because I made specific accusations of a political nature against him which, it was subsequently discovered, turned out to be well-founded. I refused to continue attending the hearings on several grounds, particularly the denial of natural justice but also because I wanted to be allowed to introduce evidence and witnesses and to cross-examine and, most particularly, I wanted the then Cathaoirleach to vacate the Chair because otherwise the proceedings violated the principle of *nemo iudex in causa sua*: one cannot be a judge in one's own case. This theme was violated by the chief superintendent in this case.

Independence is vital and I am pleased that the Minister recognises this in the legislation and that it is recognised as one of the three principal findings of the Supreme Court. The finding was that the warrant should be issued by a person who is independent and the person should also be satisfied that, on the basis of sworn information, reasonable grounds exist upon which to issue the warrant. That was the view of the Supreme Court.

I have more trouble with the second ruling which found that the granting of a search warrant is an act that is administrative in nature and not an aspect of the administration of justice and, that being so, there is no requirement that a warrant must be granted by a judge despite that the person granting the warrant is obliged to act judicially. There appears to be a certain violation of common sense in this. I do not believe for one second that the granting of a search warrant is administrative in nature. That suggests it is something of little moment and that it is just like ticking a box, but it is a great deal more. The finding goes on to state that the person is obliged to act judicially. If it is not an aspect of the administration of justice then why should someone be obliged to act judicially? That is a complete and total contradiction. This simply shows that Supreme Court judges can say things that are contradictory. The second ruling is a complete nonsense.

The third ruling deals with urgency. When there really is urgency then it must be taken into account but the reason for the urgency should be noted at the time. There should be a contemporaneous note not only of the fact that it was urgent but of why and of the circumstances that rendered it urgent. It is not good enough to go back retrospectively and add these. That would be too much of a temptation.

There is a history here and the Minister has honestly acknowledged the difficulty with section 29. The Minister referred to the Morris tribunal. The fifth report of the Morris tribunal referred to disquiet about the use of section 29 in a celebrated series of situations in County Donegal and stated:

> The danger exists that a warrant would be issued automatically and without proper investigation of the matter by the superintendent to whom the application is made if he or she is heading the investigation. There is a danger that the power to issue a Section 29 Warrant thereby becomes a mere formality in which the investigating sergeant might as well be empowered to issue a search warrant to himself.

That would be a very dangerous thing.

I wish to draw the attention of the Minister to a matter that was raised in this House. It shows how we can all be innocently gulled. A series of busts occurred throughout the Thirty-two Counties in the area of prostitution. The PSNI were heavily congratulated from various sides of the House for the wonderful work it carried out.

Acting Chairman (Senator Paschal Mooney): Senator, your time is almost up.

Senator David Norris: Unfortunately, it turned out that the vast majority of people whose houses were broken into by the police on foot of warrants were completely innocent. This highlights the fact that we must be very careful. A case is under way at the moment involving a Mr. Ted Cunningham. He is using a challenge to section 29 to obtain a situation where the Court of Criminal Appeal has quashed the convictions and ordered a retrial.

The Minister has referred to conditions of urgency and that urgency should be noted at the time. He noted that Mr. Justice Morris in his comments on section 29 warrants has called for urgent consideration to be given to changes in this area rather than making an absolute recommendation that these changes be made. I well remember this distinction being made by the leader of a previous, Fianna Fáil Government, a good friend of mine.

Acting Chairman (Senator Paschal Mooney): You are now almost up to ten minutes, Senator.

Senator David Norris: I am concluding now. I wish to state without any intention of being provocative that this is a Jesuitical distinction between an urgent consideration and an absolute one. If it urgent it should also be absolute.

Senator Aideen Hayden: I welcome the Minister to the House. I congratulate him in the first instance on the speed with which he has brought this legislation before the House. It is important to note the Supreme Court decision in the Ali Charaf Damache case was only delivered on 23 February of this year. I also stress that the House could pass on its congratulations to the parliamentary draftsmen, who must have burned the midnight oil to bring this legislation before us.

I also congratulate the Minister on a very thorough and comprehensive justification of the reason for bringing this legislation before us today and for the arguments he persuasively made as to why this a matter of urgency. Generally, we would all without exception say we are very proud to have the Constitution we have in this country. Given the history of this State, particularly in the context of the conflicts we have had in a small country of such recent origin, we have managed, in spite of everything, to retain a very peaceful society. We have a police force and a body of legislation of which we can be proud. Most importantly, we have a Constitution which operates to protect the interests both of the individual and the wider society.

What is before us today is about exactly that, namely, the balance of the rights of the individual and his or her right to have the sanctity of the home protected against the wider rights of the society as a whole. When we find ourselves in a position where we have to perhaps rush more quickly than we would have liked into legislation, it behoves us to ensure we are doing what we do in the most prudent and comprehensive way and that we satisfy ourselves we are not making a mistake that may come back to haunt us in the course of time.

In the context of this Bill, I am proud to note that not only has the Minister dealt with the situation he faced in the context of the Supreme Court decisions but he has made necessary improvements to the wider body of legislation. In particular, I congratulate the Minister on the changes he has made. For example, where the original section 29 allowed a warrant to be issued in regard to the intended commission of an offence, he has narrowed that down to the commission of an offence, which is an important safeguard for the average citizen. In regard to another narrowing of the rights of those against whom warrants may be issued, the Minister has introduced the word "reasonable" in regard to the amount of force that can be effected during an entry under a warrant. These are important changes into the wider body of law. I also note the Minister's commitment at the end of his statement to addressing the wider area

of warrants and bench warrants in line with the Law Reform Commission's report, which is also a very important matter.

I share the Minister's concerns in regard to some of those persons who will be distressed by the situation in which they find themselves in the context of some of the judgments that will perhaps be found to be repugnant to the Constitution under the old section 29. As he rightly stated, it is important that every conviction in this State is in every respect a clean conviction and one that is not repugnant to the constitutional rights of the individual, even though, unfortunately, there may be persons who walk away in situations where the wider society would accept they should not.

The question we ask is whether this is balanced legislation and whether it addresses the issues that arose in the course of the Supreme Court judgment. I believe it does. The Minister has managed to ensure that the warrants issued in respect of this legislation are issued on good and reasonable grounds, with the protection of safeguards for the individual. Therefore, I believe he has managed to strike that balance which we would all hope to strike as a mature and reasonable society, namely, between the rights of the individual and the rights of the wider society to protect itself in situations where we are not dealing with minor matters but with serious crimes relating to drug offences, firearms offences and offences against the security of the State. That latter point should not be forgotten even though it is some years since we have had to concern ourselves to any great extent with that matter.

Again, I congratulate the Minister on what is very thoughtful, well delivered and well thought out legislation.

Senator David Cullinane: I welcome the Minister back to the House. We will spend the greater part of this week and perhaps next week in the Seanad debating what I would see as one of the most draconian pieces of legislation on the Statute Book, namely, the Offences against the State Act. It is an embarrassment to any state which claims to be a modern progressive democracy and republic that we would have such a piece of legislation on our Statute Book.

The Act provides for remarkable powers which are intrusive, excessive and disproportionate. As the Minister knows, there have been many calls for the Offences against the State Act to be done away with. The powers and provisions that exist on the criminal law books are more than sufficient, in our view. The Offences against the State Act 1939 has a highly corrosive effect on human rights, democratic life and the safety and well-being of citizens in this State. That is what we are being asked to vote on today.

If the Government really wanted to promote and protect the safety of the public, financially and practically the best way to do this would be to resource the Garda Síochána, the forensic laboratory, the Director of Public Prosecutions and the courts to ensure we can enforce ordinary criminal justice legislation. There will be an opportunity tomorrow to deal further with the difficulties in non-jury trials and the Special Criminal Court. However, I am of the view that the difficulties identified in the Damache and Cunningham cases, which found the old section 29 unconstitutional, flag up once more the need to do away with the Offences against the State Act. This is something many organisations, including my party and the Irish Council for Civil Liberties, and many individuals have called for.

Perhaps it is with the benefit of hindsight, but it is manifestly improper and unjust that the investigating senior officer would have it within his or her power to provide a warrant in a case for which they are responsible. The reality is that a judge cannot judge himself or herself, which we would all accept, so how can we assume a garda seeking a warrant for an investigation in which he or she is involved will do anything other than provide a warrant to that end. There

[Senator David Cullinane.]

must be independence and oversight as well as accountability and judicial scrutiny, which is vital to protect against arbitrary interference in the rights of the individual.

One merely has to consider the incidents at the centre of the Morris inquiry. In that case, Mr. Justice Morris expressed his concern at the case and the regularity with which gardaí obtained warrants under section 29. It was his view that the power to issue search warrants should be vested in judges and that modern communications technology could facilitate this process. The power to issue warrants under section 29 should generally be vested in the judges of the District Court or Circuit Court. This is in keeping with best modern practice as exemplified in judgments of the European Court of Human Rights and judicial trends in Canada and New Zealand. Exceptions to this should be limited and sparing. The European Court of Human Rights takes a strict approach to the issuing of search warrants without judicial supervision. There must be very strict limits on such powers. There should be clear reasons that such an interference is necessary before the infringement on privacy can be considered proportionate to the legitimate aim pursued.

We have, therefore, some difficulties with the Bill, as the Minister will appreciate. We are not minded to oppose the legislation on Second Stage and we will consider tabling amendments as we progress to Committee Stage. I understand my colleague, Deputy Jonathan O'Brien, will table a number of amendments in the Lower House to deal with some of our concerns. The Minister knows my own view and that of my party on the Offences against the State Act. For many years, we have consistently sought its abolition. We had that conversation recently concerning a Bill that was discussed a few weeks ago. The Minister will be aware of my party's position and we have given notice that we will be tabling a number of amendments to this Bill.

Senator Terry Brennan: Cuirim fáilte roimh an Aire ar ais arís go dtí an tSeanad. Section 29 allows a Garda superintendent to issue a warrant where he or she is satisfied that evidence of, or relating to, the commission or intended commission of an offence scheduled for the purpose of Part 5 of the 1939 Act, such as firearms and explosives offences, or a small number of other serious offences were to be found. It did not require a superintendent to be independent of the investigation, so this is obviously a change.

While the Garda Síochána can, pending the enactment of the new legislation, apply for warrants to District Court judges, the loss of section 29 has potentially significant implications for Garda operations in the event of urgent situations such as firearms and explosives offences. There will be occasions when it is not practicable to apply to a District Court judge in the time available.

The scope of this Bill is limited to addressing future Garda investigations. As the Minister said, it is a short Bill comprising only four sections. It provides that section 29 is to be replaced with a provision that is designed to be in conformity with the recent Supreme Court judgment.

Search warrant applications must now be made to a District Court judge. It limits the circumstances in which a Garda superintendent, or someone above that rank, may authorise a search warrant in urgent circumstances, requiring the immediate issuance of the warrant that would render it impracticable to apply to a District Court judge.

In his statement, the Minister referred to peace commissioners. Perhaps he could elaborate on the role of a peace commissioner in these circumstances.

The Bill requires a superintendent who issues a warrant to be totally independent of the investigation. It also requires a superintendent who issues a warrant to record the grounds on which he or she issued it, including the circumstances of urgency giving rise to the immediate

need for the warrant. It provides that a warrant issued by a superintendent shall lapse after 48 hours compared with a warrant issued by a judge which is valid for seven days.

I support the call that the Bill be enacted as soon as possible in order to restore the search powers available to the Garda Síochána in relation to subversive and other serious crimes. As Senator Hayden has stated, we have a Garda Síochána force of which to be proud. It is important to make these search powers available to gardaí without delay. I congratulate the Minister on his work to date. I commend the Members of the Opposition who are supporting this Bill.

Senator Colm Burke: I welcome the Minister to the House and thank him for a comprehensive presentation on the need for this amending legislation. I welcome the Bill but have one or two observations to make on the question of independence. I note that District Court judges will now be involved in issuing warrants, except in exceptional circumstances.

Following the Morris tribunal's recommendations, the Law Reform Commission referred to the role of peace commissioners, which has almost disappeared in real terms. A superintendent who signs a warrant must be independent of the investigation but I wonder if that provision could be re-examined at some future date. It might be more useful for peace commissioners to deal with this matter rather than leaving it to someone who is working within the same group of people. A superintendent may not be involved in the investigation but is still part of the overall Garda force. Perhaps that could be looked at by the courts at some future date. I am not saying now but perhaps in ten, 15 or 20 years time, a court could say that there is not a clear distinction because the person issuing the warrant is in the same organisation as the person who is executing a search on foot of the warrant. I wonder if that issue can be examined.

It is time that we examined the role of peace commissioners. What is their role? There is a disconnect because Garda stations are not manned 24 hours a day in many rural areas. We should therefore re-examine the role of peace commissioners with a view to expanding it. I know there are other priorities at present, but this matter might be put on the agenda in future.

The Minister referred to the amount of legislation which contains the right to search, and the need to undertake a comprehensive review of that area. Such a proposal is to be welcomed as we need a more comprehensive overview. The Bill before us responds to a Supreme Court decision and is urgently required to ensure that gardaí are not restricted in any way in their work of protecting the citizens of this country.

While I welcome the legislation which has my full support, I would ask the Minister to consider the issues I have raised at some future stage.

Acting Chairman (Senator Paschal Mooney): As nobody else is offering, I call on the Minister to conclude.

Minister for Justice and Equality (Deputy Alan Shatter): I will start by thanking Senators for addressing the Bill and for their substantial support of its provisions. In particular, I wish to thank Senator Power for her contribution on behalf of Fianna Fáil. I welcome the recognition given by all who spoke of the need for this important legislation to be passed with some speed. Senator Bradford said that the State is more peaceful today than in the past. However, in recognising the need for this legislation, he was not blind to the continued unfortunate existence of small terrorist groups on this island who are still intent on murder and mayhem.

In repeating what seems to be Sinn Féin's regular dirge about the Offences against the State Act, Senator Cullinane indicated that that party still carries the legacy of its past engagements in this State on the other side of the law.

[Deputy Alan Shatter.]

The reality is that every democracy must be in a position to defend itself against those who might subvert the state. The Offences against the State Act has proved to be an important statutory tool in facilitating the Garda Síochána to undertake important investigations, provide protection for the wider community, and disrupt those engaged in terrorism on this island. Frankly, I find it surprising that Senator Cullinane and his Sinn Féin colleagues should continue to maintain the position they hold when, as they know well, we still have on this island subversive and terrorist groups who are placing at risk the lives of members of the PSNI, for example.

Just over one year ago a member of the PSNI was shot. These groups are particularly and extraordinarily targeting members of the Nationalist or Catholic communities in Northern Ireland who are members of the PSNI. The policy now in place in Northern Ireland is to ensure that the police force of Northern Ireland represents both communities proportionately. As such so-called self-styled republican terrorists now see it as their mission to shoot members of their own communities for daring to engage in policing in Northern Ireland.

I note that members of Sinn Féin at the highest level have expressed support for the PSNI and its policing. The organisations concerned also, unfortunately, have a presence in this Republic. It is only — I must be careful how I phrase this to ensure I do not in any way create a difficulty in terms of any prosecutions that might ensue — a short time ago that explosives were discovered in a location in Mayo, in respect of which people were arrested. We continue to have a problem on this island in terms of those intent on subverting the democratic will of the people, North and South. There is a need for this legislation and to ensure it works effectively. It is a crucial resource in the armoury of the Garda Síochána in addressing issues of great importance.

Senator Norris described the Bill as interesting and significant. He appears happy with some aspects of the Supreme Court's decisions and unhappy with others. The Supreme Court is of course the final court of determination. There is no appeal directly from the Supreme Court.

6 o'clock

It is important I correct one aspect of Senator Norris's as usual interesting contribution. No member of the Garda Síochána was criticised in any way by the Supreme Court in the decision delivered. It would be most unfortunate if any impression was given by Senator Norris in his speech — I assume he did not intend this — that the member of the force who signed the warrant in that particular case under the law as then understood did anything other than behave with the utmost propriety in the context of a serious investigation into an extremely serious matter. It is important that what occurred on that particular occasion is not misunderstood. The Supreme Court formed a view, which we accept and are now legislating for. We are fully respecting the principles prescribed by the Supreme Court. I again emphasise the law of the Supreme Court was addressing what had been in place for many years and had been used on many occasions in the past without any issue being raised successfully concerning its constitutionality.

Senators Brennan and Burke raised the issue of peace commissioners. This legislation does not provide for warrants to be issued or granted by peace commissioners. As I stated, the legislation provides that District Court judges will authorise the granting of warrants and that only in exceptional circumstances may a senior member of the Garda Síochána of at least superintendent rank authorise the issue of a warrant which shall remain in force for no more than 48 hours. That is an issue which we can give some attention to in the context of the general review to which I referred earlier. I have no fixed view on the issue. I thank both Senators for drawing that matter to my attention.

This has been an important and useful debate. While this is a short Bill, it is one of great importance. We must ensure, with some speed, that there is no gap in our law with regard to

assisting the gardaí in the work they do in addressing issues of great importance, including matters of State. Also, the provision contained in the Bill which addresses certain drug offences and the issue of warrants is of importance in ensuring that no difficulty can arise in the future in this area.

I again thank those who contributed to this debate for their positive and constructive comments. I look forward to Committee Stage. I thank the House for the speed with which it has dealt with this matter.

Question put and agreed to.

Acting Chairman (Senator Paschal Mooney): When is it proposed to take Committee Stage?

Senator Paul Bradford: Next week.

Acting Chairman (Senator Paschal Mooney): When is it proposed to sit again?

Senator Paul Bradford: At 10.30 a.m. tomorrow.

Adjournment Matters

UNESCO Convention Ratification

Acting Chairman (Senator Michael Mullins): I welcome the Minister of State, Deputy Perry, to the House.

Senator Fidelma Healy Eames: I, too, welcome the Minister of State to the House and thank him for taking this matter which calls on the Minister for Arts, Heritage and the Gaeltacht to ratify the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. I believe Ireland should ratify this convention which deals with the illicit import, export and transfer of ownership of cultural property. The Minister of State will recall that a number of relics have been stolen recently. I will list the most recent examples, which will tell the House how well-known the situation is. If Ireland ratifies this convention it could prevent it from happening. An artefact containing the heart of St. Laurence O'Toole was stolen from Christchurch Cathedral in the centre of Dublin in March. Last October the relic of the true cross, said to contain fragments of the cross on which Jesus was crucified, was stolen from Holycross Abbey in County Tipperary. Prior to this another relic, known as the precious shrine of St. Manchan, was found by the Garda. If Ireland ratified the convention on cultural property it would provide a legal safeguard to prevent this type of illicit trading, exporting and hoarding and using Ireland as a base to hide artefacts stolen from other countries.

This motion is aimed at protecting our cultural heritage from the real threat of the illicit trade in artefacts. I call on the Minister for Arts, Heritage and the Gaeltacht, Deputy Deenihan, to bring a memo to Government fairly promptly and proceed with Ireland's ratification of the convention which would help ensure cultural objects stolen from Irish heritage sites and other locations can be returned to their rightful owners. It would mean that if relics or artefacts belonging to another country which had already ratified the convention were found here we would return them to that other country. Equally, if artefacts, relics or cultural property which belong to us were in another country they would be returned to us. The adoption of the convention would discourage illegal traders from purchasing cultural objects illegally acquired

[Senator Fidelma Healy Eames.]

and exported from Ireland and would facilitate the return of cultural objects illegally exported from Ireland which are located in nations which have ratified the convention.

In the past year three important relics were stolen from religious sites in this country. Ratification of the convention would help provide a legal safeguard for these items, which are an important legacy of Ireland's rich cultural history. Ratification of the convention would also mitigate against Ireland becoming a location of choice for the storage and hoarding of cultural objects illegally imported because of its status as a non-signatory of the convention. This is not the reputation we want to have. Ireland is one of only seven EU states which are not signatories to the convention. The other countries are Austria, the Czech Republic, Estonia, Latvia, Luxembourg and Malta.

The situation regarding the Elgin Marbles, the priceless sculptures from the Acropolis in Athens which are on display in the British Museum in London, is probably the best known example and causes ongoing rancour between Britain and Greece. Greece is understandably outraged at the ongoing presence of some of its most important cultural heritage in a foreign country. It is high time Ireland addressed this situation and signed up to the UNESCO convention on cultural property which would protect our cultural heritage. I am keen to hear the response of the Minister of State on behalf of the Minister for Arts, Heritage and the Gaeltacht. I am also keen to know when Ireland will ratify the treaty and when the Minister is likely to bring a memo to Government to start the process.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry): I am delighted to be here on behalf of the Minister for Arts, Heritage and the Gaeltacht, Deputy Jimmy Deenihan, to consider the issues which Senator Healy Eames has raised.

The area of the protection of cultural property has been the subject of examination in many states. It is fair to say that most governments are conscious of the need to protect the cultural heritage which is unique to their state. After all, it is what defines and sets apart that state. Ireland is no different. The importance of our heritage and culture has long been recognised and has been represented directly at the Cabinet table for the past 20 years.

An examination of some of the recitals to the UNESCO convention will underline some of the principles in this area. For example, the convention considers that cultural property constitutes one of the basic elements of civilisation and national culture and that its true value can be appreciated only with regard to the fullest possible information regarding its origin, history and traditional setting. In addition, the convention considers that it is incumbent upon every state to protect the cultural property in its territory against the dangers of theft, clandestine excavation and illicit export. These are all admirable sentiments and I am sure they would be supported by Members of the House.

The State is alive to its obligations in this area and already has in place a comprehensive infrastructure to protect the cultural heritage of the State. A number of our national cultural institutions, including the National Museum of Ireland, the National Archives of Ireland, the National Library of Ireland and the National Gallery of Ireland, have put in place systems to protect the particular aspects of cultural heritage within their remit.

Substantial off-site storage facilities have been secured for the National Museum in recent years to address concerns about the adequacy of its storage facilities. Significant fit out works were carried out by both the owner of the premises and the National Museum to ensure that optimum conditions for the storage of the required elements of our national collections prevail and the facility is now operational. The National Library is engaged in a consultancy process to identify the optimum storage solution for the library's collections. Similar work is ongoing in the National Archives building to maximise the storage space available.

The Department of Arts, Heritage and the Gaeltacht is entrusted to protect and preserve objects relating to Ireland's archaeological and cultural heritage. Licences to export cultural goods and objects from Ireland to destinations within and outside the EU and licences to alter archaeological objects are issued by the Department and or the relevant national cultural institution having regard to the particular object, document or painting. It is essential for the Department to be aware of the export of such items and, if necessary, to employ measures to assist in the retention in the State of objects of particular cultural value. The export provisions are considered essential to ensure the protection of Ireland's cultural heritage and play a critical role in mitigating the potential loss of objects of significant cultural value to the State.

In essence, the convention we are discussing sets down a wide definition of cultural property including property of artistic interest, property relating to history, including scientific, technological, military and social history, the lives of national leaders, thinkers, scientists and artists, and events of national importance. It then sets out the obligations and the structure that states should put in place to prevent the illegal import and transfer of ownership of cultural property. The State has not yet ratified the convention. However, a new monuments Bill is being prepared by the Department of Arts, Heritage and the Gaeltacht. The Bill proposes to put in place the necessary provisions to ratify the UNESCO convention. The Senator will be pleased to hear the monuments Bill is with the Parliamentary Counsel for drafting, with publication expected in early 2013.

The area of the return of cultural goods has already been the subject of action at EU level. Council Directive 93/7/EEC of 15 March 1993, as amended, deals with the return of cultural objects unlawfully removed from the territory of a member state and located in the territory of another member state. This was implemented in Ireland by way of statutory instruments during the 1990s. However, the Commission has acknowledged there is rising concern about increasing illegal trade in high cultural properties such as paintings, sculptures, religious property and archaeological pieces. In recognition of this concern, the Commission launched a public consultation, which is now closed, on ways to improve the safe-keeping of cultural goods and the return between member states of national treasures unlawfully removed from their territory. The Department of Arts, Heritage and the Gaeltacht will monitor and assess developments in this regard. I hope this clarifies the position for the Senator.

Senator Fidelma Healy Eames: I am delighted this is on the agenda of the Minister for Arts, Heritage and the Gaeltacht and there is a plan to ratify the UNESCO convention in early 2013. The Minister of State mentioned that the Commission had launched a public consultation on this convention. Was notification received in Ireland and is the Minister of State aware of any Irish responses to it?

Deputy John Perry: We are extremely fortunate to have the Minister, Deputy Deenihan, in charge of this important portfolio dealing with the arts and cultural matters. He has great empathy with the sector and since his appointment has been extraordinarily successful in dealing decisively with this issue. While the public consultation has been closed, I am certain it was wide-ranging. However, to answer the Senator's question directly, I have no doubt but that the Minister will clarify the position. Nevertheless, the UNESCO convention will be ratified and his announcement that a new Bill is being introduced is good news. I note it is at the drafting stage at present. I believe the concerns raised by the Senator will be addressed clearly in legislation now being drafted.

Senator Fidelma Healy Eames: I thank the Minister of State.

On a point of order, I wish to clarify that Committee Stage of the Criminal Justice (Search Warrants) Bill 2012 should have been ordered for Thursday, rather than for next Tuesday.

Acting Chairman (Senator Michael Mullins): Is that agreed? Agreed. I thank the Minister of State, Deputy Perry, for his responses to Senator Healy Eames.

Services for People with Disabilities

Acting Chairman (Senator Michael Mullins): I welcome the Minister of State, Deputy Kathleen Lynch, to the House.

Senator Marc MacSharry: I welcome, as always, the Minister of State to the House and acknowledge she is well aware of this important issue. A number of issues arise from my perspective and I am not satisfied the Minister of State's office has been briefed adequately on the facts relevant to this case. I do not seek to cause an issue to arise between the Minister of State and me. She is focused on her brief and I often have praised her in this Chamber for her determination and commitment to it. In this case, I ask the Minister of State to provide a detailed statement regarding reports on the underfunding of the care of people with intellectual disabilities at Wisdom Services at Cregg House. In particular, the notes to editors accompanying her press release of last week, which indicated that services would continue, mentioned the Department did not accept there was an underfunding issue. However, the HSE publishes an annual report containing details of revenue and capital funding paid to section 38 voluntary service providers, of which Wisdom Services is an example. An analysis of all the published reports from 2005 to the present day reveals that Wisdom Services received a lower percentage increase throughout all those years when compared with comparable service providers in the sector. I do not know the reason this should have been the case and consider it to be fundamentally wrong. Moreover, an exercise conducted by the working group appointed jointly by the HSE and Wisdom Services on foot of a meeting between Oireachtas Members and the Minister of State when this issue first arose last April, revealed that HSE facilities are better funded than the services provided by Wisdom Services at Cregg House. The difference is apparent in the case of residential services, services in community homes and day services.

Wisdom Services is a section 38 health service provider, that is, a designated provider of services on behalf of the HSE and its costs are lower than those of comparable services provided directly by the HSE to persons with intellectual disabilities. I understand these facts are reflected in two reports. While I am uncertain whether the Minister of State has yet had sight of the national value for money review, I am reliably informed this is the case when compared with other section 38 voluntary agencies. It also is reflected in a report, which again I gather the Minister of State may not yet have seen, namely, the result of the collaborative process between the HSE and representatives from Wisdom Services over the past month or so, which has culminated with the announcement by the Daughters of Wisdom that they were obliged to pull out on the basis that they could not stand over the continued underfunding.

I take the Minister of State's view that the services will continue, although I have questions to ask about that shortly. Apart from that issue, I have a concern as a public representative for the people of the north west. The representatives from Wisdom Services, under the auspices of the Daughters of Wisdom, are providing a service that is more cost effective and which provides greater value for money than the HSE can provide directly in the area. In the face of present difficulties and given the scarcity of resources, everything possible should be done to ask them to stay on and to ensure their effective management is replicated elsewhere among section 38 providers, as well as in the directly-provided HSE services, rather than pursuing an agenda which I consider to be pushing them out. I believe there are agendas at play in this regard. While I do not believe it is the agenda of the Minister of State, and I acknowledge this sounds strange, I believe the Government is being used as a pawn to ensure these service providers are pushed out in order that the HSE can take control of the services. I do not

believe this is in the best interests of either the clients, that is, the people who use those services and their families, or those of the State because, as I stated it is alleged that two value for money reports, the most recent of which was conducted between Wisdom Services and the HSE directly, as well as the national value for money review carried out on section 38 voluntary agencies, show Wisdom Services is providing better value for money.

The other point with which I take issue concerns the notes to editors contained in the Minister of State's press release on this issue. The Minister of State has stated——

Acting Chairman (Senator Michael Mullins): The Senator's time has concluded.

Senator Marc MacSharry: I know but I ask the Acting Chairman to indulge me slightly because I have a couple of brief points to make. As the Minister of State has made the effort to be present in the Chamber, the least I can do is to make the points outlining my rationale for raising this matter. The aforementioned notes stated Wisdom Services has received 38% of the funding and have 23% of the people with intellectual disabilities. That is a ridiculous statement and clearly was written by a spindoctor, rather than someone who is involved in the delivery of services to those with intellectual disabilities. Anyone familiar with this issue is aware that those who receive the services at Cregg House are the people with the most complexities. As other people's intellectual disabilities might be mild, when compared with the more severe to profound intellectual disabilities dealt with at Cregg House, it is only right the latter receives a higher proportion of funding relative to the complexities of the services that are delivered in that area.

Third, the Minister of State must have been misinformed because the person I know would never have been as flippant with language as to state there were difficulties for quite some time at Wisdom Services. This suggests a level of incompetence and recklessness with funding which——

Acting Chairman (Senator Michael Mullins): I have given the Senator great leeway.

Senator Marc MacSharry: —— simply was not present. The Minister of State should correct the record in this regard because an audio version of her contribution was disgraceful, in respect of the complexion it created regarding the facts, which include the brilliance and expertise that was delivered by the people operating under the auspices of Wisdom Services over the years. At this late stage, I ask the Minister of State to engage in a process to attempt to persuade the Daughters of Wisdom to stay on——

Acting Chairman (Senator Michael Mullins): I call on the Minister of State.

Senator Marc MacSharry: —— and to continue to deliver the aforementioned services. Moreover, if it is necessary to deflect a portion of the national budget to that particular HSE area, it should be done. I believe it is in the best interests of the State from a value-for-money perspective and more important——

Acting Chairman (Senator Michael Mullins): Senator MacSharry is repeating himself.

Senator Marc MacSharry: —— it is in the best interests of those who use those services. I thank the Acting Chairman for his indulgence.

Minister of State at the Department of Health (Deputy Kathleen Lynch): I thank the Senator and acknowledge this is not the first time he has shown an interest in this issue. I thank him for raising this matter, which gives me an opportunity to outline the current position in respect of Wisdom Services. To correct one point, when I stated that there had been difficulties, it was

[Deputy Kathleen Lynch.]

never to indicate there was mismanagement or something untoward with the service. I believe this contribution probably will confirm this was never the intention. As the Senator is aware, Wisdom Services is a voluntary body operated by the Daughters of Wisdom, which provides services for people with disabilities in the north-western region. It supports more than 200 service users, with 111 on campus, 75 in the community and 20 day attendees. I was disappointed to learn that the Daughters of Wisdom, who operate Wisdom Services, have advised the HSE they intend to withdraw from the provision of services on behalf of the HSE. The decision was made in the light of serious concerns on the part of Wisdom Services regarding a deficit built up in 2010 and 2011 which continues to increase in 2012, and other financial concerns. When I stated there were difficulties in arrears that is what I meant.

Wisdom Services have written to all families of service users. Sister Quinn informed me in writing that all families were telephoned as well, which is only what I would expect from a service that has been in operation for a considerable time and which, from everything I have heard, has delivered an excellent service. They also arranged staff briefings to outline their reasons for withdrawal. Wisdom Services have been funded consistently by the HSE over the years and also benefited from additional intellectual disability developmental funding in the period 2006 to 2011, along with additional capital funding in this period. All services need to update and I am sure that is what this money was about. This compared favourably with the percentage of intellectually disabled, or ID, clients from this area who were covered by their services. I do not accept that this service has been underfunded, allowing for the necessary reductions which have been applied to all service providers in recent years.

The HSE has been working with Wisdom Services for some time to address their financial concerns and identify opportunities for efficiencies and savings through potential new combinations of service deliveries in the north-west area. Wisdom Services had a cost containment plan for 2012 which has had some success but in spite of the detailed engagement by the HSE in an effort to resolve the various issues, and faced with significant financial concerns, Wisdom Services decided to voluntarily withdraw from service provision.

The HSE is working closely with Wisdom Services to ensure continuity of service for service users during an agreed transition phase for the service. The process for transition has now commenced and the first meeting of a steering group of Wisdom Services management and HSE officials was held yesterday, Monday, 18 June. The process will include a due diligence exercise to establish the options for future management of these services.

It is regrettable that the Daughters of Wisdom made the decision they were no longer in a position to augment or subsidise the services provided and that they have decided to cease as a provider. The HSE respects this view and all parties have agreed a co-operative approach to the transition process to ensure the needs of service users and their families will continue to be met.

On behalf of the Minister for Health, I express thanks to Wisdom Services for their dedication and commitment to providing services to children and adults within the north west since 1955, and wish them well for the future. That is a substantial period during which to have delivered a service. I regret that the Daughters of Wisdom have withdrawn from the service. I believe a solution could have been found. However, the deficits that continued to increase could not be sustained. The Daughters of Wisdom have provided an excellent service down through the years at a time when, as I have stated consistently, the State was not providing that service. We owe a debt of gratitude to these people that we will find very difficult to repay.

Senator Marc MacSharry: I accept the response of the Minister of State but I do not like it. It is worth remembering it was at the invitation of the State that these people provided the

services. Applying the basic business common sense I may have, I do not see how we expected Wisdom Services to run a deficit they would subsidise from the religious order and at the same time, in spite of the fact that they did this more cheaply and cost effectively than the HSE can do directly, how we expect a third party or the HSE to be able to take over this service, do as good a job with fewer resources and not run a deficit. I do not see how that is possible. If the Minister of State wishes to take upon herself to engage directly with the Daughters of Wisdom I am sure they could be convinced or influenced to stay on and continue the service if a way can be found to ensure that adequate funding can be made available. Along with the Minister of State, I believe there is a solution. For that reason, I say to her that outside the Department of Health and beyond the office of the Minister, there is an agenda at work that may not be the purest. I hate to see such an excellent service used as a pawn in a game that does not at all involve them.

Acting Chairman (Senator Michael Mullins): The final word from the Minister of State.

Deputy Kathleen Lynch: As to the value for money review, I have not seen it and although there have been discussions around it there has been no detail. I do not know where the figures come from in terms of the HSE providing the service along with voluntary organisations. I do not know where that argument comes from because I have seen nothing to support it.

Senator Marc MacSharry: Surely then, we should wait until we see that review before we allow Wisdom Services to disengage.

Deputy Kathleen Lynch: I cannot demand that people who are free to make these decisions should make a different decision. I was disappointed that this happened. I believed there could have been a solution but that did not happen. The service will continue for the people who need it. The pay costs will be the same and the increments will have to be paid. There will be a new management structure rather than a new service but a different service will have to be looked at because in every service we are looking at a different way of doing things.

Senator Marc MacSharry: Are we potentially downscaling the service?

Deputy Kathleen Lynch: No. There will be no downscaling of the service. The service, as it exists, will continue.

Acting Chairman (Senator Michael Mullins): That clarifies the situation. I thank the Minister of State. I now call my constituency colleague, Senator Lorraine Higgins.

Primary Care Facilities

Senator Lorraine Higgins: I welcome the Minister of State to the House and thank her for taking this Adjournment matter regarding the potential provision of primary health care facilities in the east Galway area. Primary health care was born as a concept under the Declaration of Alma-Ata in 1978 but it entered the Irish lexicon only in recent years. It was an important milestone in the promotion of world health as it introduced a new way of delivering essential health services. The type of services provided under this concept are imperative for people in areas such as Athenry, Tuam, Loughrea, Ballinasloe, Gort and Portumna. These facilities would provide a wide range of services essential for the well-being of members of these communities and include the promotion of health, screening, diagnosis, treatment and rehabilitation, as well as personal social services. They are particularly attractive as a concept in that they are fully accessible by way of self-referral and operate as a one-stop shop for health needs.

[Senator Lorraine Higgins.]

Although the term "primary health care facilities" is often used in synch with the term "general practice", it is important to point out that the former is much broader than the latter as it involves many health professionals, delivering a wide range of services from such as general practitioners, public health nurses, general nurses, social workers, midwives, community mental health nurses, dieticians, dentists, community welfare officers, physiotherapists, occupational therapists, chiropodists, community pharmacists, psychologists and others. As we know, the current health system is not a fully integrated one, as many of the aforementioned professionals are private practitioners or direct employees of the public health system, and they operate with general practitioners, who are independent contractors.

We need a better health service for everybody in the community and for that reason I ask the Minister of State to outline her plans today. Our health strategy should aim to deliver improvements in the personal experience of many thousands of individuals who are availing of health services every day. To that end, it is imperative that the aforementioned services be made available within the community. That is the reason I request the Minister of State to expand the primary care team concept to Loughrea, Ballinasloe, Gort, Tuam, Portumna and Athenry, in the interest of providing accessible community care facilities to the citizens of these areas. If the Minister of State is minded to provide these facilities in these areas, I further ask that she make the necessary arrangements in the capital budget to implement this programme over the coming three years.

Deputy Kathleen Lynch: I thank the Senator for raising this issue. The programme for Government sets out this Government's commitment to ensuring a better and more efficient health system; a single-tier health service that will deliver equal access to health care based on need, not income. In a developed primary care system, up to 95% of people's day-to-day health and social care needs can be met in the primary care setting. The key objective of the primary care strategy is to develop services in the community which will give people direct access to integrated multidisciplinary teams of general practitioners, nurses, physiotherapists, occupational therapists and other health care disciplines. This is central to this Government's objective of delivering a high quality, integrated and cost-effective health system. The HSE has identified that 485 primary care teams will be needed by the end of 2012. Some 403 primary care teams were in operation by the end of April 2012. They were holding clinical team meetings on individual client cases, involving general practitioners and HSE staff. The development of primary care services is an essential component of the health service reform process. A modern and well-equipped primary care infrastructure is central to the efficient functioning of primary care teams. These teams enable multidisciplinary services to be delivered on a single site, provide a single point of access for users and encourage closer co-operation between health providers. The infrastructure that will be developed through a combination of public and private investment will facilitate the delivery of multidisciplinary primary health care. This represents a tangible refocusing of the health service to deliver care in the most appropriate and lowest cost setting. To date, the intention has been that infrastructure can be provided, where appropriate, by the private sector through negotiated lease agreements.

The Exchequer will continue to fund the delivery of primary care centres in deprived urban areas, small rural towns and isolated areas. Where service needs dictate, accommodation will be provided in primary care centres for mental health service delivery. The universal primary care project team was established earlier this year to make progress with the various primary care commitments in the programme for Government. Six work streams have been identified, one of which is addressing infrastructure needs. The HSE submitted its accommodation needs assessment report for primary care teams earlier this year. Delivery of primary care infrastruc-

ture must be informed by an analysis of needs, with priority being given to areas of urban and rural deprivation. The HSE is currently prioritising locations for primary care centres on the basis of an analysis of needs. Decisions on a delivery programme will be made when this exercise has been completed. The HSE's national service plan for 2012 states that a primary care centre in Athenry will be delivered late in 2012 using the lease initiative. Construction of the facility has begun. It is estimated that it will be completed late in the third quarter of 2012. The primary care team in Ballinasloe is accommodated in a building that was completed in 2003. Decisions on locations for primary care centres will be made in the context of the prioritisation exercise that is under way. I thank the Senator again for raising this issue.

Senator Lorraine Higgins: I thank the Minister of State for her succinct response. I am delighted that 485 primary health care teams have been rolled out in recent times or will be rolled out in the near future. It represents a firm commitment on the part of the Government with regard to this country's health service. It is fantastic that deprived urban areas and small rural towns will get the benefit of the Government's plan. I hope all the towns I mentioned in my initial remarks will be considered when decisions are being made on the locations of primary health care facilities. I thank the Minister of State again.

Deputy Kathleen Lynch: It is interesting to extract information from the health statistics. The statistics make it clear that the areas of highest deprivation have the lowest availability of any service. That is why the prioritisation exercise is vitally important. We are not just talking about urban areas — we are also talking about areas outside the bigger population bases.

Míbhuntáiste Oideachasúil

Acting Chairman (Senator Michael Mullins): I welcome the Minister of State, Deputy Sherlock.

Senator Brian Ó Domhnaill: Cuirim fáilte roimh an Aire Stáit. Níl a fhios agam an mbeadh sé iomlán compordach dá labharfainn go hiomlán trí Ghaeilge. Baineann an rún seo le scoláireachtaí Gaeltachta. Go dtí seo, bhí deis ag páistí meánscolaíochta ar fud na Gaeltachta buntáiste a bhaint as na scoláireachtaí a bhí ar fáil ó 1916. Bhí scoláirí a bhí ag freastal ar scoileanna Gaeltachta agus ag fáil a gcuid oideachais trí mheán na Gaeilge in ann cur isteach ar scoláireachtaí a thug deis dóibh dul ar aghaidh go dtí oideachas tríú leibhéal. I gcásanna áirithe, bhí páistí ag iarraidh dul ar aghaidh go dtí an ollscoil. Gan an scéim seo, ní bheadh an deis sin acu de bhrí nach raibh an t-airgead ag a dteaghlaigh. Ar an drochuair, rinne an Rialtas cinneadh deireadh a chur leis na scoláireachtaí Gaeltachta, mar a bhí, agus iad a dhíriú ar meánscoileanna DEIS amháin. Cuireann sé sin isteach ar an scoil atá luaite sa rún agam. Ritheann sé go huile is go hiomlán in éadan an méid atá ráite sa straitéis 20 bliain don Ghaeilge. As the Minister of State might not understand the Donegal dialect of Irish, I will repeat in English the point I have made about the scoláireachtaí Gaeltachta, or Irish language scholarships, that were available to students in Gaeltacht areas who were attending second level education. The scheme in question gave such students an opportunity to obtain assistance that allowed them to go to university and promote the Irish language in third and fourth level education. The Minister for Education and Skills announced earlier this year that the qualification criteria for that scheme were to be changed. As a result, these scholarships are now confined to students from DEIS secondary schools.

Pobal Scoil Gaoth Dobhair is the only full-time Irish-language second-level school in any Gaeltacht area in the country. The full curriculum is delivered to the approximately 400 pupils who attend the school through the medium of Irish. The school's leaving certificate results are second to none. The school is located in an area of high unemployment where many people

[Senator Brian Ó Domhnaill.]

are eligible for medical cards. Each of the seven or eight primary schools that send their pupils to Pobal Scoil Gaoth Dobhair is a DEIS school. Therefore, all of the kids who attend the secondary school in question come from DEIS schools. In that context, I do not understand why the Government has decided to withdraw DEIS status from Pobal Scoil Gaoth Dobhair. When one examines the poverty and deprivation statistics for the area, it appears to meet all the criteria. The only criterion it might not meet is that relating to educational outcomes. Its pupils should not be penalised as a result of the quality of teaching and their willingness to learn.

If the DEIS status of Pobal Scoil Gaoth Dobhair were to be reinstated, its pupils would qualify for the new scholarship arrangement. Although that is one possible solution, it is not the best one. The best solution would be to revert to the old method, which was established by Pádraig Pearse in 1916, whereby Gaeltacht scholarships were awarded to students from the Irish language-speaking parts of this country. A person from a Gaeltacht area who is fulfilling his or her second level education through the medium of Irish should get a financial benefit if he or she gets a certain amount of points in the leaving certificate. The former approach, whereby a scholarship was provided to enable a pupil to go on to third level education if his or her family could not afford to send him or her to do so, had stood the test of time until it was changed by the Minister, Deputy Quinn, in recent months. That decision will have drastic consequences for Pobal Scoil Gaoth Dobhair — between seven and ten Gaeltacht scholarships are awarded to the school every year — and other secondary schools in Gaeltacht areas. As a result of the change I have mentioned, not one pupil in the school will be entitled to a scholarship next September. If previous trends had continued, up to ten students would have been able to avail of this scheme.

Acting Chairman (Senator Michael Mullins): The Senator's time is up.

Senator Brian Ó Domhnaill: This is an area of high unemployment. It meets all of the deprivation statistics. I have spoken to members of the parents' committee in the school who are of the firm opinion that the withdrawal of these scholarships has the potential to mean that some students will not be able to afford to go to third level education. That is wrong. I know of secondary schools in other parts of the country with DEIS status that do not meet the same criteria that this school does. There are two issues. First, the overriding issue of the change in scholarship policy. Second, why has a school with DEIS status, along with all of the feeder national schools, been withdrawn?

Acting Chairman (Senator Michael Mullins): I have allowed the Senator great latitude.

Senator Brian Ó Domhnaill: I thank the Acting Chairman.

Minister of State at the Department of Education and Skills (Deputy Sean Sherlock): Let me first state that I apologise for not being able to engage with the Senator as proficiently as possible through the medium of Irish. Perhaps that is a reflection on the rota of Ministers who reply and perhaps he should have been afforded the opportunity of a full reply as gaeilge.

I am pleased to have the opportunity to address the Senator about DEIS status for Pobal Scoil Gaoth Dobhair, County Donegal and scholarships for Gaeltacht students. The process of identifying schools for participation in DEIS was managed by the Educational Research Centre on behalf of the Department of Education and Skills and supported by quality assurance work co-ordinated through the Department's regional offices and inspectorate. Second level schools were selected by reference to centrally held data from the post-primary pupils and the State Examinations Commission databases. The identification process was in line with international

best practice and had regard to, and employed, the existing and most appropriate data sources available. The school referred to by the Senator was not selected for inclusion in DEIS. A review mechanism was put in place that did not quality for inclusion in the school support programme under DEIS. An appeal by the school to the independent review body confirmed that the level of disadvantage did not warrant its inclusion in the DEIS process. None of the existing schools that was unsuccessful in the initial identification and subsequent review process was ever admitted to the DEIS programme. A key priority for the Department is to prioritise and target resources in schools with the most concentrated levels of educational disadvantage. That challenge is significant given the economic climate and the target to reduce public expenditure. It also reduces the capacity for any additions to the DEIS programme, including the selection of further schools.

As announced in the 2012 budget, five scholarship schemes for higher education, namely the Easter Week 1916 commemoration scholarship scheme, an scéim scoláireachtaí tríú leibhéal do scoláirí ón nGaeltacht, an scéim scoláireachtaí gaeilge tríú leibhéal neamh-theoranta, an scéim scoláireachtaí tríú leibhéal and the Donogh O'Malley scholarship scheme will be replaced with a new single scheme of bursaries based on merit and financial need. These earlier scholarships, with one exception, were awarded without the application of socio-economic criteria. The new bursaries are specifically designed to target students attending DEIS schools in disadvantaged areas and also indicating a level of personal or family disadvantage by virtue of having qualified for a medical card. The bursary will be an extra support and incentive to recognise high achievement for students from disadvantaged families and attending DEIS schools. The change was made to make the best use of the limited funds we have available for bursaries in order to focus on the best performing students in the cohort of those who are most in need of financial help. It is envisaged that 60 students will receive a bursary this September and the number will rise over each of next three years with more than 350 students per year benefiting by 2015. These changes will not impact on those who already hold scholarships under the existing schemes and the principal financial support made available by the Department of Education and Skills to facilitate access to third level education continues to be the means tested student grant.

Other financial measures to support broader access and participation include the provision of the special rate of maintenance grant for students from welfare dependent families and the availability of the student assistant fund at college level to assist students in particular financial difficulties. From the academic year 2012-13 onwards grants will be centrally administered by a single grant awarding authority, Student Universal Support Ireland, SUSI, a division of the City of Dublin VEC. SUSI will administer the student grants scheme on behalf of the Department. A new online-only grant application system has also been introduced to facilitate applications.

Acting Chairman (Senator Michael Mullins): A final question, Senator Ó Domhnaill.

Senator Brian Ó Domhnaill: I appreciate the Minister of State's comments and thank him for his attendance. His response is contradictory when one reads it. On the one hand, the DEIS status is being given to schools on the basis of exam results and was clearly outlined by him. It is not exclusively based on exam results but it is almost. These scholarships are being provided on socio-economic criteria. It should be the other way around. It should be socio-economic qualifying criteria for DEIS. It is the poorest schools that should be in DEIS and not the ones that achieve the best exam results due to their teachers being better. It is disappointing. The people who deserve these scholarships, particularly those with an excellent grasp of the Irish language living inside or outside of a Gaeltacht, should be given the opportunity of availing of grants that were established by Pádraig Pearse in 1916.

Acting Chairman (Senator Michael Mullins): I thank the Minister of State for attending.

Senator Brian Ó Domhnaill: Will the Acting Chairman allow the Minister of State to respond?

Acting Chairman (Senator Michael Mullins): Yes, a final word.

Deputy Sean Sherlock: I acknowledge the point made by the Senator but there cannot be a geographical bias for bursaries either. We must have regard for the economic circumstances that we find ourselves in.

Senator Brian Ó Domhnaill: Go raibh maith agat.

The Seanad adjourned at 7 p.m. until 10.30 a.m. on Wednesday, 20 June 2012.