



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

2/10/2012

Business of Seanad	348
Order of Business	349
An Bille um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí) 2012: An Dara Céim.	367
Thirty-First Amendment of the Constitution (Children) Bill 2012: Second Stage.	368
Adjournment Matters.	412
Third Level Funding	413
Health Services	415
Industrial Relations.	416
Accommodation for Asylum Seekers.	419

SEANAD ÉIREANN

Dé Máirt, 02 Deireadh Fómhair 2012

Tuesday, 02 October 2012

Chuaigh an Cathaoirleach i gceannas ar 14.30 p.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

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

The need for the Minister for Education and Skills to discuss the future of funding for third level education to maintain the current level of maintenance grant for students; and if he has plans to change the eligibility criteria.

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 Portumna, County Galway in the interests of providing accessible community care facilities for the citizens of this area and to make the necessary arrangements in his capital budget to implement this programme over the course of the Government.

I have also received notice from Senator Denis Landy of the following matter:

The need for the Minister for Jobs, Enterprise and Innovation to clarify the issue regarding the dismissal of SIPTU members from the Gleeson Group and their ongoing concerns; the situation faced by the workers; and if the company has sought a rebate of the statutory redundancy payment made to the employees.

I have also received notice from Senator Jillian van Turnhout of the following matter:

The need for the Minister for Justice and Equality to confirm whether standard 3.4 of HIQA's national standards for the protection and welfare of children are applicable to children in direct provision accommodation and to confirm the number of Irish citizen children in direct provision accommodation.

I have also received notice from Senator Trevor Ó Clochartaigh of the following matter:

Go dtabharfaidh an tAire Comhshaoil sonraí maidir le líon na nglanna amach a rinne Seirbhísí Dóiteáin Chontae na Gaillimhe chuig Conamara Theas ó 2009 go dáta, an fhad a thóg sé orthu teacht amach, cén stáisiún as a dtáinig siad, cé mhéad inneall a tháinig amach agus cé chomh fada is a bhí siad ar na láithreacha.

2 October 2012

I regard the matters raised by Senators Reilly, Higgins, Landy and van Turnhout as suitable for discussion on the Adjournment and they will be taken at the conclusion of business. I regret that I have had to rule out of order the matter raised by Senator Ó Clochartaigh as the Minister has no responsibility in this matter.

I point out that the two television monitors in the House are not working but they will be working if there is a vote. Everything else in regard to the televising of the proceedings is working.

Senator David Norris: Can the Cathaoirleach provide supplementary information as I did not quite follow him? If he says the two television monitors are not working but will be for a vote-----

An Cathaoirleach: We do not have any further information. The two monitors in the House are not working but the recording is taking place.

Senator David Norris: The proceedings can be broadcast.

An Cathaoirleach: Yes.

Senator David Norris: Thank you.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Thirty-First Amendment of the Constitution (Children) Bill 2012 - Second Stage to be taken at the conclusion of the Order of Business, with the contributions of group spokespersons not to exceed 12 minutes and those of all other Senators not to exceed eight minutes and the Minister to be given ten minutes to reply to the debate. The content of No. 19, a motion, can be discussed in conjunction with the debate on Second Stage. Obviously, this motion will not be moved until the Final Stage of the Bill has been passed.

Senator Darragh O'Brien: On foot of the Government's own report on pyrite, the stakeholders' report was due with the Minister by the end of September. I do not want this to drag on for months again. I would be most grateful if the Leader would find out whether the Minister for the Environment, Community and Local Government, Deputy Hogan, has that report and when he will publish the real actions that will help homeowners across the north Leinster region, in particular.

It is crucial that this House has a series of debates prior to the budget in different policy areas and I am glad we will have that. Today, however, it is crucial that we have an urgent debate on the social welfare area, in particular child benefit. Thousands of others across the country and I want to know where the Government stands on child benefit and the retention of the universality of that benefit. Many of our Labour Party colleagues might remember the pre-election poster stating that families needed the Labour Party in government. I suppose that has proved not to be correct. The Labour Party said it would protect child benefit. I listened to the Minister for Social Protection, Deputy Burton, in the past few days and it is not very clear that she will protect child benefit. I propose an amendment to the Order of Business to allow the Minister to clarify for this House and the people whether she intends to see through at least one Labour Party promise. One pre-election promise that should be kept is the retention of universal child

benefit, which assists thousands of families across the country. My amendment to the Order of Business proposes that the Minister come to the House to clarify the position on child benefit and confirm that she will see through the Labour Party's commitment to protect child benefit at the current rates and the universal nature of that benefit.

A colleague of mine, Councillor Jim O'Callaghan, raised a very serious issue with me, namely, the removal of funding for a south inner city post with the CYC. The post concerned is that of education officer dealing with adult education and all the voluntary groups dealing with drug abuse and anti-social behaviour. This is in the constituency of the Minister for Education and Skills, Dublin South East. We should schedule a debate on foot of the information I have received from Councillor Jim O'Callaghan. How many other posts across the city of Dublin and the country have been removed by stealth? This individual has worked for 17 years as education officer, on drugs task forces and youth schemes across the south inner city. With one letter from the City of Dublin VEC, that post has been removed. All of us will agree that education for young people and young adults, some of whom may have strayed from their path, is crucially important. To have a situation where in the south inner city, some of which is very deprived, the post of education officer is removed without any consultation is disgraceful. We should have a proper debate on this to see whether these posts have been removed in other areas of the country. Is this not a front-line service? Will the Leader organise a debate with the Minister for Education and Skills, which would be preferable, or a Minister of State in his Department?

Senator John Whelan: I congratulate Senator Hayden on her election as the new Whip of the Labour Party Seanad group. I wish her well in her endeavours.

I share Senator Darragh O'Brien's concern about pre-budget speculation and consternation. I thought we had ceased the leaking of pre-budget proposals so as not to upset unnecessarily families already put to the pin of their collar. I agree with Fr. Seán Healy of Social Justice Ireland who said it would be unacceptable and unjust to cut child benefit for needy families. Can anyone honestly say everyone who receives child benefit requires it? It is time we came to terms with the reality - that we need to help those who most need our help. Since I was a boy, we have been told that one cannot means-test children's allowance because the computers in the two Departments do not talk to each other. Someone will have to start talking to someone because we need to make the best use of resources in order that those most in need benefit. We should await the decision before rushing to make rash judgments on what the outcome will be. I know families that require child benefit to pay for groceries and dress their children, but we all know families also that draw it down and give it to a boy or girl at 18 years of age to go on an around the world tour. That is not the purpose for which it was intended.

It sticks in my craw as much as anyone else's that yesterday the State, on behalf of the taxpayer, parted with another €1 billion to AIB in an unsecured bond. Will the Leader ask the Minister for Finance to come to the House to tell us how we are holding the banks to account for the support we have given to them? There has been no *quid pro quo* in terms of support for mortgage holders, home loans and businesses. In three weeks time AIB will close 54 branches across the country, despite the supports it has received from the State. One branch is located in Portarlington which has a population of 8,000. It is not a village; rather, it is the sixth fastest growing town in the country according to the previous census. I ask the Minister for Finance to intervene, not to overturn the decision - he cannot micromanage AIB - but to ask it to defer the closures at least until January and in the interim to carry out a socio-economic analysis of the impact of the decision.

I commend the wholehearted support in a statement of Dr. Diarmuid Martin, Archbishop of Dublin, for the children's rights referendum. He has always been a courageous and fair-minded man. I refer also to the efforts he is making to curb the excesses at First Holy Communion time, the €45 million industry that has sprung up around it and the pressures, because of the burden put on families. I welcome this because there is nothing as unseemly and unsightly as young boys and girls in their outfits running around pubs at all hours of the night on their First Holy Communion day.

Senator Rónán Mullen: I agree with what Senator Darragh O'Brien said on child benefit. We need to hear from the Government what its precise intentions are. I, for one, am worried. Universality has always been an important principle. There must be another way by which more privileged members of society can be taxed. Given the importance of the principle involved, I would be sorry to see universality go.

I, too, welcome what Archbishop Martin had to say. He is right about the balanced proposal to be put in the children's rights referendum. As Members will be aware, I have tabled amendments which I wish to explore with the Minister to see whether they could offer an improvement; nonetheless, I restate what I said previously, that, overall, I am happy with the balance struck. The children's rights referendum cannot be separated from the debate that needs to happen on the issue of child benefit. Many are going to see the proposal on children's rights to be put in the referendum as a cynical PR exercise if, at the same time, they see no progress being made in dealing with the failures relating to children, whether it be the HSE's ongoing performance, the resources available to children in situations where there is danger or deprivation, the actions and failures of social workers and the resource issues surrounding all of these areas. If there is a fear that the budget will impinge on families we can expect a degree of scepticism, if not cynicism, from families about what is behind the children's rights referendum. I make that as a political point and am not happy about it but I believe it is something the Government will have to take very seriously.

I also note - I am sad to do so - it is being proposed, rightly but sadly, that teachers should receive specialist training in how to manage disruptive behaviour in schools. The National Council for Special Education has made recommendations in this area, as people know, recommending that a teacher in every school would attend a three-day seminar. Already €200 million of additional teaching resources was allocated last year to deal with behaviour issues. That is a real tragedy. We should be asking what is going on in our society. However, I wonder why it is always about trying to address the problems and why there never seems to be an enthusiasm to ask why they are happening. When are we going to have a debate about issues such as family breakdown, the negative effects of family instability on children and behavioural issues? We have to be courageous about encouraging stable family life and having a debate that would lead to that if we are ever going to solve some of these problems, the symptoms of which we are seeing now.

I note that the Labour Party members of the Government are not going to ask for clarification about the criteria used by the Minister for Health, Deputy Reilly, in regard to the primary care centres. I do not understand that. If one thing is clear it is that what we saw in this entire issue was old politics, not the new politics that were performed at the election. I wish our former colleague in the Seanad, Deputy Alex White, well in his new role as Minister of State with responsibility for primary care. I would like to know whether he will be in charge or be subject to the whims of his senior Minister. It is a bad day for transparency and accountability and new politics when the Labour Party Ministers of Government are not willing to ask the questions

they obviously should be asking about the criteria employed in the decision around the choice of Swords and Balbriggan.

Senator Imelda Henry: We have had several discussions in this House on alcohol and drug abuse. I am a member of the Oireachtas Joint Committee on Health and Children which has spent several months in discussions with organisations, alcohol companies and supporting agencies that deal with people who have problems with alcohol and use drugs. Will the Leader ask the new Minister of State, Deputy White, to the House as a matter of urgency in order that he can inform us as to the timescale in which we can start to deal with this problem? The former Minister of State, Deputy Shortall, had plans and the Government is committed to introducing minimum pricing in regard to alcohol and to other aspects of dealing with the problem. All the work has been done and the committee has submitted a report. If the Leader can bring the new Minister of State to the House within the next week or so we would be very grateful to hear what he has to say on this issue.

Senator Paschal Mooney: I second the amendment to the Order of Business proposed by Senator Darragh O'Brien and support him in the views he expressed. If there is one thing the Government has focused on, correctly in our opinion, it is jobs and job creation. It has also put forward the view that confidence is an important element of building the new economy. However, yet again the Government has decided to have a kite-flying exercise in advance of the budget, scaring the living daylights out of the vast majority of people. This is so much the case that a survey of consumer confidence published in recent days shows such confidence has gone through the floor. People are so concerned about all that is being said about the budget that they are not spending money. Where is the confidence on which the Government places so much importance? Everybody accepts there must be confidence in the economy in order to get people to spend, yet the Government is achieving the complete opposite by means of another leak, one relating in particular to that most vulnerable part of society, those in receipt of child benefit.

I would be grateful if the Minister for Social Protection, Deputy Joan Burton, would respond to Senator Darragh O'Brien's request and attend this House. In addition, the Minister has more to answer in that, despite Government spin about saving money, the Comptroller and Auditor General's report has excoriated her Department, contrasting its lack of effort and action in recovering money that has been paid out fraudulently with the Revenue Commissioners, who managed to deliver some €34 billion in taxes to the Irish economy. The Department of Social Protection has managed to leave over €100 million - some €35 million of which relates to fraud - unrecovered. There is no indication of prosecutions being pursued or action being taken to recover money which, effectively, was stolen from the State and its taxpayers. The Minister for Social Protection has a great deal to answer for, not just in respect of the kite-flying exercise in which she and her Department are engaging in respect of her plans with regard to child benefit, but also in the context of the action she proposes to take to recover money which should never have been paid out in the first instance and which her Department seems incapable of trying to recover.

Senator Mary Moran: I wish to raise awareness of the fact that the period from 1 to 7 October has been designated as both Simon Week and Positive Ageing Week. Simon Week is now in its fifth year. As Members will be aware, the Simon Community continues to do excellent work in tackling homelessness throughout the country. This year it is asking people to "Take a Step for Simon to help tackle homelessness", which can include taking part in a fund-raiser, volunteering or donating time or a service.

Age Action is celebrating ten years of Positive Ageing Week. There is no doubt that in working with and on behalf of older people it is achieving its aim to make Ireland a great place in which to grow older. County Louth, where I live, is setting the pace in the context of recognising the value of older people in society. Last year, for example, it was the first recipient of the award of most age-friendly county. Dundalk, County Louth, is to the fore with regard to the development of products and services for older people. The latter are designed to ensure that those to whom I refer can continue to live full and independent lives for as long as possible. The people who live in the town are very proud of the Netwell centre, which is based in Dundalk Institute of Technology, DKIT. The latter is a world-class facility and it assisted in putting Louth on the map as Ireland's first age-friendly county. Last night I had the pleasure of launching Positive Ageing Week in Dundalk. One of the great success stories in the town - this could be replicated throughout the country - involves Mrs. Ann Egan, who last year organised computer classes at DKIT which were attended by 112 people.

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

Senator Mary Moran: Yes. Mrs. Egan's efforts resulted in DKIT becoming the country's first age-friendly third level campus. I ask the Leader to ensure that the House will continue to engage in lively debates with regard to the issue of how we can improve the lot of older people in this country.

Senator David Norris: Will the Leader try to convince the Government to intervene in the situation relating to Clerys department store, which is located in an iconic building in this city and which has a very special place in the hearts, not just Dubliners but also of people from all over the country who traditionally come here on 8 December each year to do their Christmas shopping? What is happening at Clerys is a national matter. I understand the company has been taken over by a US group, Gordon Brothers, which seems - I hope I am not doing it an injustice in this regard - to be acting in the best traditions of American vulture capitalism. Clerys, which owed €26 million to Bank of Ireland, was bought by Gordon Brothers for €15 million. This means that Gordon Brothers has been absolved of a debt of €11 million. In other words, it has basically been given a gift in that amount by the taxpayer. Gordon Brothers has now liquidated the Guineys store on Talbot Street and the Clerys outlets in Naas, Leopardstown and Blanchardstown and is not paying redundancies to the staff affected. These people have been referred to the social insurance fund in respect of their redundancies and that is wrong because the taxpayer will again be obliged to foot the bill.

The staff at Clerys are extremely apprehensive. People with almost 40 years service are not going to receive proper pensions. This is horrible. I understand that only €700,000 - a relatively small amount - would be required in order to rectify the position in respect of pensions.

3 o'clock

Will the Minister intervene in order to try to show some degree of humanity towards the people concerned? I hope this very important business will be supported.

I agree with my colleague who spoke for the Labour Party. Leaving aside the question of the children's allowance which is a matter for another day and I have always said every allowance should be means-tested, but scarce resources must be directed at the people who need them most because that is socialism. However, it defies belief that we are incapable of co-ordinating the various Departments and have one national income census. We have it for income tax. I

have expressed this view over many years.

An Cathaoirleach: The Senator is over time.

Senator David Norris: I apologise.

Senator Jim D’Arcy: I welcome the pupils and teachers of St. Josef school in Rheinbach-Bonn, Germany, who are visiting Ireland. I hope their stay will be enjoyable.

As Senator Rónán Mullen said, the NCSE yesterday released its report recommending that teachers receive further training in order to provide behavioural support for students. The report recommended that each school should appoint one teacher to have special responsibility for behaviour management in the school. I welcome the report but I have been contacted by teachers in Dundalk and Louth. The learning support and resource teachers in particular are not in favour of responsibility for behaviour in schools falling to one teacher. They favour a whole-school approach and that the appointment of this teacher should occur solely in conjunction with whole-school training in appropriate management of challenging behaviour. In my view this should include ancillary staff and special needs assistants.

I read recently about children’s behaviour and refer to a view that children today are unruly and badly behaved, resentful of authority and aggressive at times in their behaviour. That was written in 400 BC by a man called Plato. *Plus ça change, plus c’est la même chose.*

Senator David Norris: I hope the Senator is not pilloried for using the word, “Plato”, in this House.

Senator Kathryn Reilly: More than 75% of 1,500 nurses who will become registered nurses this month will be forced to emigrate in search of permanent work. A permanent recruitment pause in place since 20 July 2012 has made it virtually impossible for new graduates to find employment in the health service. The moratorium on the filling of permanent posts in the health service has seen a reduction since 2008 in nursing posts from 39,000 to 34,300. In recent weeks the provision of primary care centres has been in the news and in particular the announcement of the 35 new centres. I ask if the Minister of State, Deputy Alex White, or the Minister for Public Expenditure and Reform, Deputy Howlin, whichever is the most relevant Department, will come to the House to discuss the plans for the hiring of additional primary care staff, given the increase in the number of new centres from 20 to 35. We must ensure that the best primary care service is available. The lack of sufficient staffing levels in the primary care centres means they would become white elephant projects and would be of little benefit to the communities in which they are located. Highly qualified and skilled personnel are available. I ask if we can find out how these new primary care centres will be staffed and if those who are forced to leave can be retained to work in them.

Senator Darragh O’Brien and other Senators spoke about the leaked report on the proposals for changes in child benefit. When will the Minister bring that report to the Cabinet and the Houses of the Oireachtas? More important, when will the House discuss that report in detail with the Minister rather than under the heading of general statements or being included in a broad-ranging debate? Instead of leaving it as media fodder, we in this House, as public representatives, must have an opportunity to discuss it.

Senator John Kelly: I fully support the eloquent case made by my colleague, Senator John Whelan, in regard to the provision of child benefit. There is a general acceptance among the

public that wealthy people should not be in receipt of this payment or, at the very least, that it should be means-tested.

Senator Darragh O'Brien: How does one define “wealthy”?

Senator John Kelly: I remind Senator Darragh O'Brien, for whom I have great respect, that the social welfare budget is costing taxpayers €21 billion per year. The reason it is so high is that the Senator's former leader prepared for three general elections by increasing social welfare provision, including child benefit, year on year. He even promised to increase the State pension to €300 per week.

Senator Darragh O'Brien: In all those cases, members of the Senator's party complained that what we had provided was not enough.

Senator Paschal Mooney: In 2007 the cry went up from members of the parties now in government for more and more.

Senator John Kelly: How much worse would our current situation be if the State pension had been increased to €300?

Senator Paschal Mooney: The Senator should read his own party's election manifestos.

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

Senator John Kelly: Yes, when I am finished making this point. I also remind Senator Darragh O'Brien that his party in government chose to deal with the issue of increasing child care costs by way of the provision of a €1,000 payment per child under six years of age. While this sounded like a good idea at the time, within two days of the announcement it transpired that there was an obligation to make this payment to all working parents in the State, even where their children were residing in another country.

Senator Darragh O'Brien: What about the free preschool year we introduced? What does the Senator have to say about that?

Senator John Kelly: It was soon discovered, moreover, that such workers were also entitled to child benefit payments even, once again, where their children were not living in this country.

Senator Darragh O'Brien: That is in accordance with European Union law.

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

Senator John Kelly: A review of child payment provision would be worthwhile and timely. There is a great deal of money tied up in that payment which should not have been lost to the economy.

Senator Jim Walsh: I fully support Senator Darragh O'Brien's proposal, as seconded by Senator Paschal Mooney, for a debate on the forthcoming budget. In fact, I propose that we have a series of debates on a variety of expenditure areas, as agreed by the party leaders. A week should not go by in this House between now and December without a debate on some aspect of economic policy in the context of the budget.

All expenditure decisions for the coming year must be underpinned by the overriding cri-

terion of fairness. In this regard, I ask the Leader to invite the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, to the House as soon as possible. The Minister's complete capitulation in regard to public service allowances astounded us all. While he predicted in his Budget Statement that the review would secure savings of €75 million this year and next, the outcome of that lengthy process was a saving of a mere €3.5 million. As a businessman in the Leader's home city commented to me last week, if he had been responsible for a failure of that magnitude he would have been fired without time to pack his bag. The Minister must come to the House to address this issue.

I hope to take the opportunity presented by that debate to raise with the Minister the possibility of undertaking a new benchmarking exercise. The Minister for Health, Deputy James Reilly, recently announced the results of a survey his Department had conducted of hospital consultants' fees across various countries in Europe. It is little surprise to find consultants in this country at the top of the table. I am confident that corresponding surveys would show other high level workers at or near the top for a variety of positions across the public service. A benchmarking exercise would ensure we were informed as to our position in these league tables and would back up efforts, if we wish to be fair, to address disparities. We cannot keep going back to those who are not in a position to take more pain than has already been inflicted on them by the Government and, I acknowledge, the previous Government.

In regard to social welfare, we have a choice between taking a small amount from a large number of people or a large amount from some of them. In the case of child benefit, the Government is proposing the latter option. The changes introduced in last year's budget by the Minister for Social Protection regarding the criteria for qualification for the State pension have a disproportionate adverse impact on women, many of whom are obliged to vacate the workforce periodically in order to undertake parenting duties.

An Cathaoirleach: That issue cannot be discussed on the Order of Business.

Senator Jim Walsh: Will the Leader agree to a series of debates on all of these issues? Such debates would help to inform a more enlightened Government policy in respect of the budget in December.

Senator Martin Conway: I agree with Senator Jim Walsh on holding a series of debates. The Leader gave a commitment to hold a number of pre-budget debates, which could be very useful. In other European countries parliaments debate the budget process some time before budget day, which means the budget speech of their respective Ministers are effectively a summation of what has been decided by parliament. A move towards this type of system would be a positive development.

I am concerned that a report on child benefit has been leaked to the media. I am fed up with such leaks taking place, irrespective of the source. Someone should be disciplined for leaking information because it is unhelpful, a form of scaremongering and causes unnecessary upset to vulnerable people. I do not agree with paying child benefit on a universal basis. A millionaire should not be able to claim the payment. At one stage, a facility was in place in post offices for child benefit to be lodged in a savings account over a period. If someone can afford to save child benefit, he or she does not need it.

We need to have a mature debate on universal payments. They are not necessary because those who can afford to shoulder the burden should be required to do so. It is wrong for people

to expect a payment on the basis of their citizenship. Child benefit should be provided only to those who deserve it.

Senator Darragh O'Brien: Spoken like a true Tory.

Senator Martin Conway: I request a debate on this issue. Perhaps we should bring some of the relevant stakeholders before the House. With the referendum on children's rights imminent, this is an opportune time to examine the issue of payments to children.

Senator Sean D. Barrett: Yesterday, the *Irish Independent* carried a story on its front page which indicated that health insurance premiums would increase by €200 this year to cover the costs of looking after old people. I ask the Leader to raise with the Minister some of the efficiency issues Senators discussed with him last week. The Milliman review, which examined the issue of ageing by comparing data for 2010 and 2008, produced findings that contradict those published yesterday. The average age of VHI members has increased from 38 years to 38.5 years, the percentage of VHI members aged more than 65 years has increased from 13% to 14% and the percentage of those aged more than 80 years has increased from 2.8% to 3%. These figures are presented as justifying very large increases in premiums. However, the evidence presented on page 21 of the Milliman report suggests that while the ageing of the portfolio was a reasonably significant factor driving claims, it was not the most significant factor.

The Milliman review also found that VHI and hospitals have major efficiency issues. The Minister, in re-ordering the Health Service Executive, is starting out to make an efficiency gain. To achieve efficiency gains we must ensure the increase in premiums of €200 sought yesterday is not approved. Major issues arise with regard to VHI's monopoly. These problems and the high costs of Irish hospitals alluded to by other Senators should be tackled first. The basis for arguing that premiums are increasing as a result of the number of old people should be questioned. I hope the Leader takes up the matter with the Minister for Health.

Senator Catherine Noone: I concur with the comments made by Senator Conway on the report on child benefit. An expert group was commissioned by the Department to make proposals in respect of child benefit that would be cost-effective, improve employment incentives and achieve better poverty outcomes, especially in the area of child poverty. It is astonishing, annoying and typical that the group's report has been leaked. The Opposition and media are engaged in the type of kite-flying they accuse the Government of practising.

Senator Paschal Mooney: It is all our fault.

Senator Catherine Noone: As the report in question has not been published and is not in the public domain, I should probably not refer to it in the House.

Senator Darragh O'Brien: I was about to say that.

Senator Catherine Noone: Let us have a mature debate on child benefit, as suggested by other Senators. Let us have the Minister in the House in advance of the budget to have a helpful discussion about the proposals. However, one can well understand why the Minister would not be willing to engage when any report that is commissioned is put out into the media in such a negative light. It frustrates efforts in many ways.

I also want to raise the issue of cyber-bullying. There were disturbing events recently with regard to a child, Ciara Pugsley, who took her own life.

An Cathaoirleach: The Senator should refrain from naming individuals in the House.

Senator Catherine Noone: I apologise as I should not have named her. It is public knowledge as it was raised on television last night, however.

An Cathaoirleach: That is not the issue.

Senator Catherine Noone: The Internet is an invisible tool for the bullying for children. It is a significant concern and parents need to be educated about its dangers as well as the methods to ensure their children are safe when using the Internet. It is an issue we could usefully debate in this House.

Senator Labhrás Ó Murchú: Various speakers have spoken about the contrast between people in society who have problems and there is no doubt there are varying degrees of deprivation. There is no greater deprivation, however, than not to have a home, a roof over one's head and, accordingly, not to have any sense of self-worth. There can be nothing worse than having to take refuge in a derelict building or having to throw oneself down in a doorway or a ditch at night. This is happening in society as we have new homeless people coming on stream. Very often, it is virtually impossible for the official services to do anything for these people. That is why a body like the Simon Community is important.

I am always inspired by the many young people attached to the Simon Community. They go out at various hours of the night to do what is not exactly nice work with no monetary gain or obvious appreciation. There is even a danger to themselves seeking out these people who are outside the mainstream of humanity and who are not even regarded as a statistic. We should salute and support the Simon Community, as well as those other charitable bodies working away quietly, not looking for any spotlight for their work. If those bodies did not exist, the absolute intolerable suffering that would be inflicted on these human beings could not even be imagined. As the Simon Community is coming somewhat centre stage, as legislators it would be good for us, in the midst of all the other big issues we have, to take a little time to acknowledge the work of Simon and support, help and encourage it in whatever way we can.

Senator Tom Sheahan: I join colleagues who have called for the Minister for Public Expenditure and Reform to attend the House. One issue I would raise in a debate with him is the waste of public moneys. Recently, the Dublin Airport Authority, for example, painted a fire tender and then after six months repainted it to its original colour. This cost €7,000. The Department of Social Protection made welfare benefit overpayments of approximately €100 million to more than 63,000 claimants. The Department of Education and Skills overpaid teachers for nine months at a cost of €1.2 million. Up to €4,200 was paid by Waterford Institute of Technology to charter a plane to take a Department of Education and Skills consultant from Waterford to Dublin. By the time they had got through airport security, they would have been half way up the Waterford-Dublin road by car. This is an example of wasteful spending. We should get the Minister in and allow Members from all sides point out constructively and positively what they see as wasteful spending. If he can tackle that, perhaps the forthcoming budget will not be as severe as expected.

Senator Trevor Ó Clochartaigh: Maidir leis an liúntas leanaí, ba mhaith liom a rá go bhfuil Sinn Féin i bhfábhair go gcoinneofaí an íocaíocht uilíoch. We are in favour of retaining universal child benefit. We would much prefer if Government Senators and Deputies focused on exactly where the wealth is, because the principle of the payment of child benefit is a pay-

ment to the child. That has always been a long-held view of the Labour Party in the past and it is a shame to see it doing a U-turn on it or talking about that at this stage. We would much prefer to see Labour Party members focusing on where the wealth of the country is and we will put forward proposals in our pre-budget submission on that issue.

I would like to mention the matter I wished to raise on the Adjournment, which has been ruled out of order. The matter relates to fire services in south Connemara, but I have been told this does not relate to the powers of the Minister. I call for a debate with the Minister to ask him to explain who is in charge of fire services. When we asked the director of services in Galway County Council the question I wanted to raise, we were told we would not get the information. The director of services is working for the county council, which is under the direct responsibility of the Minister for the Environment, Community and Local Government. This is an important and serious issue and there are concerns about it.

Last week was the fifth anniversary of the dreadful fire in Bray, where two fire fighters were tragically killed. Relatives have said that in the five years since that tragedy, nothing has changed with regard to how fire services are run. The issue in Connemara relates to the fact that there is no fire service based in south Connemara. We have been campaigning for that for a long time. I know a national strategy is to be put before the Houses of the Oireachtas. It would be pertinent if the Minister could come in and tell us who is in charge of the fire services in the country. Is it the Minister, and if not who is it? We should debate whether the fire services we have are suitable for our needs.

Senator Paul Coghlan: We all commend Archbishop Diarmuid Martin for his support for the children's rights referendum. He correctly pointed out that it clearly balances rights and obligations. That sets it out properly. I also commend him on his advocacy of uniformity of dress and a more simple celebration for children on the occasion of their First Holy Communion.

With regard to child benefit, I am always struck by the tongue in cheek performances of Senator Darragh O'Brien, when he knows perfectly well this is a budgetary matter, whatever about the leak. Senator John Whelan set out a view to which we would all subscribe. Child benefit was clearly designed for low income families, not the well off, particularly at this difficult time for the country. It was never intended for the well-off. Senator Whelan gave examples of people being able to save it.

Senator Trevor Ó Clochartaigh: It is a payment to the child.

Senator Paul Coghlan: With respect, I think Sinn Féin is totally wrong.

An Cathaoirleach: The Senator should speak through the Chair.

Senator Paul Coghlan: Senator Whelan said it well when he said it was something for low income families, to support their children, not for the well-off who can always support their children.

Senator Denis O'Donovan: I ask the Leader to arrange for a debate on the ongoing plight of the trainee airline pilots. After much toing and froing over the summer, they have found that the pilot training college in Waterford has gone belly-up, into liquidation. These trainee pilots have paid in something between €5 million and €10 million for their training and there are different accounts of what has happened. I am deeply concerned about this as the Minister, Deputy Varadkar, has decided to abdicate his responsibility in this regard. If this type of service

or treatment was delivered to any other education facility on this island, whereby almost 300 students were out of pocket for substantial sums, there would be a hue and cry about it.

I raised the matter in the first week of July last, supported by colleagues such as Senators Keane, Whelan and others. While I am not making a political point, something is radically wrong. Substantial sums were paid earlier this year to this training college, which is affiliated to and accredited by the Irish Aviation Authority and supported by the Department. All of a sudden, the money and the company seem to have gone wallop. The Minister made a big play of bringing some, though not all, the pilots back from Florida at a cost of €400 or €500 each, and had he not done that, they would probably have been sent home by the American immigration authorities.

I make the following points to the Leader. First, were the Garda authorities contacted in this regard? Second, has the Director of Corporate Enforcement been asked to look at what happened in the six months leading up to the collapse of this company and the loss of this money? Third, the Minister and his Department should take a more hands-on approach, take off the kid gloves and tackle this issue head on.

There is a serious issue which is worthy of a debate in this House. The Leader suggested to me on a previous occasion that I should table a motion on the Adjournment. However, this is a broader issue that affects many people who are dealing with education facilities which are similar to third level facilities. As I said, if it was any other college in any other part of Ireland where students were left out of pocket and left half-trained or untrained, there would be a hue and cry. Given this was the House where the matter was first raised, it is a dereliction of our duty not to have a proper debate on it. With all sincerity, I again urge the Leader to consider asking the Minister, Deputy Varadkar, to come to the House for a one or two-hour debate to find out whether we can get to the bottom of this debacle.

Senator Terry Brennan: I support the call for a debate on child benefit. I give the example of two young men from the same townland who were educated together and who both qualified from UCD. One family toggled the son out in all the gear to do his interviews, having been so successful, whereas the other family bought a Renault 21 for their successful student. My point is that both families were receiving children's allowance but one family needed it and, in my opinion, the other did not. Both mothers came together and stated that most of the cost of the car was from saving the children's allowance. Something must be done.

On another issue, maps were drawn up at the beginning of the last century, about 1907, indicating areas of the country liable to flooding. In recent times we have had flooding, the overflowing of rivers and so on. I call on the Minister of State, Deputy Brian Hayes, to initiate an up-to-date mapping of the country indicating the areas liable to flooding. Parents built houses 40 years ago in designated areas where there has been no flooding-----

An Cathaoirleach: Is the Senator calling for a debate on this issue?

Senator Terry Brennan: -----but their sons and daughters are being refused in the same areas. I call for an urgent debate with the Minister of State.

Senator Diarmuid Wilson: I join Senator Whelan in congratulating Senator Hayden on her appointment or election - I am not sure which - as the Whip of the Labour Party group. I pay tribute to the former Whip, Senator Susan O'Keeffe. It is not an easy job being a Whip and it is certainly not an easy job being an assistant Whip to a Government Whip, particularly when

that Government Whip is Senator Paul Coughlan. I wish her well.

An Cathaoirleach: Is the Senator looking for a debate on this issue?

Senator Diarmuid Wilson: No, I think there has been enough debate within the Labour Party on that issue and I do not want to go any further.

With other colleagues, I call on the Leader to arrange a debate on child benefit. During that debate we need to define who the less well-off are, because from the point of view of optics, somebody may look wealthy and affluent but in reality, he or she may not be.

I join colleagues in commending Archbishop Diarmuid Martin for his initiative in banning fancy dresses and outfits and designer clothes from First Holy Communion and confirmation ceremonies in the Archdiocese of Dublin. I call on other bishops to do likewise. As this is something which puts huge pressure on families - that is, keeping up with the Joneses - I very much welcome this initiative and call on other bishops to follow suit.

Senator Michael Mullins: Like many other speakers, I deplore the leaks from various Departments about what might and might not be in the budget. Many Members have called for a debate on child benefit and universal payments but I would like that debate to be widened. The Minister for Social Protection has a budget of €21 billion and we need a debate on the social welfare budget. There is much wisdom in this House and many Members would like an opportunity to have an input into how we can best target that large budget to the most deserving people in our communities. We all query whether child benefit should be a universal payment. There are arguments for and against that and we would all like the opportunity to make our views known.

Our friends from Sinn Féin are always talking about taxing the wealthy. I wonder who the wealthy really are. Is it the small business person who, a few years ago, employed maybe five or six people but is no longer in a position to earn money and cannot get any benefits? Is it the public servant or the person who worked in industry who got a retirement lump sum and was encouraged by the bank to invest it in bank shares but is now penniless as a result? I ask the Leader organise a debate on the social welfare budget to give us an opportunity to have an input into how we believe that budget should be best targeted and to give the Minister the wisdom of this House before she announces it, because we all want to see the best outcomes for people who are most vulnerable and need assistance from the State.

Senator Mark Daly: Will the Leader arrange a debate on some of the parades taking place in Belfast? I pay tribute to the Catholic community in Carrick Hill in Belfast, who organised a dignified protest against the Orange Order parade that went through their area at the weekend. Over the summer months there has been serious tension in Carrick Hill because of the triumphalist nature of the parades and the anti-Catholic and sectarian songs being played by the Orange Order, the Apprentice Boys and the Royal Black Preceptory as they went past St. Patrick's Church in Carrick Hill. I pay tribute to the women of Carrick Hill, who held a silent and dignified protest outside their church, and to Mr. Frank Dempsey, the community organiser who ensured the protest went off without incident. I witnessed it with other Members of the House and civil servants from the Department of Foreign Affairs and Trade, and it was quite a sight to behold. There were 100 PSNI Land Rovers and hundreds of PSNI officers around this church with only 50 of the Carrick Hill community allowed to protest and with thousands of bandsmen and women passing this church in what can only be described as an intimidating manner, but it

went off peacefully. The head of the Orange Order spoke in the House about debate. We called for talks between the communities, which they want, with the Orange Order so as to ensure that the parades pass off peacefully.

If the Cathaoirleach will bear with me, I wish to raise two other issues; one is social welfare on which the Labour Party was giving out to Fine Gael about proposed cuts to child benefit prior to the previous election. The Labour Party was castigating Fine Gael for putting forward proposals on changing child benefit.

An Cathaoirleach: The Senator is over time. I have a number of Senators offering.

Senator Mark Daly: The other issue relates to suicide prevention. I ask the Leader for a debate on why a director for suicide prevention has not been appointed after five months. We have more than 600 suicides a year-----

An Cathaoirleach: I call Senator Healy Eames.

Senator Mark Daly: -----yet we do not have action by the Government on the issue.

Senator Fidelma Healy Eames: Fairness must be at the core of the debate on universal payments. We must face up to the question of equality. Since when were we all equal? We must take the approach of assessing each person according to his or her means. A balance must be struck in the debate because, currently, middle-income families are being squeezed as well. In fact, the evidence is that they are the ones paying all the taxes and charges. I agree with my colleague, Senator Mullins, who sought a wider debate on social protection and the social welfare budget. One could ask whether we have reached a time in this country when we must specify the income limit a family must get on social welfare. We must examine the issue if we are to be truly fair.

I seek a debate on social media. We have seen the worst excesses of that in the claim by a father last night on “The Frontline” that his young daughter committed suicide as a result of cyber-bullying. The debate I seek is not on education. While it is important, it is not enough. We must consider regulation. I call on the Leader to invite the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, to the House to talk to us about the regulation that exists in this country on the identification of those who post information on various web-sites. Such people must reveal their identity and not hide behind pseudonyms or anonymity. How can we follow such people? How can the Garda be called in by parents if they are concerned about someone abusing or bullying their child if they are not known. What regulation is there on sites that have IP addresses outside of this country? The situation has gone mad and now we see it can be fatal. I urge the Leader to arrange such a debate as soon as possible.

Senator Colm Burke: I join my colleagues who have raised the issue of Simon Week. Last night I attended the launch of a Simon project by John Lonergan, former governor of Mountjoy Prison. During the course of his speech he was interrupted by someone who was complaining about the fact that they were locked out of the Simon Community hostel the previous night, which indicates the strain it is under as regards accommodating the number of people who are now living on the street. It would be appropriate to have more joined-up thinking between voluntary agencies such as the Simon Community and local authorities about moving people on from hostel accommodation if that is possible. I am not sure enough work is being done in terms of giving assistance to the Simon Community to help people to get off the street into a hostel and then move on to permanent accommodation. We must do more.

Much effort is made by the volunteers in Cork alone. They have to raise more than €1 million a year to keep the facilities there going. That is a huge contribution by people but the support they give is also a recognition of the work the Simon Community does. There is a need for much more to be done both by the Government and at local authority level in working with the Simon Community to deal with the problems.

Senator Maurice Cummins: Senator Darragh O'Brien asked about the pyrite report. The Minister for the Environment, Community and Local Government, Deputy Phil Hogan, had agreed to come to the House next week to discuss this entire issue, but as I understand the Senator is to introduce a Private Members' Bill dealing with the pyrite issue, all matters will be revealed during that debate.

Senators Darragh O'Brien, John Whelan, John Kelly, Rónán Mullen, Martin Conway, Catherine Noone, Paul Coghlan, Terry Brennan, Diarmuid Wilson, Michael Mullins and Fidelma Healy Eames - I hope I have not missed anybody - spoke about child benefit. The simple fact of the matter is that the Government has not yet considered any issue relating to child benefit and the budget; anything other than this is speculation. People complain about leaks and suchlike, yet they want us to deal with speculation.

Senator Diarmuid Wilson: There was speculation about the closure of Army barracks.

Senator Darragh O'Brien: We need clarity on the issue.

An Cathaoirleach: The Leader to continue, without interruption.

Senator Maurice Cummins: The group set up to consider the issue examined options for the reform of child benefit, including taxation of the payment and having a two-tier system. I look at the Members opposite and consider the hypocrisy of Fianna Fáil on the issue.

Senator Darragh O'Brien: Change the record, Maurice.

Senator Maurice Cummins: I know the Senators do not like to listen, but they will have to because we intend to say it.

Senator Darragh O'Brien: Go on; we are ready for you, Maurice.

Senator Maurice Cummins: The options in question were first proposed under a Fianna Fáil Minister for Social Affairs, Mary Hanafin, in a policy review of child benefit and associated programmes which she initiated in 2009.

Senator Darragh O'Brien: That was only a draft which was not accepted.

Senator Maurice Cummins: Structural reform of child benefit was also advocated by the previous Fianna Fáil-led Government in the 2010 national recovery plan. In that famous plan it was suggested structural reform of child benefit could include a rebalanced and integrated child income support payment system. This was to provide for a universal component, with one single payment rate per child, which would be supplemented by a further payment in the case of children of families in receipt of a social welfare payment.

Senator Darragh O'Brien: If the Government does that, it will be doing okay.

(Interruptions).

Senator Maurice Cummins: Has the Senator heard that anywhere within the past couple of hours? It is the same proposal.

Senator Darragh O'Brien: Let the Minister come and we will have a chat about it.

Senator Maurice Cummins: I announced on several occasions in recent weeks that the Minister for Social Protection, Deputy Joan Burton, would attend the House on 16 October.

Senator Diarmuid Wilson: It is not that long ago when the Leader's party wanted to give child benefit to persons who did not even have children.

Senator Maurice Cummins: The Minister will come to the House and every Member will have the option of speaking. Again, I hope the Members who have requested a debate on the issue will attend the House when it is raised.

Senator Darragh O'Brien: We are always here.

Senator Maurice Cummins: The question on the VEC in Dublin can be addressed in an Adjournment debate. It is really one for the VEC.

Senator John Whelan and other Members mentioned Archbishop Diarmuid Martin. His comments on both the children's rights referendum and the excessive amounts spent by families when celebrating a child's First Holy Communion and accompanying events such as parties and so on have been welcomed by the vast majority of people in the country. As Senator Diarmuid Wilson stated, I hope the archbishop's brother bishops will take on board what he said and will be encouraged to make similar statements in their own dioceses in this regard.

Senator John Whelan also mentioned the closure of AIB branches. We will bring to the attention of the Minister for Finance the fact that 53 branches are to close to see if anything can be done to prevent this. It is a matter for AIB, but we will raise it with the Minister.

I refer to burden sharing with junior and subordinated bondholders, a matter that has been raised since March 2011. Burden sharing measures with junior bondholders have delivered a figure of €5.8 billion, a sum that would otherwise have been provided by the taxpayer. That is an aspect of this matter which people would do well to remember.

Senator Darragh O'Brien: Junior bondholders were also burned by the previous Administration.

Senator Maurice Cummins: Senator Mullen referred to the universality of child benefit. It appears that he agrees with Sinn Féin's policy to the effect that millionaires should also be paid child benefit.

Senator Trevor Ó Clochartaigh: No; he stated that they should be taxed properly.

Senator Maurice Cummins: Senator Henry referred to alcohol abuse. We will endeavour to have the Minister of State at the Department of Health, Deputy Alex White, come before the House at the earliest opportunity. I did so last week but I again wish to thank the former Minister of State, Deputy Shortall, for spending so much time in this House and for always coming here when requested. I also thank the former Minister of State for her commitment to tackle alcohol abuse. She had agreed to come before the House later this month in order to discuss that issue. I am sure the new Minister of State, Deputy Alex White, will continue where Deputy

Shortall left off.

Senator Norris referred to Clerys department store. I am sure all Members would express the wish that the staff who are being obliged to leave the company should receive their full entitlements.

Senator Jim D'Arcy referred to the NCSE report in the context of the recommendation it contains that responsibility for behaviour management in schools be given to one member of staff. I note the Senator's remarks and also the comments made by the many teachers who brought this matter to his attention.

Senator Reilly referred to primary care centre staffing. The House is due to take Committee Stage of the Health Service Executive (Governance) Bill next week. Perhaps the Senator might raise the matter to which she refers with the Minister when he comes before us for that debate. As stated, the Minister for Social Protection is due to come before the Seanad in a couple of weeks time.

Senator Walsh asked that I arrange a debate with the Minister for Public Expenditure and Reform. I have made a request in this regard and hope the Minister will accede to it.

Senator Barrett referred to the efficiency of health insurers, particularly VHI. I suggest that this matter might also be raised with the Minister for Health when the House takes Committee Stage of the Health Service Executive (Governance) Bill next week.

Senators Noone and Healy Eames referred to cyber-bullying. Last week the House engaged in a good debate on homophobic bullying, during which the question of cyber-bullying was raised. However, I agree that, as the Senators suggested, there is perhaps a need to ask the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, to come before the House to discuss the matter of control of the Internet.

Senators Ó Murchú and Colm Burke referred to homelessness and applauded the Simon Community and all other agencies that work with the homeless for their efforts. The Government is determined to find a better way to address homelessness and to prevent it. I am sure the Senators will agree that there are no simple or easy solutions to this complex problem. In the programme for Government we are committed to reviewing the current national strategy and to adopting a housing-led approach to homelessness. The Department of the Environment, Community and Local Government's funding provision for running costs in respect of homeless accommodation and related services for 2012 is €50 million. When added to the 10% provided by the Housing Agency from its own resources, this means that a total of €55.5 million in funding will have been made available this year. Funding at this level means that there will be no diminution in the provision of essential front-line services. I agree that we should applaud the efforts of and give every possible encouragement to all the voluntary agencies that are involved with the homeless.

Senator Sheahan raised a number of matters in the context of wasteful spending. I understand the Committee of Public Accounts is dealing with those issues to which he refers. However, I will certainly invite the Minister for Public Expenditure and Reform to come before the House for a debate on them.

Senator Ó Clochartaigh asked about the provision of fire services in Galway. This is a matter for Galway County Council and I suggest that is where it should be raised.

I have addressed Senator Paul Coghlan's reference to Archbishop Martin's comments.

Senator O'Donovan raised the matter of the plight of trainee pilots. Their training was licensed by the Irish Aviation Authority and a number of questions arise. The Senator referred to the Garda Síochána and the Director of Corporate Enforcement. I am aware that he wrote to the Minister who replied at the time. I suggest if the Senator writes to the Minister and includes those questions again, he will give him a comprehensive reply.

Senator Brennan asked about the provision of maps for areas liable to flooding. I will bring this matter to the attention of the Minister of State with responsibility for the Office of Public Works, Deputy Brian Hayes, who when he was in the House recently spoke about flooding.

I have addressed the points about social welfare which were also raised by Senator Wilson. He also raised the issue of the excessive use of the whip but I am sure he is quite used to that.

Senator Daly spoke about the parades in Northern Ireland. We are all delighted that they took place relatively peacefully. Matters relating to the parades have been addressed comprehensively by the Joint Committee on the Implementation of the Good Friday Agreement which has maintained a good rapport with all involved. We thank all those involved in ensuring that the events were peaceful.

I wish to correct the inaccuracies mentioned in newspapers and by Senator Daly. The Government has increased the budget for the National Office for Suicide Prevention from €4.1 million to €7.1 million. This highlights the priority placed on the matter by the Government. I do not think it is correct to say that the position of director has been vacant for five months. The position has been vacant since 10 September when Dr. O'Keeffe was seconded by the Department of Health to work on a new national project on public health and well-being which will include a policy on early prevention of suicide. On 27 September 2012 expressions of interest were sought from the general manager, local grades and higher within the HSE in the position of director of the National Office for Suicide Prevention. The closing date for receipt of applications is 10 October. The interview process will be held on 22 October. In the interim, Martin Rogan, assistant national director of mental health, will take responsibility for the National Office for Suicide Prevention.

An Cathaoirleach: Senator Darragh O'Brien has proposed the following amendment to the Order of Business, "That the Minister for Social Protection, Deputy Burton, come to the House to clarify the position on child benefit and confirm that she will see through the Labour Party's commitment to protect child benefit at current rates and the universal nature of that benefit." Is the amendment being pressed?

Senator Darragh O'Brien: Yes.

Amendment put.

The Seanad divided: Tá, 18; Níl, 30.	
Tá	Níl
Barrett, Sean D.	Brennan, Terry.
Byrne, Thomas.	Burke, Colm.
Daly, Mark.	Coghlan, Eamonn.
Mac Conghail, Fiach.	Coghlan, Paul.

2 October 2012

Mullen, Rónán.	Comiskey, Michael.
Norris, David.	Conway, Martin.
Ó Clochartaigh, Trevor.	Cummins, Maurice.
Ó Murchú, Labhrás.	D’Arcy, Jim.
O’Brien, Darragh.	D’Arcy, Michael.
O’Brien, Mary Ann.	Gilroy, John.
O’Donovan, Denis.	Harte, Jimmy.
O’Sullivan, Ned.	Hayden, Aideen.
Power, Averil.	Healy Eames, Fidelma.
Quinn, Feargal.	Heffernan, James.
Reilly, Kathryn.	Henry, Imelda.
Walsh, Jim.	Higgins, Lorraine.
White, Mary M.	Keane, Cáit.
Wilson, Diarmuid.	Kelly, John.
	Landy, Denis.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Noone, Catherine.
	O’Donnell, Marie-Louise.
	O’Keeffe, Susan.
	O’Neill, Pat.
	Sheahan, Tom.
	van Turnhout, Jillian.
	Whelan, John.

Tellers: Tá, Senators Ned O’Sullivan and Diarmuid Wilson; Níl, Senators Paul Coghlan and Susan O’Keeffe.

Amendment declared lost.

4 o’clock

An Cathaoirleach: Owing to Senator Norris omitting to vote “Tá”, the result will be amended.

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

An Bille um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí) 2012: An Dara Céim

Thirty-First Amendment of the Constitution (Children) Bill 2012: Second Stage

Tairgeadh an cheist: “Go léifear an Bille an Dara hUair anois.”

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

Acting Chairman (Senator Michael Mullins): No. 19 on the Order Paper, motion pursuant to section 23 of the Referendum Act 1994, prescribing a formal statement for the information of voters to be included in the polling card, will be debated in conjunction with Second Stage of the Bill. The motion will be formally moved when the debate on the Bill has been concluded. I welcome the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald.

Minister for Children and Youth Affairs (Deputy Frances Fitzgerald): We are here to discuss the Thirty-First Amendment of the Constitution (Children) Bill 2012, a Bill that will move the position of children onto a new plane as regards recognition of the unique qualities and vulnerabilities of childhood and adolescence and reflect this in constitutional change. Few changes matter as much as this one. Much of what we do in these Houses is about legislation which, by its nature, must be about delivering to meet the needs and problems of today. Constitutional change goes way beyond this in terms of the imprint it leaves on values for upcoming generations.

The Bill provides us, as legislators, and, ultimately, the entire voting public with the rare opportunity to look at how we view children in society and reflect that view in the Constitution. Whatever the answer to this may prove to be in the decision of the people in the referendum, it is certain from the reaction to date to the proposed measures that we do not wish the position to endure that children are virtually “invisible” in the Constitution. The opportunity the Bill puts before us is for this generation to author an enduring positive message to future generations that we place among the highest values of our society the protection and welfare of children.

The Constitution, rightly, recognises the centrality of the family and the special position of parents in the care and upbringing of their children. This is guaranteed by the Constitution under Articles 41 and 42. Let me be clear that the referendum will not alter this position. Unfortunately, however, all children do not have a safe and nurturing family life and hard, sometimes awful, experience has taught us that the rights of children to be protected can reveal tensions between the constitutional rights of different parties which may complicate or suggest a basis for reservation as regards taking resolute action on behalf of the child at risk. This is not something newly discovered. As far back as 1993, Mrs. Catherine McGuinness, a former Supreme Court judge, in her report on the Kilkenny incest case, pointed to the need for constitutional change in respect of children. At the time she was talking about a young girl who had been raped over a period of 15 years by her father. When she heard the case, she felt this type of change was necessary in the Constitution in order to protect that child and other children like her. Since that time successive Governments have received report after report and evidence upon evidence that the Constitution is failing children. Members of this House will be all too familiar with the litany of human misery contained in various reports over many years. That failure was multifaceted.

That knowledge leaves us facing a simple question: do we believe the way children were treated in the State represents what we believe to be the values, morals and ethics of the people? I have absolutely no doubt that the answer of the people to that question is a resounding “No.” When all of the complex and sophisticated arguments are boiled down to whether anything

should be allowed to get in the way of protecting children from abuse or neglect, the common will of the people is crystal clear - the safety and welfare of the child are paramount. However, up until now we have failed to make sure this national determination to ensure the safety of children is adequately expressed, enacted and implemented. This applies across the range of discussions on the issue. This is about constitutional change, but it became clear in the discussion in the Dáil - I am sure it will be here also - that it was also about how we delivered services, as well as resources. The referendum is our opportunity to put this right at a constitutional level, but it is only part of the solution.

As a Member of this House at the time, I was privileged to serve on the Joint Committee on the Constitutional Amendment on Children under the chairmanship of then Deputy Mary O'Rourke, to whom I pay tribute for the work she did as Chairman. A huge amount of work was done on that committee, with 64 dedicated meetings and 175 written submissions. Its work means there is a significant body of study and authority in regard to the challenge of achieving an effective rebalancing of rights under the Constitution in order that there can be a greater focus on the welfare of the child.

Since taking office, my Department and I have been working very closely on the amendment, together with the Office of the Attorney General, to whom I pay tribute for the time, care and attention to detail she and all her staff have taken in working with me and my Department to make the transition from the committee wording to a robust constitutional wording. There is a transition to be made given the all-party committee wording is different. That is, in fact, what we have done to ensure we have the desired effect for children. Based on the comments and the support articulated to date from many quarters of society, including yesterday from Archbishop Martin, I believe we have struck that balance. Clearly, there will be different views and I have said again and again that there is no perfect wording. What I wanted to do was come up with a strong and robust constitutional wording that was meaningful and protected children.

The Bill proposes a new dedicated article, Article 42A, titled "Children", which will contain a series of provisions and will be put to the people as one, single question for their approval on 10 November. Members will appreciate, and we need to consider this quite carefully, that the Constitution must be read as a whole. Changes to the Constitution and the formulation of appropriate wording to achieve the desired change is a complex and challenging task. The aim of the Government in this case has been to present a coherent proposed wording which will interact, in the manner intended, with the Constitution as a whole. The balance to be struck is critical as to how effectively the new article will feature as part of the key considerations that must be carefully weighed in deciding actions on the future care of children. Critics might say it constitutes some form of attack on the family and, in particular, the rights of parents, which it certainly does not. However, I respect the right of every person to have his or her say on what is being proposed in the referendum and I am happy to address those concerns.

The Government's commitment was to bring forward a constitutional amendment to strengthen children's rights along the lines of the joint committee's recommendations. However, the committee also rightly expressed the view that many people regard Article 41 as central to the rights of the family under the Constitution and as generally reflecting the social and cultural view of the importance of the family. The committee felt that the continued existence of Article 41 provided that assurance to parents. On balance, the committee favoured retaining Article 41 and felt that the combination of its wording and that article provided a better balance of rights as between the State, the family and children, obviously in conjunction with the new article.

The Bill is fully consistent with the thinking and approach of the committee in this crucial regard. It makes no change to Article 41 and so does not remove or diminish the recognition given to the family under the Constitution. Nor does it remove or alter the rights and duties of parents under the Constitution to provide, in accordance with their means, for the education and care of their children.

Last week marked the 20th anniversary of Ireland's ratification of the United Nations Convention on the Rights of the Child, UNCRC. I have to say I have heard what I consider some rather bizarre and unfounded comments and criticism of the UNCRC. The UNCRC has been ratified by more countries than any other human rights convention, with only two countries not having ratified it. The principles of the UNCRC are important and we have done much in this country to act on those principles. I visited a conference on Friday last on play and recreation for children. The UNCRC has something very strong to say about cultural, social, play and recreational opportunities for children and, equally, it states at Article 7 that the bonds a child has to their family must be maintained and supported. It names these principles for which there is universal support.

Other issues have arisen during the initial stage of debate and more issues will undoubtedly arise in coming weeks. It is my hope that we have a debate which is fully informed. I would ask every Member of this House to play their part in fostering informed debate and to highlight *childrenreferendum.ie*, the website where we will reply to all of the different points which are emerging and try to give as informed a view as possible on all of the issues and the meaning of the different words, because there is quite a lot of focus on the meaning of the different words and phrases which are used in the amendment. I ask people to read the proposed wording. It is drafted in constitutional language and is four sections long. It is not 20 pages like the stability treaty so it should be somewhat easier - if complex enough - to read in conjunction with the Constitution. On reading it, the clear purpose of this amendment comes shining through.

Childhood does not stand still and can be a very vulnerable time. We see from reports, including the child death report, that timely and effective decision-making for vulnerable children is critical. If one analyses what is in the child death report, one will find that one of the big failings was that there was not enough timely and effective decision-making and that the kinds of decision that should have been taken in order to protect them in a whole variety of ways were not taken.

Some families clearly need help and support in parenting their children and this can involve providing family support, including addiction and mental health support and family and individual counselling. The best place for a child is with the family. The intervention must be proportionate and the Government is doing an awful lot in terms of providing support to families in communities, whether it is through counselling grants, budgeting for family resource centres or direct help to families. However, in the more serious cases, children may be moved from the family and cared for by people other than their parents. It is a sad fact that more than 85% of non-voluntary admissions to care in 2011 were due to abuse, neglect and serious family problems. There are a large number of admissions to care for very short periods to support families going through transient problem; in such cases, the child returns to the family within two to three months. Clearly, that is where most effort is directed to try to ensure reunification where possible.

There are approximately 6,250 children in care placements currently. We are fortunate in this country that more than 91% of all children in care are living with a foster family. When

people talk about State care, it is really important to remind ourselves that State care effectively means living with a foster family. That is different from some other countries. It is within a loving family and a family setting. Our focus when children are in care is very much on family care. Some 2,000 children have been living with a foster family for more than five years. Some of those children would be eligible, in some circumstances, for adoption but up to now have not been for the reasons I outlined. This is a referendum for all children but, in particular, for those children most vulnerable and most at risk.

What is the referendum about? It is about treating all children equally, particularly by removing inequalities in adoption. It is about protecting children from abuse and neglect by placing the protection of children at the centre of decision-making. I will outline how in the wording we have put the focus on the impact of the failure on the child. It is a newer approach to ask what is the impact of the failure on the child, as opposed to highlighting the failure of the parent. The referendum is about supporting families by reaffirming and underpinning early intervention and family support services to protect children in their homes, and that is shown by the use of the word “proportionate”. It is about recognising children in their own right.

I will now focus my comments on the intent of the different elements set out in the amendment that is to be put to the people on 10 November next for incorporation in the Constitution. I will not read out each sub-article because Senators have them in front of them. Sub-article 1 sets out rights for all citizens. This sub-article will provide, for the first time, a strong affirmation of the rights and protections to be enjoyed by children as children. The proposed Article 42A specifies certain rights that relate to children having regard to their age and potential vulnerability. Given that the Constitution is to be read and interpreted as a whole, these rights relating to children will be in addition to, not instead of, existing Constitutional provision. That is a very important point. Some lawyers have said, for example, that the general provision on the rights of all citizens is inclusive of children. Of course, it is; it relates to everyone, but what we are doing is inserting a specific article, given the vulnerable period of childhood and because we have so many reports and instances where it was considered the balance was not right. It is an addition to, not instead of, existing constitutional provision.

Sub-article 2.1 will replace the current Article 42.5 under the heading of “Education” in the Constitution. Moving this article from under the “Education” provisions fits well with having a new article relating to “Children”. All of the educational provisions remain in the Constitution. We have not dealt with education under this provision. The articles remain as they are in the Constitution. The committee did deal with educational provisions, but we have focused entirely on the previous article.

There has been uninformed comment, even scaremongering, on the powers the proposed amendment will give the State to intervene in the family to protect children at risk. Certainly, as I have said, the State has failed children and families in the past. It is, however, charged by the people with the duty of protecting the common good. Our job, as legislators, is to ensure services are fit for purpose to follow through effectively and efficiently on the solemn responsibility the people have entrusted to the State in that regard but in an equitable manner. As I have said, the sub-article replaces an existing provision in the Constitution which states:

In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as the guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

There are a number of points I wish to highlight in that regard. One is that the power is to be used in exceptional cases. Second, there must be a failure by the parents in their duty towards their children, for physical or moral reasons. That is what was in place previously. Third, the means of intervention used by the State must be “appropriate”; and, fourth, there must be “due regard to the natural and imprescriptible rights of the child”. I will not read out the new article, but, again, it refers to the State only making use of the power in exceptional cases; there must be a failure of parental duty towards the child - “where the parents, regardless of their marital status, fail in their duty towards their child”; any failure must involve the likelihood of harm or risk to the child’s safety or welfare - “to such extent that the safety or welfare of any of their children is likely to be prejudicially affected”; the actions of the State must be in balance with the harm or risk to the child that needs to be addressed “by proportionate means; the actions the State can take must be set out in law “as provided by law”; and there must always be due regard to “the natural and imprescriptible rights of the child”.

The articles must be read together. The reference to “exceptional” applies to all children. It is spelled out how the harm must be analysed by “proportionate means” and the response must be “as provided by law”. There is a whole series of connecting statements that must apply in the interpretation of the article. The cumulative effect of the new wording is to place the protection of children at the centre of decision-making. That is the key point. It places the protection of children at the centre of decision-making, regardless of their parent’s marital status. As I have emphasised, this wording will not change the assumption in law which is shared by Irish society that the best place for children is with their families. As I have said, protecting children and supporting families are simply two sides of the same coin. With this in mind, let us be clear that it is not the mission or objective of the child protection services to take children into care unless that is absolutely necessary to ensure the child’s safety and well-being. The explicit inclusion in the amendment of a reference to a response by “proportionate means” seeks to reaffirm this principle, as well as reaffirming and underpinning the State’s continuing development of early intervention and family support services, to protect children in their homes.

The commitment to not retaining children in care for longer than is necessary for their safety and welfare is perhaps best demonstrated by the fact that large numbers of children stay in care for relatively short periods. As in the figure I quoted for 2010, one third of children who came into care were discharged within the same year.

The next sub-article is Article 42A.2.2°. The Constitution currently does not refer to the circumstances in which adoption may be provided for in law, which has created some uncertainty in the development of laws dealing with this important area. As I stated, 91% of children in care are cared for by foster families, with over 2,000 children living with the same foster family for more than five years. In not all of these cases would adoption be appropriate; the children might not want to be adopted or the foster family might not be in a position to adopt them. Nevertheless, only 16 children in foster care were adopted in each of the years 2011 and 2010. There is probably a variety of reasons for this but I will give one. The High Court cannot authorise the Adoption Authority to make an adoption order unless it is satisfied there has been a failure of duty by the parents towards their child, that this failure is likely to continue until the child is 18 years old and that the failure amounts to the parents’ giving up all rights towards the child. Therefore, while it is already the case that a child who is in care may be adopted by his or her foster parents, in practice this happens to a very limited extent and only in the most extreme of cases, as the test set out in existing law is difficult to meet. The proposed wording provides for the making of legislation to allow for adoption where it is in the best interests of a child who is

in foster care due to the serious and persistent failure of his or her parents in their duty towards the child, irrespective of the parents' marital status. The aim of this change is to promote family care, remove inequalities in adoption and put the treatment of all children on an equal footing.

I refer Senators to the general scheme of the adoption (amendment) Bill 2012, which outlines clearly the detailed legislation that will follow if the referendum is passed. This will come to the Houses for discussion and to be passed as legislation. I gave Senators details about what is in the draft Bill and the circumstances that will apply. This draft outlines the role of the High Court, which must be satisfied that the parental failure constitutes an abandonment of parental rights. The court must also be satisfied that adoption is the most appropriate way in which to provide for the parenting of the child. It must consider the constitutional rights of all parties, including the natural parents where they wish to be heard, but ultimately, in the resolution of these proceedings, the best interests of the child must be the paramount consideration for the court. I also outlined the timeframes involved. Parents will have to have failed in their duty towards the child for three years and have no reasonable prospect of resuming care of the child. In addition, the child will have to be at least 18 months in the care of foster parents who are applying to adopt. It is worth reminding ourselves that most adoptions in this country are inter-country adoptions, with more than 3,000 such adoptions taking place in recent years. There are very few young children available or suitable for adoption in this country and this legislation is more likely to affect older children. In other countries it is increasingly seen that it is older children who have been with foster parents for some time who are available for adoption.

Article 42A.3 concerns the voluntary placement for adoption and adoption of any child. The aim of the change is to make it possible for married parents to place their child for adoption and consent to an adoption in the same way as a parent or parents who are not married. Most people probably do not realise the current constitutional position. I am not sure what the numbers are likely to be, but this will take away an existing impediment. The numbers will probably be low. However, it brings to an end the current constitutional situation in which children are treated differently on the basis of their parents' marital status. Adoption will continue to be carefully regulated. Every adoption must go to both the Adoption Authority and the High Court. It is a stringent process and will remain so.

Article 42A.4.1° provides that the best interests of the child are the paramount consideration. This "best interests" principle is already well established in Irish statute law under the Guardianship of Infants Act 1964, the Child Care Act 1991 and the Adoption Act 2010. The referendum will give constitutional recognition to this principle. By recognising the principle at constitutional level, it is strengthened when counterbalanced against other constitutional rights and principles that might arise in such proceedings. The provision will also ensure that no future Government can repeal or dilute the existing legislation that makes the best interests of the child the paramount consideration in such proceedings.

A core objective of the proposed Article 42A.4.1o is that when the State is taking child protection proceedings which may involve removing a child from its home, for example, in proceedings taken under the Child Care Act, those deciding the matter must regard the best interests of the child to be the paramount consideration in determining arrangements for the future care and upbringing of the child. This places an appropriate discipline on the State in actions of the kind contemplated under child protection legislation. In addition, the best interests principle is to be regarded as the paramount consideration in the very considerable body of proceedings concerning adoption, guardianship, custody or access. Currently, the court in determining these proceedings applies the test of best interests of the child, subject to the rights

of the family. Under the new provision the court will consider the best interest of the child having regard to the rights of the family.

The proposed Article 42A.4.2o is about ensuring that the views of the child who is capable of forming his or her own views are also taken into account. This again gives constitutional recognition to the rights of the child to have his or her views heard and given due weight in critical court proceedings in the areas of child welfare and protection, guardianship, custody and access. While this amendment refers solely to these critical court proceedings, the Department and I are equally committed to working with others in the development of legislation, policies or procedures to extend this “voice of the child” approach to other spheres of decision making. Similar to “best interests”, this principle is already recognised in existing child care and family law and will be included in further legislation in those areas affecting children.

These two provisions will provide for real visibility of children in the Constitution and the decision-making of judges and the courts. I believe that the dark stain of child abuse and the failure of those in positions of power to protect children must propel us to listen to children and act in their best interests. The constitutional change we propose addresses that imbalance.

I wish to comment on the broader programme of change for children we have under way. The establishment of the Department is part of that. The programme involves a range of initiatives relating to legislation, the withholding of information legislation which has already been enacted by the Minister for Justice and Equality, Deputy Shatter, the placing on a statutory basis of Children First, the vetting legislation and the reform of child protection services. This change will not happen overnight. There is much work to be done with regard to child protection services and their development as there are inconsistencies and a lack of national data. We are addressing these issues and the change programme is under way under Gordon Jeyes, the director of child and family support services, but there is serious work to do.

We have increased the budget for child and family services, but there are increasing pressures on it. We have a small increase in the number of children coming into care, in line with the population increase and there are demands for secure care for small numbers of children who need specialist services which are extremely expensive. These are a huge demand on the budget of child and family support services. The courts are also taking a more direct interventionist approach, in terms of asking the services to provide certain sorts of care, which is very expensive. All of this adds to pressure on the services, in addition to the pressures families are under in general. I am also bringing in HIQA to look at standards in child protection. It is an important initiative to have HIQA oversee the standards.

This referendum will help ensure we treat children equally, by removing inequalities in adoption. It will protect children from abuse and neglect by providing greater clarity on the State’s role. It will support families by focusing on a proportionate response and will recognise children in their own right. I thank Senators for their attention and look forward to a positive debate on this important legislation. I commend the Bill to the House.

Acting Chairman (Senator Michael Mullins): I thank the Minister for her very comprehensive speech. We will proceed with the debate, with 12 minutes allowed for spokespersons and eight minutes for all other Senators. As it is Second Stage, spokespersons can share time if they wish, in accordance with the decision made by the Committee on Procedure and Privileges some time ago.

Senator Diarmuid Wilson: I am honoured to welcome the Minister, Deputy Fitzgerald, back to a House with which she is very familiar, in particular as she returns with legislation for a referendum regarding a topic she continually raised when she was Leader of the Opposition in this House.

The country has been haunted in recent years by revelations of untold horror against children helpless to defend or protect themselves. This Oireachtas has had reports laid before it identifying indefensible gaps in the protections we can put in place to ensure the State's protection of children in such need. This proposed amendment to the Constitution gives us an opportunity to put all our heartfelt words into meaningful action. In addition to requiring protection and consideration of parental rights, it will oblige protection and consideration of children's rights.

A very clear purpose of the proposed amendment is to give practical and meaningful illustration to our intent that the Constitution gives explicit recognition to the rights of all our children to be heard, to be kept safe and protected and to have their best interests acted upon. It seeks to do this in a number of ways. It recognises the natural and imprescriptible rights of children. In those rare and exceptional but horrific cases where children are not safe in the care of their parents, the amendment will provide for the State to undertake proportionate intervention and, most importantly, to ensure the safety of the child. This, I hope, will help us to ensure that children are kept safe from the trauma and hurt experienced by those in the past. I am reluctant to cite specific situations or instances as each of these involve individuals who experienced unspeakable suffering and I have no wish to add to that suffering by causing them additional reliving and remembering. However, it is of paramount importance that we, as legislators, particularly in this House, never forget and that we are determined to strive to prevent such suffering from happening to others.

I welcome the recognition that State intervention must be proportionate but I remind the Minister respectfully that this increases the obligation of the State to ensure appropriate and timely support to parents who need it. Every year over 30,000 child protection and welfare concerns are reported and, of these, over 16,000 are child welfare concerns. Early intervention is essential. It is a reality that some people struggle with parenting for a variety of reasons but support and assistance at an early stage can result in families staying together, in the avoidance of more serious problems and in the avoidance of children being taken into care at a later stage. It can thus result in children not only being kept safe but in benefiting from a nurturing environment that supports their development into well adjusted and functioning citizens whose contributions make our country a better place.

Supporting families is essential to child protection. We must move away from viewing child protection services as reactive services for use in a time of crisis. Rather, it is essential we embrace the holistic concept of safeguarding, creating and supporting safe environments for our children and recognise that supporting families is an essential component of this safeguarding and is of the utmost necessity in effective and proactive child protection.

It is welcome that the Bill recognises children's interests are paramount in judicial and custody proceedings and that children's views in such matters must be heard and taken into account, having regard to the child's age and maturity. This is in keeping with the direction of previous legislation and changes that have occurred in practice in other areas, taking into account the views of children and having regard to their age and maturity.

It has been a matter of inexplicable sadness that for generations there were children in the

care of the State who have missed the opportunity to grow up as members of a family and experience the joys and challenges of everyday family life that so many of us are lucky enough to take for granted. Under the Constitution, it is not possible for children whose parents are married to be adopted, as the Minister pointed out.

This has meant that children whose parents are not able for a variety of reasons to take care of them, live their childhoods in the care of the State or, if they are fortunate enough, in the care of loving foster families. All of us have heard the stories of foster families' efforts to adopt such children where loving bonds and relationships have been established and where there is a desire on the part of the child and foster family to have that relationship legally recognised and yet it is not permitted. Even in situations where the natural parents wish for their child to have the opportunity to be adopted, this is not permitted. I do not believe it was ever the intention of the Constitution's authors to condemn children to such lives and to miss out on being part of a living family. It is quite clear that the opposite was the case with importance being attached to families. I do not believe Irish people would want such a situation to continue.

It is welcome that this proposed amendment will provide opportunities for such children to grow up with the love of a family. We have been told by the Minister that there are more than 2,000 children for whom this could be made a possibility. We know that over the decades, thousands of children missed out on such opportunities. This amendment can make a very real difference. It demonstrates the potential of politics to be relevant and it is an example of how politics and politicians can work together to get it right.

As the Minister mentioned, the Oireachtas Joint Committee on the Constitutional Amendment on Children was established specifically to examine this area and identify the actions required to address difficulties being encountered. It was chaired by a former Minister and former Leader of this House, Mary O'Rourke, and its membership included the Minister, Deputy Fitzgerald, the Minister for Justice and Equality, Deputy Shatter, and members from all parties in both Houses, including former Senator Maria Corrigan, who worked together to bring forward three comprehensive all-party reports.

I welcome the fact the Minister has acted on this all-party work and brought it to the next step in holding the referendum. I welcome the wording proposed for the referendum which is based on the core principles published by this committee in February 2010. I take the opportunity to pay tribute to former Ministers, the late Brian Lenihan, Brendan Smith, my constituency colleague, and, in particular, Barry Andrews who worked very hard on pushing forward with the wording for this referendum, as the Minister has acknowledged on a number of occasions. At a later stage, the Oireachtas will give consideration to legislation, including the National Vetting Bureau (Children and Vulnerable Persons) Bill 2012, also emanating from the work of this committee, to further enhance the safety and protection of children.

This is a significant referendum in our short history as a country. It reflects our determination to learn from past tragedy and to take action to prevent its recurrence. I commend the Minister for her contribution but if she wanted to save time, her last four sentences would have summed up the referendum. It is a referendum which will help to treat all children equally by removing inequalities in adoption, protect children from abuse and neglect, support families and recognise children in their own right. This referendum should be fully supported by the people of this country. My party will fully support it and I wish the Minister and the officials in her Department, who worked so hard on this, well into the future.

Senator Imelda Henry: I am delighted to see the Thirty-First Amendment of the Constitution (Children) Bill 2012 before the House and I am very glad it is getting cross-party support. I welcome the Minister, Deputy Fitzgerald, and thank her and her staff for their commitment, dedication and hard work which has brought this legislation to this House. The Taoiseach decided to create a new Department of Children and Youth Affairs at senior Cabinet level and appointed the Minister who stated from the outset that she would address the serious matter of ensuring that each and every child in this country is protected. For far too long, many a blind eye was turned to the horrendous abuse suffered by children.

The amendment proposes constitutional change based on the following key objectives: protecting children; supporting families; removing inequalities in adoption; and recognising children in their own right. I am also pleased that the Government will be running a major information campaign on the referendum, which will include a dedicated website and sending information booklets to every home. I welcome the support for the referendum from several children's organisations and support agencies. In particular, I welcome the remarks and support from Archbishop Diarmuid Martin yesterday. Having listened to Geoffrey Shannon, special rapporteur on child protection and chairman of the Adoption Authority of Ireland at a recent conference, I was struck by his passionate commitment to the issue. I am sure he will bring his expertise and knowledge to this campaign.

When the Taoiseach decided to appoint a senior Cabinet Minister it was reflected by taking child protection away from the Health Service Executive and the establishment of a new child and family support agency which will be fully operational early next year. The establishment of a single agency will provide a focus for the major reforms already under way. In the past, approximately 15 agencies dealt with children with difficulties. Sometimes, unfortunately, children got lost in the system.

The referendum will strengthen the protection of all children from abuse and neglect by putting their safety and welfare at the centre of decision making. It will support families by reaffirming and underpinning the State's continued development of early intervention and family support services to protect children in their homes. It will treat all children equally when it comes to issues such as adoption, regardless of the marital status of the parents. It will recognise children in their own right by providing for the first time an express statement of their rights and give constitutional standing to the best interests and the views of the child in child care and family law proceedings.

We all know child abuse occurred in this country in the past. We have had several reports on it such as the Roscommon case, which was a shocking example of abuse and neglect of children at the hands of their parents. It was also the case that the efforts of social workers seeking to intervene to protect the children were met by a High Court challenge taken by the parents to prevent action by child protection services. The challenge was successful and, unfortunately, the children continued to live with the parents and suffered longer. The referendum will ensure this does not happen again.

A total of 2,000 children are in foster care. It may be the case for whatever reason that some parents are incapable of caring for a number of such children because of illness, drug abuse or who are simply overwhelmed by the demands of parenthood. Only last week I spoke with a social worker who told me about an 11-year old boy with whom she was dealing who had been with a foster care family since birth. His parents will never be able to care for him. He is in a loving family environment where he has two brothers and two sisters. He would love to be

adopted by his foster parents and they would love to adopt him. We can make that happen by voting “Yes” in the referendum. It is important that children’s voices are heard, in particular in a court case, and that the judge will get to speak to the child directly and not just through his or her social worker. This is a referendum for all children, but in particular it is for those children who are most vulnerable and most at risk. We must remember that every child matters.

Senator Jillian van Turnhout: Successive Governments have made promises to strengthen children’s rights in the Constitution and with this in mind I heartily congratulate the Government, and in particular the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald, for publishing the wording and for setting the date for the children’s referendum.

Acknowledgement of the need for change is not new. It was first raised in the Oireachtas more than 35 years ago by former Senator, later President of Ireland, Mary Robinson, during the 1976 debate in this House on the powers of the Adoption Board. In recent years the Oireachtas has spent significant time discussing horrific reports concerning the abuse of children. When the child death review group report was published in June, I expressed my profound sadness and a sense of the responsibility and shame I bear as a member of society that has systematically failed to protect our most vulnerable children.

The opportunity presented by this referendum brings us closer to securing constitutional change that will make a real and positive difference to all children in Ireland. For several years I have campaigned for children’s rights. With others, we moved the need to strengthen children’s rights in the Constitution up the political agenda. I wish to take a brief moment to pay tribute to others whose steadfast commitment and dedication to children’s rights has helped bring us to this vitally important juncture. First, I thank the Minister and commend the Government for prioritising the referendum. I also thank the former Minister of State with responsibility for children and youth affairs from 2002-07, the late Brian Lenihan. He was the first Minister for children to secure a seat at the Cabinet table and was instrumental in securing significant advances for children during his tenure. He recognised the need to bring about constitutional change for children and threw his energies into examining this issue.

I also pay tribute to the former Deputy, Mary O’Rourke, who in her role as chair of the Oireachtas Joint Committee on the Constitutional Amendment on Children, worked to secure all-party agreement on this issue. She was aided by all members of the committee but I pay particular tribute to the Minister for Justice and Equality, Deputy Alan Shatter, and Deputy Caoimhghín Ó Caoláin, who in their respective roles as Opposition spokespersons, showed great leadership on that committee.

I pay tribute to the non-governmental and civil society organisations which have been convinced for a long time of the need to strengthen children’s rights in the Constitution and have campaigned relentlessly to spur us on to this point. In particular, I highlight the role of the Children’s Rights Alliance, Barnardos and the ISPC, with more than 100 member organisations of the CRA. Last, but certainly not least, I thank Dr. Geoffrey Shannon whose expertise on child and family law is renowned and whose work as special rapporteur on child protection has heightened public awareness.

I refer to the amendment before us, that will shortly go before the people for their considered opinion. I do not believe it will be a surprise to the Minister that I would have preferred if it had gone further in a number of areas, particularly in stating certain rights such as the right to identity. I am keenly aware that more than 50,000 adopted persons have no automatic legal

right to their birth certificate, medical information or history, or any legal right to trace information about their identity. We will be able to address this issue in part through legislation but aspects may need to be addressed at constitutional level. Legislative and constitutional change on this area is an issue for which I will continue to advocate.

I considered tabling some amendments to the Bill but after long reflection I believe the wording of the proposal before us strikes an appropriate balance. However, when I outline some points both today and on Committee Stage I hope to get the commitment of the Minister in response. I reserve the right to table amendments on Report Stage if I believe it to be necessary.

Although I have waited a long time for this referendum, I know that even if it is successful, it will not be a panacea to solve all ills. There are many issues facing children and families today for which I will continue to advocate strongly, both inside and outside the Seanad. It is our role as legislators to be ambitious on behalf of the people and, in this case, on behalf of children and their families. I am convinced that a constitutional amendment on children's rights is absolutely necessary. It is needed to overcome legal road blocks that prevent us from fully protecting children and supporting families, hamper us from making decisions that are child-centred and prevent us from reforming our adoption laws.

I turn my attention to the campaign period we are about to commence. In years gone by children were seen but not heard. I hope we will not have a campaign in which we see but do not hear, where we may see posters on lampposts but the air waves will be practically silent and decisions are made in a void. The media will have a critical role to play. From speaking to groups in recent days I believe there is a real appetite to know exactly what people are being asked to vote upon. People do not want to hear generalities about children's rights but want to understand what this amendment means. I have heard parents say, "This amendment won't affect my child". Maybe it will not, but it is every parent's safety net, if one I hope they will never need to use. However, if there is a family bereavement or break-up, for example, one would want a legal safety net to be in place.

We should not underestimate the power of the people and their opportunity to vote on 10 November and say "Yes; children have rights". I call on all journalists to take time to understand what this referendum means and use their platform to inform the public. I call on all political parties, groups and representatives to use their voices and their feet to inform as many people as possible. Several non-governmental organisations and civil society organisations have campaign plans in place.

It is fitting that the referendum will take place on Saturday, 10 November, the birthday of Padraic Pearse who, when reading out the Proclamation in 1916, urged us to cherish all the children of the nation equally. I realise he did not mean children in a literal way but the concept of cherishing children and childhood is close to the hearts of many of us. I very much welcome the decision by the Government to hold the referendum on a Saturday, thereby allowing young people to go back to their constituencies to vote and ensuring that schools do not have to close unnecessarily.

5 o'clock

I strongly advocated for Saturday voting when I was the president of the National Youth Council of Ireland in 1999 and maintain that this should be the case for all referenda and elec-

tions.

Let me take the amendment point by point. I propose, where time does not permit today, to come back on Committee Stage to address particular aspects.

The potential of Article 42A.1 is huge. Its interpretation will be important as it is the bed-rock of the entire amendment. I trust that the courts will be informing their interpretation of the provisions against the UN Convention on the Rights of the Child. This provision should guide and potentially strengthen the protection of children in other areas if read with other laws. It provides signposts for the courts, policymakers and decisions makers that children are independent rights holders. I will come back to this point on Committee Stage.

On Article 42A.2.1°, I have stated on several occasions that I hoped the proposed amendment would enumerate the word “proportionate” and I welcome its inclusion. I note the proportionality test as set out in law in *Heaney v. Ireland* and will elaborate on it on Committee Stage.

The majority of care planning does not include thinking of a permanent care solution for children. Children can drift in the care system indefinitely. This provision will be a significant shift in how we approach taking children into care. It will reframe how and when the State should intervene. It has important safeguards built in to protect against unwarranted interventions by using the words “exceptional cases” and “proportionate”.

The Minister should note that I considered amending the Irish language translation of “exceptional”, to which some have attributed the literal translation “uncommon”, but I am now satisfied that there is sufficient judicial precedent around “exceptional” to allay any concern in this regard.

On the articles on adoption, first, I very much welcome the publication of the Minister’s intentions on the adoption Bill. This is an intricate area that will need some thoughtful and careful consideration. The Minister mentioned that there are approximately 2,000 children who, if this legislation is passed, may become eligible for adoption, that is, children that have been in foster care for five years or more. Not every child wishes to be adopted, nor does every foster parent wish to adopt. We need to ensure that there are options available to suit each circumstance. I encourage the Minister to introduce the Bill in the Seanad to allow for that deliberation.

I welcome the use of the term “shall be made by law”, although its power has been overstated in some statements. Effectively, it means that these provisions will be dependent and, in fact, puts an obligation on us in the Oireachtas to legislate. This is the first of four places in the proposed amendment which we need to provide for in law and there will be considerable work for us. It is important that the Minister would outline the timetable for the legislation related to this amendment.

Another important question which, I suppose, is one of those which are indeterminable, is how judges will balance these provisions against Article 41. When discussing *N v. HSE* [2006], more commonly known as the Baby Ann case, I have always stated that strengthening children’s rights may not necessarily have changed the outcome of this case. However, I believe that this amendment would have changed the way in which it was handled.

In effect, the Baby Ann case could be summed up by saying, “You have my property – I am entitled to it and so give me my property back.” The judgment in this case follows a long line of jurisprudence in the adoption field, particularly two dating from 1966 and 1985. These judg-

ments are *Re: J* [1966] I.R. and *Re: J.H.* [1985] I.R. In both of those cases, the courts concluded that the child should be returned to its natural parents. This amendment would have allowed for Baby Ann to be viewed as an autonomous being with constitutional rights – the same as any other citizen – not greater or lesser, but equal. That is hugely significant.

In considering Article 42A.4.1°, I recognise that the Minister wished to exclude cases taken against the State by using the term “brought by the State”, but this has unintended consequences, which I would ask her to commit to addressing through legislation. In particular, I would cite the Child Abduction and Enforcement of Custody Orders Act 1991.

I noted, in the Dáil last week and today, the Kilkenny, Roscommon and child death reports cited. This provision does not remedy the failure of the State to act on the concerns of family and extended family members, which were key features of these reports, and this concerns me. It is an issue to which we need to return.

Acting Chairman (Senator Michael Mullins): Senator van Turnhout has one minute remaining.

Senator Jillian van Turnhout: I will do my best.

I also note that the majority of children who come into care are outside of the court orders of the Child Care Act 1991 as they are in care on a voluntary arrangement. In addition, I worry that homeless children will not be covered by this constitutional provision if they are being provided with accommodation under section 5 of the Child Care Act 1991. I would ask the Minister to commit to bringing legislation covering these categories of children into line with the principles outlined in this constitutional amendment.

Tomorrow, I will also raise with the Minister the forthcoming mediation Bill brought forward by the Minister for Justice and Equality, Deputy Shatter. I am trying to move to the end of what I need to say. I have so much to say on this issue.

I also welcome the provision about listening to children about forming their opinions. International standards and guidelines recognise the importance of engaging with and listening to children in order to fully guarantee their right to participate in court processes. I welcome the wording the Minister has used.

Let me end with a question that I have been constantly asked since the wording was published, namely, whether this will make a positive difference. My answer is an unequivocal, “Yes”. Reforming the Constitution is a fundamental step towards making Ireland the best place in the world to be a child. A constitutional amendment is only one step, albeit a critical one.

As part of my current and previous role, I have met many survivors of abuse who have shared their experiences, hurt and nightmares. In every case, these individuals of such integrity have encouraged me to advocate strongly to strengthen children’s rights in the Constitution and, in part, I see this amendment as a way of atoning for our past while ensuring the children of today will be better protected and cherished.

Anyone who knows me knows that I am pragmatic person who is working to bring about positive change to people’s lives. I try not to get caught up in the theory but prefer to focus on areas that will make a difference.

If the people say “Yes” on 10 November, our work will only be just beginning and I hope

that I have outlined some of the challenges lying ahead to the Minister today. The wording is tight and well drafted. The clear message to the people is that this is setting us in a new direction. It is not a minimum but more of a starting point. I thank the Minister wholeheartedly for all of her work and commitment to date. We have already seen some of the fruits of her work.

Senator Aideen Hayden: I welcome the Minister to the House. Once again, I congratulate her on her part in progressing this referendum. I also acknowledge the contribution of others such as those who have been mentioned - former Deputy Mary O'Rourke, former Minister of State, Mr. Barry Andrews, the late Deputy Brian Lenihan - and the important work of the NGO sector, including Senator Jillian van Turnhout, Barnardos, ISPCC, and many other organisations which have argued strongly for better protection for children, including FLAC.

It is important to say that, of course, a constitutional amendment will not necessarily change the lives of children in this country. It will, as Senator van Turnhout stated, make an important difference. There are obviously other questions that we must ask ourselves as legislators. In particular, we must acknowledge that we are facing into difficult budgetary circumstances and it behoves all of us to ensure that the vulnerable, in particular, children, are not the ones who pay the price for the economic crisis that we face.

I welcome the programme the Government has in place for change for children, in particular, the establishment of the new child and family support agency, which will be independent of the HSE. One of the difficulties that we must acknowledge is that the HSE has consistently failed children in this country and if we are going to ask the parents and people of Ireland to have confidence in child care provisions, we must say that it is important that this area moves outside the ambit of the HSE.

I bring to the Minister's attention something that I and, I believe, other Senators received today, namely, the response and analysis of the proposed amendments of the Irish Human Rights Commission. While the commission generally recognised affirmed that we are obviously going in the right direction, it made some criticisms which it is important to acknowledge. It has, for example, observed that the current wording is too vague in identifying which rights are being recognised under the article and suggested that we need to be less equivocal regarding the obligations of the State to vindicate the rights of children in all situations. It recommended that the wording be revised to include express reference to the Convention on the Rights of the Child as a source of rights and recognition that children's best interests must be the primary consideration in all actions concerning them. I am sure the Minister will address these comments in her response. I agree with Senator van Turnhout that it is not possible to spell out all aspects of this issue on Second Stage and I, too, look forward to more extensive debate in the coming days.

I agree with other speakers that we are taking an important step with this proposed amendment. I appreciate the warm welcome given yesterday by the Archbishop of Dublin, Diarmuid Martin, to the proposed wording. He recognised that the wording strikes a balance between protecting the interest of the child and giving due recognition to the position of the family and parental rights and acknowledged that interventions to remove a child from his or her family will be exceptional in nature.

We must not lose sight of the purpose of this referendum, which is to give children a voice and to put their interests at the centre of decisions regarding their welfare. Anybody who has listened to a child will know the old adage, out of the mouths of babes, is only too true. As matters stand, there are serious gaps and inconsistencies in the way children are heard. Barnardos

estimates that only 35% to 40% of children involved in care proceedings have a guardian *ad litem* appointed to represent them. Placing the right of a child to be heard will ensure all our children have the right to express their views. We should not fear hearing from children. History has shown that the only people with something to fear from the voice of a child are those who have reason to fear what he or she may say. Unfortunately we do not have a proud history of listening to our children but this is an opportunity to rectify the situation. If we truly believe our children are the future of this country, it is time to prove it.

This referendum is not about changing the role of parents as the natural, primary and fundamental unit group of society. It is not about the organs of the State forcing their way through the doors of the average home to forcibly remove children from the arms of their loving and caring families. It is not about forcing children to be vaccinated against their parents' wishes, the right of parents to slap their children, although that is a matter I would like us to discuss, or abortion. It does, however, offer the possibility of adopting the children of married parents. Approximately 2,000 children in Ireland are currently unable to return to their families for various reasons, such as physical abuse or dependency on alcohol and drugs, but cannot be adopted by their long-term foster parents under the law as it stands. We are not only denying the chance for such children of legally becoming part of a family who knows and loves them but practical obstacles also arise, such as giving consent to medical procedures and applications for passports. If we adopt this constitutional amendment we will not be turning adoption into an easy process because the courts will have to weigh the rights of all involved while ensuring the best interest of the child is prioritised.

The amendment will make a real commitment to cherishing all the children of the nation equally by placing the children of married and unmarried parents on an equal footing. I remind Members that we only abolished the status of illegitimacy with the Status of Children Act 1987. Shame on us. The last of the Magdalene laundries was only closed in 1996. The women of the Magdalene laundries, many of whom were nearly children themselves, were often incarcerated in these prisons for the crime of having a child out of wedlock. I do not believe we will ever put that shameful episode behind us, notwithstanding the good we will do with this amendment, unless we recognise our collective responsibility for a crime against these women. We must not only apologise as a people but also make recompense before it is too late. It is easy to look to the future but there can only be a real cleansing if we truly acknowledge the mistakes of the past. This amendment is an important step in recognising the part that children have to play in society, as well as our duty to protect them.

Senator Rónán Mullen: I congratulate the Minister on the long journey she has taken with her Department during which time a lot of hard work has been done by many people. On the day the wording was announced I expressed my sincere view that it achieves an important balance. It maintains the principle that the State may only intervene to supply the role of parent in exceptional circumstances, and then only proportionately. Maintaining that principle does not in any way disregard the rights of children and in fact it enhances them because the time honoured presumption is that the interests of children are best guaranteed by the safety and security of their home. The State must be a cautious guardian of the common good but clearly it needs to exercise its role in certain exceptional cases.

It is time that we make a special statement about how we cherish children in the Constitution. The phrase "cherishing the children of the nation equally", which we have used for so many years, expresses people's longing for a constitutional entrenchment of our obligations to children as important and vulnerable members of our society. I have opposed the use of the

phrase “children of the State” because that would have been an unfortunate and unpredictable addition to the Constitution.

While the Constitution recognised a number of important rights and values at a time when they were not acknowledged in other parts of Europe and the world, this is an area in which we need to grow and develop. However, I do not agree with the Minister that the Constitution fails children. The amendment secures an imbuing spirit going forward but to blame the Constitution for failing children would be like blaming the constitutional provisions for mothers in the home for not providing in any meaningful way for families who wish to care for children within the home, such as through taxation. The Constitution establishes the spirit but I do not think it has ever frustrated the welfare of children. Governments have failed to properly implement legislation and systems have failed but I do not accept the analysis that the Constitution has failed.

The Convention on the Rights of the Child gives international recognition of what is owed to children and I agree with the Minister that it is substantially positive in this regard. I may, however, disagree about the way certain committees seek to campaign on the basis of the convention to further agendas which I do not support. The preamble to both the 1959 Declaration on the Rights of the Child and the convention states “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. Senator Hayden is correct to note this constitutional proposal is not about abortion but as I indicated in the Seanad and the media, I expect consistency in supporting this proposal because it supports the welfare of children. I expect a Government which includes a majority party that committed in advance of the last election to guaranteeing the best medical care for women and upholding the duty of care to the child to put the unborn child on the same level. Any indications to the contrary in the coming weeks and months would make a mockery of this Government’s declared commitment to uphold and protect the welfare of children. That is even more the case when we know and need to affirm there is nothing in the European Court of Human Rights decision that states we have to legislate for abortion. It is clear we can give the necessary legal clarity on the best medical practice that takes place in Ireland and the reason we have the lowest maternal mortality in the world. I make no apologies for introducing that point because consistency is of the utmost importance and there is a duty on us to cherish human life at all stages. Otherwise, what we are talking about is absolute nonsense and hypocrisy. Therefore the point must be made in the same way that Senator Hayden was right to raise the point about the Magdalene laundries.

I would not be doing my duty if I did not seek to look at the wording of the amendment and ask particular questions. I have tabled some amendments which we can debate tomorrow. I do so in a profoundly sincere spirit of seeking greater clarity and precision about what is meant in the wording. Also, I am proposing that certain additions would further the intentions of the Government in circumstances in which the wording may be vague and its precise meaning unpredictable. It is our job to provide legal scrutiny, to ask those questions and to engage in a genuine searching debate. While the proposal is broadly good and balanced, certain important issues need to be clarified and examined. I shall deal with the detail of those tomorrow but I wish to flag some of the issues. It is difficult to know precisely, at first reading, whether the Government thinks that the introduction of the phrase “fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected,” raises the threshold for intervention, lowers it or leaves it the same as it was. It is difficult to gain a precise sense of what “prejudicially affected” means. Clearly, in view of what I

said about the need to be consistent about life at all stages, it is absolutely beyond argument that there must be no difference between the children of marital families and the children of single-parent families when it comes the State's right and duty to intervene. In a sense, that is the golden thread of equality based on which all must support what the referendum proposes, and is one of the reasons it is worthy of support, the other being the provision that the children of marital parents may be adopted in certain cases. I ask whether the phrase "prejudicially affected" goes beyond or changes the current text, which refers to failure. There is also the deletion of the phrase "for physical and moral reasons." What change does the exclusion of those words bring about? Does the Minister consider it widens the scope for intervention by the State?

A third issue, which is addressed in one of my proposed amendments, is that provision can be made by law for the adoption of any child. Obviously, the Constitution must be changed with a eye to future possible legislation and therefore we cannot judge it in terms of the legislation being proposed. However, I believe it is the Government's intention that forceable adoption - that is, the non-voluntary placing for adoption of a child - can happen only in exceptional cases and where the parental failure meets the test set out in sub-article 2.1, namely, in the event that the parents fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected. Must that test be met before it shall be constitutionally permissible for provision to be made in law for the adoption of any child? I submit that the inclusion of the words "in particular" would put that issue beyond doubt in a way that would be very helpful - perhaps essential - provided the Minister intends that same threshold be met before the law can make provision for the placement for adoption of children in such circumstances.

I read and listened carefully to the Minister's speech. With regard to the best interests of the child being the paramount consideration, the legal position is that there is a presumption that the best interests of the child are secured within the marital family. That is a rebuttable presumption. Does that remain the case? I presume the application of the best interests test takes place at the second stage of the process, the first stage being that the State intervenes only in exceptional cases, as stated in sub-article 2.1, and, that test having been met, the best interests being the paramount consideration becomes relevant. I would welcome clarification of that issue. If the best interests test on its own were to balance out, modify or qualify the meaning of sub-article 2.1, that would change the position. I apologise that some of these arguments may appear to be technical considerations. However, we are changing the Constitution and we are all approaching it in a spirit of goodwill. We seek to vindicate the best interests of children and we need to know these things. The electorate has a right to know, including those people who are perhaps unnecessarily worried about an overly adventurous State. Even with regard to the Baby Ann case, which Senator van Turnhout mentioned, there is another way of looking at it; social workers do not necessarily come out of it well, if I recall the judicial reasoning correctly. I remember seeing that case; the constitutional position was as it was. It is not our main point today.

Senator Jillian van Turnhout: The Senator should have listened to what I said.

Senator Ivana Bacik: I ask the Senator to read the judgment.

Senator Rónán Mullen: I do not think the social services came out of the case shining. I reject the notion that it was simply an attitude of property; that possibly demeans in some way the motivations of the natural parents. However, that discussion is for another day. We are approaching the issue in a constructive spirit. It is a good proposal and is the fruit of much

hard work. It appears to be balanced in terms of achieving an imbuing spirit for the benefit of children. The Minister is absolutely right. I look forward to the debate tomorrow on the amendments.

Senator Maurice Cummins: I welcome the opportunity to speak on the Bill. Since taking office, the Minister, Deputy Fitzgerald, has been working on the wording of the amendment. The work of the Joint Committee on the Constitutional Amendment on Children and the contributions of campaigners, organisations and professionals who work with children have been instrumental in reaching the point at which we are holding the referendum.

I commend the civil society groups which have been forceful in their support for the constitutional amendment on the rights of children. That support is crucial. I pay tribute to Members from all political parties and the Independent Members who have been united in their support for the amendment. It is not often that we achieve almost unanimous support across both Houses. This reflects the special nature of the referendum in enhancing the protection afforded by the Constitution to children. However, there would have been no progress on the referendum were it not driven by the Minister, Deputy Fitzgerald, and her colleagues. I commend her on the work she has done on the proposed wording of the amendment and in bringing together many elements of society to support the referendum. The wording of the amendment has been carefully put together. In the past year the Minister and her staff have worked closely with the Office of the Attorney General to ensure that the amendment does not take away from any other right that is in the Constitution. This is an important point to make and one that we will need to continue making over the course of the referendum campaign.

People have talked about a need for a referendum for nearly 20 years and since the time of the report of the Kilkenny incest case which contained such a recommendation. It is this Minister and the Government that have delivered on the recommendation and generated support from a broad cross-section of society. Our challenge now, as supporters of the referendum, is to ensure that the electorate is well informed and motivated to vote. Nothing could be more dangerous than complacency. While I know the Minister will not be complacent even for a minute between now and Saturday, 10 November, I urge all Senators to actively support the referendum by encouraging people to come out and vote “Yes” on polling day.

The Minister has outlined a number of key objectives in the proposed constitutional amendment, including the protection of children and a focus on the best interest principle. I wish to make a few observations on the amendment. It changes the focus of the Constitution away from the reasons for parental failure to the impact on the child when parents fall short in their responsibilities. There is a clear onus on the State to support families in difficulties in order to protect children. We all know that children are better off with their parents and nothing in the amendment seeks to change that. The threshold for intervention in families is unchanged and remains that “in exceptional cases” the State can “supply the place of the parents”. The language is already in the Constitution but the difference is that the Constitution will now focus on the needs of children and the impact on children due to parental failure rather than the reasons for such failure. This is a forward looking and enlightened approach by the Minister and I commend her for achieving a balance.

The concept of best interest is already well known and illustrated in Irish law. It was a core element of the Guardianship of Infants Act 1964, the Child Care Act 1991 and the Adoption Act 2010. It is a well defined principle but is now being given constitutional backing.

The amendment will provide for the removal of inequalities in adoption. More than anything else people are shocked to hear that children are treated differently in law depending on whether their parents are married. The amendment does not make changes to how we understand the idea of family in the Constitution but the constitutional convention may consider the matter at another time. The amendment is based on the child's interest and the child's perspective. A child in need of adoption who has been abandoned by his or her parents has no reason to be concerned about whether his or her parents were married or not. What he or she needs is a stable and loving home and the amendment may provide such a possibility.

For the first time, the amendment will provide the recognition of children in their own right. In time this may be the most significant element of the amendment, both in practical and cultural terms. Some may ask why we need to single out one group for additional protection in the Constitution and why children need more explicit protection. The answer is simply because of their inherent vulnerability by virtue of their age. Children need to be protected by their parents but when their parents cannot do so then by another family through the intervention of the State. It is important to remember that children at risk receive family care through the foster care system. With regard to family care through the foster care system, children at risk are not put into institutions for long periods. They are placed in families and have the ambience and protection of a family. Like all other children they are brought up within families and it is important to acknowledge that. We must also acknowledge the great work that is done by the many families who foster children and the State agencies that monitor their care when they are placed in such families.

The voice of the child will now be heard as circumscribed in the new Article 42A.4.2°. This is important notwithstanding the fact that in family law proceedings the voice of the child could be heard. Again, the provision will now be part of the Constitution giving it additional weight in legal proceedings.

The Government and political parties will conduct a strong information campaign calling for a "Yes" vote. I ask Members to inform people about the new website *childrensreferendum.ie* referred to by the Minister where all of the information on the referendum can be found. I commend the excellent information campaign co-ordinated by the leading child protection groups in society, Barnardos, the ISPCC and the Children's Rights Alliance. I also acknowledge and welcome the support for the referendum from Archbishop Diarmuid Martin whose comments were well founded and balanced. I ask every Senator to actively promote the referendum. The people should send a strong message to the Judiciary and every person working with children that there will be a new culture when it comes to the protection of children. The people can do so by voting in large numbers and overwhelmingly in favour of the amendment.

Senator Mary M. White: I compliment the Minister. She is a colleague and friend and I knew that she would do a good job and she knows that I have complete faith in her. She sat on a committee with former Minister and Deputy, Mrs. Mary O'Rourke, and with our former Seanad colleague, Maria Corrigan, who did great work. I also acknowledge the work done by the late Brian Lenihan. It was the Fianna Fáil Party that first appointed a Minister of State with responsibility for children which drew attention to the need for children's voices to be heard.

As the Minister has said, the referendum is for all of the children, particularly the most vulnerable and most at risk. It is about treating all children equally, particularly by the removal of adoption inequalities. It is about protecting children from abuse and neglect by placing their protection at the centre of decision making. It is about supporting families by reaffirming and

underpinning early intervention and family support services to protect children in their homes. It is about recognising children in their own right. I also acknowledge the work done by Senator Jillian van Turnhout as chief executive of the Children's Rights Alliance.

People have said that there is no need for a referendum and that children rights' issues could be dealt with through legislation passed in the Dáil and the Seanad. I do not believe that the Constitution has failed children but we must upgrade it because of the systematic failure by the State and its treatment of children. The Ryan report, the Murphy report and various reports on dioceses around the country have shamed Ireland around the world. The way that thousands of Irish children were sexually abused, raped, physically abused and mentally abused has brought shame on this country. That is the reason we must amend the Constitution.

The Ryan report demonstrated beyond doubt that the entire system treated children more like inmates and slaves rather than people with legal rights and human potential. It also demonstrated that some religious orders and officials encouraged ritual beatings and there is no doubt that in certain institutions the ill-treatment of children was endemic.

We debated the Ryan report in the Seanad. It was clear from the report that children who ended up in industrial schools or institutions were generally from poorer families in society. They ended up in the courts for some minor misdemeanour in front of judges who were cold-hearted and lacked compassion for children who were poor. The officials from the then Department of Education closed their eyes during their inspections of these institutions and did not investigate thoroughly what was happening in these institutions. The religious orders covered up and continued until this very day to cover up and try to protect the reputation of the Catholic Church rather than protecting the children who were in their care.

Let me repeat, this is our holocaust. We cannot ignore the fact that even at this time Irish children are being abused. The Ryan report conducted an investigation from 1936 until the present day. We know that thousands upon thousands of children were abused. I have serious concerns about the vetting system. I do not want to go into the cases of the 6,500 children in care, but based on previous experience we can be sure that predators who are ruthless, cold and cynical continue to abuse children. I believe that Members have become immune to their plight. When the content of Ryan and Murphy reports first came into the public arena, we were traumatised. I noticed that when the reports on the abuse in the different dioceses around the country, there was no similar emotional reaction to them. People became indifferent to it. There was not much discussion in the Seanad on the reason for holding this referendum or from where the momentum came for it. My colleague, Senator Diarmuid Wilson reminded us of the children who were abused. Senator Aileen Hayden drew attention to the treatment of Irish women in the Magdalene laundries. On account of the way Irish children were treated by brutal predators, I wonder why more children have not been murdered.

I am very emotional about this issue, in contrast to the matter of fact discussion on the technicalities. We are discussing the failure of human beings, members of the Catholic Church who were supposed to be exemplary in their behaviour as Christians, yet were cynical, cold-hearted and ruthless in the treatment of children who were in their care.

I visited the small village of Letterfrack, where the then Letterfrack industrial school is located in beautiful physical surroundings. I visited the graveyard in which many of the children who died while in care in this institution were buried. I experienced a cold and sinister feeling, knowing that these children who died in care had led sad and unfulfilling lives, generally speak-

ing because they were poor.

Senator Mary Moran: I welcome the opportunity to speak on the Thirty-First Amendment of the Constitution (Children) Bill. I welcome the Minister for Children and Youth Affairs, Deputy Frances Fitzgerald, and congratulate her on the excellent work she has done to date in bringing this Bill to a referendum on 10 November. I welcome and acknowledge the cross-party support as well as support from many children's groups, including Barnardos, ISPCC and the National Children's Rights Alliance under Senator Turnhout. I commend Senator van Turnhout for her very emotional, forthright, warm and encouraging speech today. I appreciate and acknowledge the statement yesterday by Archbishop Martin. It is great to see so much cross-party and cross-groupings support. I agree with Senator Cummins who said that we cannot afford to become complacent. The level of support for the Bill is great.

The passing of the referendum will have a profoundly positive impact on the way that children are treated. The wording of the referendum states that the State recognises and affirms the natural and imprescriptible rights of all children and will protect and vindicate those rights. It also crucially states that the views of children will be taken into account in legal proceedings. Putting children's rights specifically into the Constitution will mean, in my opinion, that in those cases where children are being abused or neglected in the family, the State can now step in more quickly to protect them. It has been very encouraging to witness the almost universal support for the referendum since the wording was announced. It would appear that we have come to recognise that our track record as a State of protecting children has been flawed. We have listened to the litany of cases of child abuse and neglect which have come to light over the years and wondered how such things could possibly happen in a so-called civilised country. We have come to the realisation of exactly what has happened.

The referendum will copperfasten the protection of children in the Constitution and will ensure that we take a child centred approach by making children the focus of every decision that is being taken about their welfare. It will mean that when decisions are being taken affecting them, their rights must be taken into account. The proposed amendment will recognise that children being children, by their nature, are vulnerable and deserve certain protections from the State. Last year, as has been referred to, there were approximately 30,000 child protection and welfare concerns reported to the welfare services. The vast majority of these cases are dealt with by way of support to the parents and family. Of these 30,000 cases over 16,000 were child welfare concerns and of that number there were 1,500 confirmed cases of sexual, physical, or emotional abuse.

The referendum will reaffirm and underpin the continuing development of early intervention and family support services which play a vital role in responding to child welfare concerns thereby preventing more serious problems arising. The objective is to protect children in the home and prevent them from being taken into care at a later stage. Of the few dissenting voices who have spoken out until now, one concern appears to suggest that the amendment, if passed, will give the State preference over the parent when deciding what is in the child's best interest. There are concerns that the provision might give the State too much power, but I am firmly convinced that this will not be the case. I am delighted the Minister has referred to this and has acknowledged and reaffirmed that this will not be case.

The amendment will force the State to consider the rights of the child above all else but in a proportionate way. The wording of the amendment acts to curb excessive control by the State by stating in the proposed Article 42A.2.10 that only in exceptional cases will the State become

involved. The amendment gives children constitutional rights that are robust but in a way that does not undermine the rights of the parents unless they have failed in their duty towards the child. Cases such as the Roscommon one, where children were left to suffer in the family home for far too long should not happen in the future. The incorporation of dedicated provisions for children in the Constitution have long been called for by expert groups, including the Kilkenny incest investigation, the constitutional review group, the all-party Oireachtas Committee on the Constitution and the Joint Committee on the Constitutional Amendment on Children 2007 to 2011. Former Supreme Court judge, Mrs. Catherine McGuinness, noted almost 20 years ago that the Constitution might be interpreted as giving a higher value to the rights of parents than to those of children. Since that time successive Governments have examined the issue, but until now - great credit is due to the Minister for this - no action has been taken. I see this as a great step forward and I am very confident that it will receive overwhelming support. We cannot afford, however, to become complacent.

It is fantastic to see the website *childrensreferendum.ie* established. It will be a great source of information for everybody in the country. We all have a part to play in urging people to come out and vote on 10 November. Like others, I am delighted the referendum is being held on a Saturday, which is a step forward. It is the way to go and reduces the economic cost, particularly the costs entailed in closing schools. I have just one concern about the referendum and it relates to posters. Perhaps we would be better off, since there is such widespread cross-party support for the referendum, using the money to be spent on posters to provide better information.

Senator Fiach Mac Conghail: I would like to share my time with Senator Marie-Louise O'Donnell.

Acting Chairman (Senator Marie Moloney): Is that agreed? Agreed.

Senator Fiach Mac Conghail: Cuirim fáilte roimh an Aire thar n-ais go dtí an Seanad. Tréaslaím leí go mór as ucht An Bille um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí) a chur faoi bhráid an Tí tráthnóna. Is maith go mór ar deireadh agus go beacht go mbeidh leanaí agus a gcearta á aithint as a gceart fhéin sa Bhunreacht. Is iontach an rud é go dtabharfar cosaint speisialta anois do leanaí le foráileacha tiomnaithe i mBunreacht na hÉireann, ag féachaint dá n-óige agus don so-ghontacht a d'fhéadfadh a bheith ag baint leo, go háirithe nuair a chuimhníonn muid siar ar fhorógra Éirí na Cásca agus an gheallúint a tugadh beart agus aire cuí agus cineálta a thabhairt do leanaí. Tá 96 bliain caite, ach ar deireadh tá sprioc na fise bainte amach againn, a bhuíochas sin don Aire agus don Rialtas.

It is 96 years since the Proclamation of the provisional Government of the Irish Republic promised equal rights and opportunities for all its citizens and declared its resolve to pursue the happiness and prosperity of the whole nation in all of its parts, cherishing all the children of the nation equally. I congratulate the Government on making the psychological link between with spirit and vision of the Proclamation in introducing the Thirty-First Amendment of the Constitution (Children) Bill in this House. I know the Bill is the culmination of well over five years of formal deliberations. Now, after several generations of debate, we are finally and profoundly about to put to our fellow citizens the amendment to enshrine the rights of children in the Constitution. I will not go into the chronological detail outlined by my colleague, Senator Jillian van Turnhout, but I acknowledge the role of civic society in bringing us to this point of historic importance. We have had a litany and list of failures and crimes against children before and since the voice of Judge Catherine McGuinness was heard in 1993 about the Kilkenny

incest case.

The amendment will not help to resolve the issues involved in the cries of the past, but it can, with proper resources and training, impact positively on the happiness of children in the future. It is welcome that the text of the amendment reflects the language of the United Nations Convention on the Rights of the Child. Whatever about the important legislative provision of inviting the voice of children to be heard under the Constitution, the significant cultural change it will bring will be promoted across all sectors of society and have an immense effect. The thought process for us, as legislators and citizens, will in a short time mean that we will have to filter our aims and objectives through the lens of children. Article 42A.1 will offer us support in doing so. This is an important philosophical consequence of placing the rights of children in the Constitution and is a challenge worth pursuing.

I note that the Ombudsman for Children has also congratulated the Minister on bringing forward the amendment. She has said the Bill represents a significant and positive step forward for children and the provision of facilities in Ireland. The proposed Article 42A.1 makes explicit what has been implicit in the Constitution heretofore, which must be acknowledged. I note also that the proposed amendment sets out a series of provisions for or challenges to the Oireachtas. This is explicit in Articles 42A.2.2o, 42A.3, 42A.4.1o and 42A.4.2o. Therefore, a series of legislative measures must be introduced to support the constitutional amendment if it is passed as I hope it will be by the people in the referendum. I urge the Minister to introduce some of this legislation in the Seanad as quickly as possible in order that we can help and support the implementation of the amendment.

The amendment is a key starting point in addressing the gaps in the protection of children, but it cannot address all of the issues involved. A comprehensive children's Bill should be introduced as soon as possible after the referendum is passed to close the remaining gaps in children's rights. Senator Jillian van Turnhout has mentioned the right to identity, but there is also a need to specify, as in Article 42A.4, the meaning of "the best interests" of the child and how this provision should operate in practice.

Fáiltím roimh an leasú ar an mBunreacht agus tá súil agam go n-aontóidh an Seanad ina iomlán leis.

Senator Marie-Louise O'Donnell: I congratulate the Minister on producing what is an outstanding Bill. It is one of the best Bills to be placed before my eyes since I became a Senator 18 months ago. I say this because it goes to the heart of what we want or would like to be as a nation. It is extremely well written, explained, outlined and referenced. I disagree, therefore, with the idea that it is vague. It is perhaps its simplicity that makes people think it is vague. It is, however, true, innovative, brave and real.

I have just one short comment to make on the Bill and the issues involved. We live in a world, society, community, country and culture that is witnessing the disappearance of childhood. Childhood has been amalgamated with and internalised in a kind of mini-adulthood. We no longer rear children, rather we rear mini adults. They are no longer regarded as children but as mini adults, as can be seen in advertising and marketing, on television and the Internet, in fashion, music, food and lifestyle. Therefore, what the Minister has done is restore the concept, idea, needs, hopes, possibilities and voice of children as their inalienable human rights. This is the strength of the Bill for all children - their recognition as children, not as mini adults. This is most important, not only with regard to children at risk but to all children in the most precious,

provocative and formative years of their lives which can make the difference between a life of loss and a life of hope.

Senator Cáit Keane: I welcome the Minister and commend her for bringing this important legislation before us. The Bill and the establishment of the Department of Children and Youth Affairs show how serious the Government is on this issue. I, too, acknowledge, what was done previously. The Minister acknowledged the work done by the late Brian Lenihan and Mrs. Mary O'Rourke who had responsibilities in this area. In 1997, as a teacher, I represented the St. Nicholas Montessori Society on the expert working group on child care. I never particularly liked the title given to the group as nobody is ever an expert on this subject. That group did some work in this area, mainly on the issue of child care, but it also looked at the issue of the rights of the child. I commend the Minister for bringing forward the Bill which demonstrates the priority she has given to children. This issue has taken over her life since she became Minister.

I commend the various groups and non-governmental organisations which have expressed their support for the amendment. They, too, deserve much credit for advocating for the rights of children, as they have done for many years.

6 o'clock

I acknowledge all of the groups mentioned by Senator Jillian van Turnhout, whose particular role I also acknowledge.

There has been much debate and discussion on, and the recognition of, what is happening in this state. The Minister has given a voice to the phrase that we should cherish all the children of the nation equally. Cherishing and giving them a voice in the Constitution shows their centrality and the importance the Minister has placed on them. We have passed legislation dealing with A, B, C and D, but giving a voice to children in the Constitution shows how important this issue is to our society, the Minister and us.

There have been 17 reports since Mrs. Justice Catherine McGuinness's report on the Kilkenny incest case. Several Senators have spoken about various appalling cases and the manner in which children have been treated, although I will not go into that debate today as we are talking about the constitutional amendment which, if agreed to by the people, will bring about a change in how children will be treated in the future. It will be a case of building a system of protection to give every child in the State, particularly vulnerable children, the opportunity to have a nurturing and secure childhood. This goes to the core of the value we place on nurturing children in our society. It is about changing attitudes, which is so important. Many of us were brought up with the idea that children should be seen and not heard. We can put whatever legislation we like in place, but if we do not change attitudes to how children are treated, it will be of no benefit. The child is the important person; his or her voice is more important than that of the adult. The amendment will have weight and enshrine in the Constitution a vision of children as citizens who are recognised as having entitlements and rights. This will I hope be vindicated by its insertion into the Constitution.

I hope the debate will not be distracted by what is not contained in the proposed wording. The role of the family is still central and Article 41 is not being detracted from, as the Minister has stated loud and clear. I also hope the debate will not be one in which the State is placed against the family unit. Again, the Minister has explained very clearly that this is not the case

and that Article 41 is not being detracted from. The amendment to the Constitution does not aim to achieve the supremacy of one ideal over another, rather it seeks to place the protection of the child at the centre of decision making and support families, which is what everybody wants. There is a continuation of the recognition that in the vast majority of instances the best place for children is with their parents, as the Minister has stated on many occasions. The Bill will not change that value. However, in a small minority of cases there are dangers to the safety and welfare of children, as many reports have testified. The amendment will provide the State with the authority to intervene in such cases in clearly defined circumstances. However, there will be safeguards, balance and proportionality in any measure undertaken, as the Minister outlined. The norm for the vast majority of children in the State is a positive, happy childhood. Unfortunately, however, some are at risk of being abused and the best interests of their welfare are not being met. It is for these children that we want to ensure protection. It is very important that the specific rights of the child be enshrined in the Constitution in order that in the very small number of exceptional cases the State will be allowed to intervene with the protection of the Constitution. There has been much debate about children being abused or at risk in families and the intention is to ensure intervention will happen early. The Minister has spoken on many occasions about the positive aspects of early intervention and outlined the supports given to families, as well as the details of the programme she is developing in regard to the Child and Family Support Agency. I commend her for her efforts in this regard.

On the issue of foster parents, Senator Imelda Henry gave a very good example of the need for adoption and the changes being made in that regard. The wider issues such as information on identity will be dealt with in other legislation, not in this Bill. I know that the Minister is dealing with proposed wording which will allow the Oireachtas to debate and pass a new adoption Bill. In this regard, I commend her for the publication of the draft Adoption (Amendment) Bill 2012 in tandem with the referendum proposal. This will afford citizens clear perspectives on the constitutional and legislative reforms that will I hope flow from a “Yes” vote on 10 November.

In mentioning that date, I commend all those who lobbied to have the vote held on a Saturday, me included but particularly the youth. I commend Young Fine Gael which kept the issue on the boil in the party to ensure the vote happened on a Saturday and I thank the Minister for listening to its voice.

Senator Jillian van Turnhout and another Senator mentioned the UN Convention on the Rights of the Child which was adopted in Ireland in 1992. The Irish Human Rights Commission stated it would be important that the convention be used as the basis for defining rights. I do not know if this would be too prescriptible, given that we are considering the imprescriptible rights of the child, and would like to hear further views on this point on Committee Stage. Representations have been made by the Irish Human Rights Commission on the issue.

This is a very important day. I commend the Minister for bringing the Bill to the House. I want to ensure we keep focused on the amendment and the clarity of the wording to be put to the people. We need to keep focused on the issues involved, rather than bringing every issue under the sun into the debate on the amendment. I also commend Archbishop Martin who came out yesterday in support of the amendment.

Senator Sean D. Barrett: I welcome the Minister. I echo and support everything said about her in bringing forward this legislation, including her clarity, thoughtfulness and coolness in the way she has presented it. This debate could become somewhat fraught, but I do not think

it will under the Minister's guidance.

The Minister was a Member of this House, as was the late Mr. Gordon Wilson. At the time when he held his daughter's hand and she said, "Daddy, I love you very much," family life in Ireland was not that open and it is so important that it should be. The amendment puts children at the centre and continues a tradition. I recall Owen Sheehy-Skeffington coming to the House for many years to protest against corporal punishment in schools and it was the late Mr. John Boland who removed it. As a result schools in Ireland became a much happier place, although there were concerns at the time as to how they would be controlled, which were imported from books such as *Tom Brown's School Days*. When we respect the rights of children, we will receive thanks and happiness a thousandfold. In a sense, it is appropriate that the Minister is here today, when we read about the €1.5 billion in costs that we will have to bear for the infringement of children's rights and institutional violence. One wonders what people had in mind when they invented the doctrine of original sin - that there was something inherently evil in children that it required to be beaten out of them. It is a very strange piece of theology that caused so much unhappiness.

In supporting families, what the Minister is doing is important. We are not yet immune to all of the dreadful events outlined in the Murphy and Ryan reports. While we all welcome what Archbishop Martin said, we have ground to make up. I remember the Wexford case in which the undertaker told people that a very distressed person had ordered coffins for both adults and children. The State and the church failed and we have seen the documentary on all of that. I fully support the Minister. She has been the leader and we are only small supporters. We are sending out the message today that such conduct is unacceptable in society. We must all do better in our treatment of children. The Minister challenges us to do so and we should all respond positively to the challenge and support her in every way.

Senator Ivana Bacik: I welcome the Minister back to the House. It is always a pleasure to have her present. I know her personal commitment to the issue as well as her political commitment in her role as Minister for Children and Youth Affairs. From the time she was in the House as Leader of the Opposition when I was first elected I know she has had a long-standing commitment to improving children's rights and the protection of children. We debated together on the Adoption Bill and on many other pieces of legislation.

The Bill has received deserved cross-party support. There is no doubt the Bill is one that has been carefully crafted. Everyone who has spoken to date in both Houses has recognised that. The Attorney General has had a significant input and that is evident, as is the work of the Department. We see the evidence of that in the support the Bill has received. The wording has been crafted to ensure a balance of rights and responsibilities and it has greatly improved upon the various drafts produced in previous times. That said, we all owe a debt to the Minister's predecessors. Others have paid tribute to Ministers such as the late Brian Lenihan and Barry Andrews who started the process of drafting a children's rights referendum. It needed the long lead-in time and extensive hearings in Oireachtas committees to arrive at a stage where we could put forward a wording with the support the Bill has received. Others have also paid tribute to the work of NGOs such as Barnardos and the Children's Rights Alliance and Senator van Turnhout's work which has gone into making the Bill well crafted legislation and, if adopted, a well crafted constitutional amendment.

I should declare a little interest as someone who has acted professionally as a barrister in cases involving child custody and the care of children. From that work I know that the refer-

endum is not just of symbolic significance - although we should not underplay the symbolic significance in a State that has an appalling record on the protection of children in the past - but it also has a practical import and will have practical significance for the day-to-day work done by those working in front-line social services with children and children at risk.

The first practical reason this is important, as others have said, is that it will enable the adoption of children of married families. That is a clear imperative. I have been involved in some of those cases and I know how incredibly difficult it is under the current law, even where everyone is in agreement that the child should be adopted where the child has been in the care of foster parents over many years and where the married parents have effectively handed over responsibility. It is a difficult test and the test that will be set out in the legislation gives equality to the children of marital parents who have been in foster care for some time. It will enable justice to be done for those children who are currently in a form of legal limbo in which they cannot be adopted by their long-term foster parents despite the fact that they wish to be in that position. That is hugely important and is the first item of practical significance. It relates to Article 42A.2.

There will also be great practical significance in giving the best interest test constitutional status and ensuring the views of the child will be heard. That is provided for in Article 42A.4. This will extend not only to proceedings brought by the State but to proceedings concerning adoption, guardianship, custody or access to children. It will give great support and help to the courts, often not only in cases in which the State is seeking that a child be brought into care but also in separation and divorce proceedings between parents where the child is often caught in the middle and it can be difficult for a judge to adjudicate. It gives a judge much clearer guidance. It may also require us to expand the provision for guardian *ad litem* to private custody disputes. That may be for another day but it is something I have raised in the House previously, as has the Minister. It is something we should examine. There may be difficult cases involving young children where it is difficult for a judge to ascertain the views of a child when they are not apparent. In those cases guardians *ad litem* could add to the protection of the rights of the child and ensure that the best interest test is observed properly.

Another reason this measure will be of practical significance goes beyond those cases involving access to children and child custody. I refer to cases in which the rights of children have until now been peripheral or the courts have been unable to take them into consideration - cases such as the CC case in May 2006, in which a challenge was taken by an accused person to provisions of the criminal law concerning the existence of a strict liability offence of unlawful carnal knowledge, or statutory rape as it was called. It struck me at the time, reading the Supreme Court judgment in which it struck down the offence and declared it was in breach of the rights of accused persons that a serious offence of this nature was capable of being prosecuted on a strict liability basis, that there was a glaring absence of any consideration of the rights of the child and the State's duty to protect the rights of children. At the time, there was a practical reason the Director of Public Prosecutions was prosecuting cases of child sexual abuse under those provisions and it made it much harder to prosecute following that judgment. I felt it would have strengthened our legal system greatly had the courts had an obligation to consider the constitutional right of the child in carrying out the balancing exercise of different constitutional rights. That is something which again will happen because of this provision and particularly because of Article 42A.1, which is the more encompassing framework right, as it has been described. That will enable the courts to take children's rights into account in all sorts of different cases, including criminal cases in which they are currently unable to do so. Others

have mentioned more direct examples of cases, such as the Baby Ann case in 2006 in which, again, it would have assisted the court had there been constitutional protection for the right of the child that could have been balanced against the rights of the marital family. People are familiar with the facts of the case, to which previous reference has been made. I take strong issue with Vincent Browne's recent article suggesting that the Supreme Court's judgment in 2006 might not have been affected by the passing of the referendum. I carefully read the judgment, in which the Supreme Court overruled a High Court finding that the best interests of the 17-month-old child lay in staying with the adoptive parents. It was most unusual that the Supreme Court ruled against that. Clearly, a strong factor in the decision was the paramount nature of the rights of the marital family. That is not to make a judgment or cast an aspersion on any of the individuals involved, but it would have assisted the court greatly had it been obliged to have regard to the rights of the child. In some ways it is extraordinary that it did not - that it was not a right of constitutional status and still is not.

Others have mentioned the Kilkenny incest case. The Minister referred to Mrs. Justice McGuinness's clear commentary as far back as 1993 and, since then, the litany of abuses against children recorded in the Ryan and Murphy reports, among others. We are well aware that the State has failed children too many times in the past. Others have talked about coming to the debate without complacency and with some passion. It is important that we bring passion to the debate - a passion for the protection of the rights of children and equality for children. There was a concern that too much power might be given to the Judiciary in substituting their judgments for the judgments of parents. That has been carefully dealt with in the wording of the amendment, particularly in the reference to provisions being made by law, which will enable legislation to provide greater clarity and more comprehensive guidelines to judges.

Equality is still an issue for children of same sex parents. A strong argument is made by the campaign group Marriage Equality, with which I agree, that children cannot be treated equally until we have marriage equality for same sex and opposite sex couples. That debate is perhaps for another day. We are all in agreement that the State has failed children too many times in the past. The referendum is part of a package of measures. I compliment the Minister on the introduction of some of those other measures. I was delighted to see the announced phasing out of detention of children in St. Patrick's Institution, which was a glaring example of how we failed and have continued to fail children for a long time. We have also passed a great number of pieces of legislation that will strengthen the protection of children such as the Criminal Justice (Withholding of Information) Bill, the National Vetting Bureau (Children and Vulnerable Persons) Bill, and so on. I see this as merely part of a whole package of measures. It is not a panacea but it will make ours a much safer state for children, both symbolically and in a very practical way.

Senator Trevor Ó Clochartaigh: Tá céad fáilte roimh an Aire. Tréaslaím léi ó chroí as ucht an reachtaíocht seo a thabhairt os ár gcomhair. Is lá iontach stairiúil é don tSeanad agus lá tábhachtach do pháistí na tíre. Cuireann Sinn Féin fáilte roimh an mBille agus roimh an reifreann a bhéas á reachtáil i Mí na Samhna. Ró-fhada atá sé nach raibh cearta na leanaí á gclúdach ins an mBunreacht. An rud atáimid ag plé inniu ná an chéad uair a bhfuil aitheantas iomlán á thabhairt ag an Stáit go bhfuil na cearta sin ag leanaí, go bhfuil sé de cheart acu go dtabharfaí omós agus aitheantas dos na cearta sin agus nach raibh sé ceart go dtabharfaí cearta leanaí faoi scáth chearta na clainne, mar a rinneadh go dtí seo.

Sinn Féin warmly welcomes the introduction of this Bill and the referendum in November. For too long the rights of children have not been enshrined in the Constitution. What we are

discussing today is the first recognition that this State believes children have the right to be heard and that, to date, this right has not been respected. The subsuming of children's rights into the rights of the family has failed. In recent years we saw the Ryan report and the infamous Roscommon case as two reasons we need this change but in reality there are hundreds of cases where this provision could have saved lives and prevented suffering of children. The minimum standard we should aim for is the UN Convention on the Rights of the Child. That document must underpin all our laws concerning children. The direct incorporation of the UN convention into Irish law would be the ideal approach and we hope this is the first step to that full incorporation.

This referendum has been a long time coming. Although the wording falls short by some way of what it could have been, my party supports it and will campaign in favour of the constitutional amendment. The placing of the natural and imprescriptable rights of all children onto a constitutional level represents a long overdue recognition of the rights of children. If passed by the people, it will also represent a victory for all campaigners for children's rights, whose work and patience I salute, as have my fellow Senators.

It is not a perfect solution. We have tabled a number of amendments which we believe will improve the Bill and we hope there can be a full discussion on those tomorrow. Amended or unamended, the passing of this amendment will be, in some ways, only the start of the battle. The Government must commit to ensuring the legal profession is fully knowledgeable on these new provisions. This amendment has the potential to dismantle some of the legal barriers which have prevented the State from taking action where it was necessary to protect children. The threshold for State intervention is to be adjusted in order that recurrences of such cases as the Roscommon abuse case should become things of the past.

The amendment will ensure that foster children, who have no connection with or who wish to have no connection with their birth families, may be adopted by loving foster parents. This change is for exceptional circumstances and anybody who objects to it is failing to see it is a necessary change and is in the interests of children, not of the State. This amendment will have no impact on the place of the family in the Constitution, something we believe needs modernising, in any case. We need to contest any attempts to muddy the water on this issue and must dispel any unfounded arguments.

The biggest issue remarked on by Sinn Féin in regard to this change is that courts will still not be required to view the best interests of the child as the paramount consideration where there is not a guardianship, custody or access issue in question. The provision fails to address this issue, which is a great pity. Nevertheless, as I stated, Sinn Féin supports this measure as a very important step forward, will support it in the Seanad and will campaign, actively and enthusiastically, in favour of its adoption by the people.

I have a number of other points but this will be a pleasant day for all people and all Senators who believe Sinn Féin are opposed to everything - we are not opposed to this Bill.

(Interruptions).

Senator Fidelma Healy Eames: For once.

Senator Trevor Ó Clochartaigh: We will have no more of that, lads, if you do not mind. It is important there is cross-party support.

Senator Colm Burke: This is a sign of things to come.

Senator Trevor Ó Clochartaigh: I doubt it. Not unless things change radically.

There is an issue about the coverage of the referendum. There are rumours that the 50:50 rule regarding coverage of this referendum might be challenged. That would be a very dangerous step to take, for a number of reasons. First, that could become the issue, as opposed to the actual referendum and passing it. Second, if there are people out there who have genuine concerns these need to be addressed by those of us who are campaigning for a “Yes” vote, instead of our branding them as cranks or people with very specific agendas. They need to be tackled head on. There are some groups who have contacted us, for example, fathers who are separated from their children who have legitimate issues, and other representative groups. The way to tackle this is to address those issues in a very forthright and open manner, taking on board the issues the people concerned have and explaining that in most cases, or so I imagine, such issues do not relate to the change in the Constitution. It is really important that we stand by the principle of 50:50 coverage in the run-up to the referendum.

Another issue very close to my heart is that of asylum seekers. The Irish Refugee Council has been seeking legal advice on the referendum. Ms Sue Conlon of the IRC stated she hoped the wording would afford rights to children living in direct provision but that at present it was uncertain if this were the case. Ms Conlon also said that phrases such as “as far as practicable” might mean that children in direct provision may not fall under all the elements of any new laws, were the referendum to be passed. She stated, “we would welcome any inclusion of these children”, and added that regardless of their status in direct provision, these children are the responsibility of the State. I raised this issue recently with the Minister for Justice and Equality, Deputy Shatter, because of the situation in the Lisbrook direct provision centre in Galway where 272 people are staying, 100 of whom are children. We are not clear what their rights are under this provision. Perhaps the Minister, Deputy Fitzgerald, might be able to enlighten us as to how she reads the referendum as affecting their rights. The people concerned have asked me to ask her that question which is a very important one.

The Minister mentioned that HIQA is to be given a role in regard to child protection standards; I hope that would include children in direct provision. At present there is a certain lack of transparency - one way to put it - about what is going on in some of the direct provision centres and about people checking what is going on in them. Mrs. Justice McGuinness was mentioned, rightly, on numerous occasions today. I wish to cite her in another instance. She wrote the foreword to the State-sanctioned report on child poverty and exclusion by the Irish Refugee Council, in which she stated:

[The report] paints a convincing picture of the damage done to children by years of living in institutional accommodation which is so far removed from the atmosphere of a normal family home. This is rendered even more damaging by the income poverty of their parents.

Noting that the UN convention has not been fully ratified, she continued:

Ms Arnold’s cogent argument in the report that in the case of these children Ireland is also in breach of the family life rights set out in Article 8 of the European Convention on Human Rights. In this context it should be borne in mind that a considerable number of the children living in direct provision accommodation are Irish citizens, born in Ireland.

These comments raise very serious issues regarding direct provision and these children. One third of the residents in State accommodation, some 1,789, are children. Regardless of their or their family's status, these children did not choose to come to Ireland and they have no control over their circumstances. The author of the report states:

Direct provision is an example of a Government policy which has not only bred discrimination, social exclusion, enforced poverty and neglect, but has placed children at real risk . . . However, the question remains - does the sustained and prolonged restriction of human rights and civil liberties inherent in the direct provision system amount to child abuse? This report calls on the Government to establish an independent inquiry to acknowledge and investigate the long list of complaints, grievances and child protection concerns reported by the residents, children, non-governmental organisations and support agencies herein. It also highlights the need for a Government commitment to protection of the best interests of the child in all circumstances.

I do not wish to continue on it for too long but it is an extremely important point.

I refer also to the issue of resources. The Government must be applauded for introducing this legislation, as must anybody who has had any hand or part in it over the years. However, the real proof will be in the pudding of how it will change the lives of children. I refer to a recent news report from Galway which stated that almost one in five households with children were at risk of poverty. In addition, over 200,000 children nationally are living in poverty. A member of the Society of St. Vincent de Paul in Galway has stated:

People are coming in hungry. One woman who came in recently had only 40c to feed her three kids for the week ... The cuts to the fuel allowance for those on social welfare and the rising costs of electricity, oil and gas have left growing numbers of Galway families struggling to heat their homes ... A good number of people coming in here cannot pay their ESB bills or put oil in their tanks and that would be a lot of our clients ... Our clients would have gone up by over 30%.

There is an obvious need to recognise children's rights in the Constitution. However, the requisite resources must be put in place in order to change the lives of the children to whom I refer and all other children of the State. I hope that the reference to "all children" means all children, regardless of from where they come.

Senator Fidelma Healy Eames: This is a good day for all of us. Nelson Mandela's comment to the effect that "There can be no keener revelation of a society's soul than the way in which it treats its children" highlights the stage we have reached with the referendum on children's rights. I compliment the Minister, who has taken the lead in respect of this matter and spent a great deal of time researching it, on the work she has done. Her efforts and those of her team are reflected in the wording that has been produced. As previous speakers noted, the efforts of many others who preceded the Minister have also helped us to reach this stage. That fact must be acknowledged.

The majority of children have happy childhoods. The forthcoming referendum relates to those who have not enjoyed good fortune in that regard. The action that is being taken is for the benefit of those who are at risk and vulnerable and who have either been neglected or failed by their natural parents. The referendum is, therefore, really about what is in the best interests of children. I have studied the legislation and the wording it contains. I must admit that I feel

comfortable about it and, given that what is proposed is so simple, I am obliged to wonder why action was not taken previously. The Minister has found a way to state that the rights of the family and those of the child can coexist. As Senator Bacik indicated, she is making it easier for judgments to be made. In view of the fact that both sets of rights will have equal standing, it will be easier for a judgment to be made with regard to who is being failed.

I welcome this amendment to the Constitution, which is long overdue and which will afford the children of Ireland the rights they deserve and need. It will also allow us to give them the protection they require. Running through the constitutional amendment and the Adoption (Amendment) Bill 2012 is the central guiding principle that acting in the best interests of the child is of paramount importance. I have a great deal of personal experience in this area because I have adopted two children, one from Ireland and one from abroad. Regardless of how much agony I might have felt as an adoptive parent, I was 100% clear that everything I did was about the best interests of the child. There have been legal cases in this country where, as a result of the position with regard to the Constitution, that to which I refer was not the central guiding principle on which the courts could rely. This has contributed hugely in the context of certain children in this country being failed. This was no more evident than in the recent Roscommon child care case. As the Minister stated in commenting on this matter, the children who were the subject of the inquiry in Roscommon were fed dog food. In view of the way the Constitution is framed, the judge who heard the case was prompted to suggest that the adults involved perhaps needed to be sent on a parenting course. It is clear that criminal acts were committed in this instance and that there was a need to act in the best interests of the child. However, the court's hands were tied behind its back.

The constitutional amendment will for the first time give children a voice and a level of visibility they have never previously had within the legal system. Thus the old adage to the effect that "Children should be seen and not heard" will be made redundant in judicial and legislative terms. Why is the amendment necessary? Some 17 reports on this issue were compiled in the past 20 years. I refer to the Ryan and Cloyne reports, various reports relating to deaths in care, the report into the Roscommon child care case and others. These reports have led us to recognise the stark deficiencies that exist in the area of child protection in this State. The abuse catalogued in some of the reports to which I refer such as that perpetrated in the Kilkenny incest and Roscommon child care cases highlights the fact that children are not afforded adequate protection under the Constitution, as it stands, and under the existing legislative framework. Put simply, the Constitution is currently not strong enough in the context of allowing the relevant authorities, etc., to act in the interests of children, when necessary. As former Supreme Court Justice Catherine McGuinness noted in respect of the Kilkenny incest case, "that the very high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the rights of parents than to the rights of children."

Senator Bacik also referred to the Baby Ann case, where the rights of the marital family - as opposed to those of the adoptive family - were seen as being of paramount importance. I thank God that I never ended up in court but adoptive parents can often have children for ten, 12 or 14 months before a final adoption order is made. If a matter goes to the High Court and if it comes to a choice between the natural marital family or the adoptive family, the latter family will also fight to keep the child.

What will the constitutional amendment achieve? The wording contained in the legislation is very fair. For the first time in the country's history, children will be recognised in their own right under the Constitution. The Minister has struck a balance between protecting children and

preserving the special place of the family - as laid down in Article 41 - in the Constitution. The Minister's greatest achievement in respect of this matter is the fact that the rights of the family will not be affected. As stated earlier, the rights of the family and the child will coexist. Given that what is proposed is so simple, why did we not take action in this regard before?

Equality of all children, regardless of their family status or background, lies at the heart of the constitutional amendment. Ireland's first Adoption Act was passed in 1952, which means that it has been possible for people here to adopt children for the past 60 years. In what area do the children of unmarried parents have more rights than those of their married counterparts? It is ironic that the answer in this regard is in the area of adoption. Until now, only the children of unmarried parents could be adopted. The constitutional position in this regard was quite confused because in the past the unmarried mothers of the children to whom I refer were thrown into the Magdalene laundries and abused. We are all aware of the position in which the State finds itself in respect of that matter. It is high time we rectified the inequalities that have affected the children of married parents until now as a result of the way in which the Constitution is currently worded.

If passed, both the constitutional amendment and the Adoption (Amendment) Bill 2012 will ensure that children of married parents who have been in long-term care will not be obliged to wait until perhaps they are 17 years of age to prove that they were abandoned in order that they might be adopted by foster families which have loved and cared for them for a significant part of their lives. I was fortunate enough to take home a child from a foster family. The child in question was seven years old, was from a marital family and had been placed in the care of the foster family to which I refer. The child was very loved but probably lacked a real identity. It is wonderful that the position in this regard is going to change. As Dr. Geoffrey Shannon of the Adoption Authority of Ireland stated last week, the referendum will end the legal limbo in which hundreds of children find themselves and which gives rise to them drifting rudderless within the care system. It will also facilitate changes in the lives of hundreds of children across Ireland who deserve a second chance to belong to loving families. It is about belonging. I refer to one fact I learned from listening to the Minister and her advisers and it is a very interesting point. Just because children are eligible for adoption does not mean necessarily that they will be adopted. It will be a case of whatever is in their best interests and that is very important. I have four final questions but they are very short.

An Cathaoirleach: The Senator is over time as it is.

Senator Fidelma Healy Eames: I apologise. Given that foster parents may now be enabled to adopt the children they originally fostered, will there be any change in the assessment of foster parents? How will the due weight be given to the views of the child? What type of new training will be available to judges or experts in order to assess these views, given the age of the child, or the influences or pressures being brought to bear on a child? For example, I am fearful that a child announcing on social media that he or she was going to be adopted would leave him or her open to bullying. How will a judge give due regard to the voice of the child? Is the Minister satisfied that we can now trust the State, given past failures? Are sufficient safeguards in place to ensure that the agencies will act with adequate speed? How will these new provisions prevent future deaths of children in care? I refer, for example, to the case of Daniel McAnaspie. The Children First guidelines will be put on a statutory footing and it is now an offence to withhold information. Does the Minister regard this as adequate provision in light of the children who have died in care? I ask her to address these questions in her concluding response because I would like to hear how they are to be protected.

Senator Paschal Mooney: I endorse all that has been said in praise of the Minister, Deputy Fitzgerald, and welcome her back to the House. Her initiative is to be applauded and there has been universal praise for the content of the amendment and for the manner in which it has been introduced. There was a certain political skill involved in this because, to a degree, it has defeated previous incumbents of the office. I note the first proposal for an amendment was in 2007. The all-party committee of which the Minister was a member, did a remarkable volume of work. Perhaps the fact that the Minister had been a member of that committee influenced and formed her views on how to proceed with this amendment. I do not wish to be churlish in any way but I had occasion to listen to the Minister's predecessor, Barry Andrews, recently when he addressed our party's annual think-in. It seems that wording similar to this wording was ready to go and we wondered why he did not publish it at the time. It may have been that a Government in crisis had other things on its mind but this is not to detract from the fact that the Minister has introduced this amendment of the Constitution and she is to be applauded for it.

The Constitution is a reflection of who we are as a people. It sends a very clear signal to the world at large about our values and what our society espouses and wishes to protect and encourage. I refer to the wording of the proposed amendment Article 42A.1, "The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights". Any constitution that includes wording of that nature must be applauded. We now have the right to include this wording in the Constitution and we should embrace it enthusiastically because it sends a very clear message. It will also reflect the will of the people.

The Minister will be aware of the substantial body of legislation dating back to the Children Act 1990. I refer to Mrs. Justice Catherine McGuinness. It is appropriate that she should retain her title even though she is retired, as is the case in the American tradition. It provides an acknowledgement of the contribution a person will have made to public life and this should not disappear once a person leaves office. However, this is a side issue to the debate. Mrs. Justice McGuinness acknowledged that when she made the remarks that have been used as a benchmark, several elements of the Children Act 1990 had not been passed into law by 1993 although they were passed at about that time. A significant and seminal provision introduced the Ombudsman for Children. It demonstrated the desire of the people to provide some form of protection for and acknowledgement of the rights of children

Reference has been made to several court cases which have been influential. I refer in particular to the Roscommon case. I do not wish to detract from the importance of this amendment. Senator Healy Eames said that the lack of wording in the Constitution prevented the court from acting in a particular way in that case. That may be so in terms of its judicial conclusions but my understanding is that if the HSE had challenged that ruling, it would have been successful. The HSE did not challenge the ruling, meaning that the State agencies had failed. Having passed this legislation much of the emphasis on the implementation of the spirit and sentiment and legal wording of the Constitution will fall on State agencies and, therefore, there may be a need for State agencies to upskill their knowledge to ensure there are no gaps and to avoid the situation where courts can rule without the benefit of a proper and thorough evaluation of a case.

The Minister was a member of the joint committee which produced a wording which is very similar to the wording now proposed. I refer to one line in the committee's wording which is not included, "The State shall cherish all the children of the State equally." Barry Andrews, the former Minister, who is a barrister, is of the view that one of the reasons this sentence was

not included is because it is an abstract in legal terms and there is a question as to how it could be enforced legally. The Children's Rights Alliance was in favour of this wording and I can understand why. I am grateful to Senator van Turnhout for providing me with this information. The Children's Rights Alliance argues that this line should be included because it echoes the oft-recited phrase from the 1916 Proclamation. The CRA argues that this phrase is close to the hearts of the Irish people and is likely to resonate with voters. I agree that this phrase might have been useful in motivating the electorate to vote.

Reference has been made to Archbishop Martin's endorsement of the wording. He said he was stating a personal view. I would have thought that a public pronouncement by the archbishop should be regarded as an *ex cathedra* statement. I would have assumed he was speaking for the body politic of the Catholic Church when he made that statement but he qualified it by saying it was his personal view. Does this signify a question about the position of the Catholic Church on this matter? I presume the church will issue a public statement as was the practice in the past with regard to previous referenda. The fact that a senior cleric of the standing of Archbishop Martin should enthusiastically endorse the wording should allay any fears that the wider Catholic Church would challenge the wording. We have come full circle. A comparison has been made between the resignation last week of Deputy Róisín Shortall as Minister of State and the situation in which Dr. Noel Browne found himself as Minister for Health in the 1950s. I am straying into the political arena here, but the implication is that Deputy Shortall was not supported by her party leadership. Dr. Browne, in fact, lost the support of the entire Cabinet, whose members were under the spell of Archbishop McQuaid, and was left totally isolated. When one considers what his proposals amounted to, it beggars belief that they were met with such resistance. Those were, however, different times.

I do not agree with Senator Trevor Ó Clochartaigh's comments in regard to the McKenna judgment. If it is not revisited, it will cause enormous difficulties for electronic media in terms of finding commentators who will argue for the "No" side in this referendum, which they must do in order to fulfil the obligation of having equal coverage for both sides. It is important to note that while they have generally adhered to this principle of equal coverage in previous referenda, the printed media do not have the same obligation to do so under the judgment. In other words, newspapers can, in fact, take any position they wish without the restraint of the 50:50 requirement.

If the constitutional amendment is passed, legislation will be required in several areas, including that of Garda vetting. The Minister for Justice and Equality, Deputy Alan Shatter, had made good progress in reducing the waiting time for Garda clearance for child care workers to six weeks, but our experience in County Leitrim in recent months is that waiting times are climbing back up to three months. Perhaps the Minister, Deputy Fitzgerald, might look into what has caused this slippage, whether lack of oversight or something else. I wish her well in the forthcoming referendum campaign. The single greatest challenge facing all political parties will be to ensure people are sufficiently motivated to vote.

Senator Lorraine Higgins: I welcome the Minister, Deputy Frances Fitzgerald, to the House to debate the constitutional change that is necessary to enshrine the protection of children in Bunreacht na hÉireann. I commend her and her departmental officials on all the great work they have done to ensure it was a priority for the Government from the very beginning of its term. I also acknowledge the role played in this regard by a Galway man, Mr. Geoffrey Shannon, the Government's special rapporteur on child protection.

There has been much scaremongering and faux philosophising about this proposal from a conservative sector of Irish society. All such misinformation must be quelled in the interests of protecting children. The reality is that the amendment is necessary and that the deficiencies in existing constitutional and legislative provisions have facilitated terrible emotional, psychological and physical atrocities to be committed against children throughout the country. Such abuse has decimated families, the very social unit given special protection in the Constitution. Despite claims from some quarters, this proposal is not part of some nanny state agenda. Rather, the amendment seeks to ensure that the horrific failings evident in cases such as the incest scandals which wracked the west in recent years, particularly the Sligo and Roscommon cases, will be ameliorated if not avoided. The lives of the children in these cases were destroyed by the actions of one or other parent and the inaction of the State. Moreover, the cases that have come to our attention are undoubtedly a mere drop in the ocean - I am sure there are episodes of child abuse which will never see the light of the day. The inability of the State to intervene in such circumstances shows a crystal-clear failing in our legislative armour. We must create the right legislative conditions to ensure that cases such as those to which I referred can never again arise. This amendment seeks to achieve that end and, as such, deserves to be welcomed and not countered.

It is clear from a literal interpretation that the wording of the amendment has struck a good balance between the rights of children to be protected and the rights of parents. Parents' rights are not undermined by this legislation, save where they have failed their children. It is imperative that the State has rights to intervene in exceptional cases, "exceptional" being the key word. There were far too many instances in the not too distant past where the well-being of children was ignored as a consequence of the glaring absence of legislative provision in Irish law to protect this most vulnerable section of our society. Under the new provision, the State will be duty bound to ensure any intervention is undertaken in a proportionate manner, as provided by law, and the onus will be on the State to prove it is taking adequate measures in this regard.

The amendment ensures there is no ambiguity in regard to children's rights. It will be a matter of law, as set out in the Constitution, which is the highest law in this country. The new provision will permit the State to protect children as children, without having to have recourse to their parents. As we saw in the abuse cases in Sligo and Roscommon, parents are sometimes their children's greatest enemy. I commend the proposal to the House and strongly urge a "Yes" vote in the referendum on Saturday, 10 November.

Senator Colm Burke: I thank the Minister, Deputy Frances Fitzgerald, for bringing forward this proposal for a constitutional amendment on children's rights. The timeline of the debate on this issue goes back as far as the taskforce on child care services which reported in 1980. Senator Jillian van Turnhout referred to the many calls for constitutional change going back over years. The Minister referred to the various reports which pointed to the problems with the current situation. The debate has been going on for a long time. In that context, we all must welcome the bringing forward of the proposal just 18 months after the Minister came to office.

Other speakers referred to the scaremongering from certain quarters in regard to what is proposed. The Master of the Rotunda Hospital told me last week that some 40 babies are born in that hospital every year suffering withdrawal systems because their mothers are drug addicts. I understand the corresponding figure in the other two Dublin maternity hospitals is approximately 20 per annum in each case. This is the type of parental situation envisaged in the proposed constitutional amendment, yet an editorial in one of the newspapers circulated in churches last weekend warned us:

The amendment states that provision shall be made by law for the adoption of any child where the parents have failed and where the best interests of the child so require. This is explosive. It leaves the way open to social workers and the courts to take almost any child from its parents, married or single, and have it given up for adoption.

Many speakers referred to the Roscommon case. The conclusion in chapter 6 of the report into the case is worth considering:

The Inquiry Team concludes that the six children of the A family were neglected and emotionally abused by their parents until their removal from the family home in 2003 or 2004. Some of the children have spoken of severe physical abuse by their parents. Some of the children were also sexually abused. There is no evidence that either parent understood or sought to consistently meet their children's needs. Both parents, but particularly Mr A, successfully resisted the efforts of professionals to work in a meaningful way with the children, while appearing to be cooperative on the surface.

The State attempted to support this family but such efforts were unsuccessful in terms of their primary aim, which was to protect the children. The report states:

Staff utilised services to support the parents. The parents tended to agree readily to accept the support offered but the Inquiry Team did not find any evidence that any area of their parenting showed a positive consistent change over the eight year period from 1996 to 2004.

Despite an ongoing engagement over an eight-year period, nothing changed and the children continued to suffer.

The limits of existing legislative and constitutional provision are clear from the way in which the courts have found their hands tied in certain situations. Reference has been made in this context to the Baby Ann case and the JH case. The judgment in the Baby Ann case runs to 103 pages and offers an excellent review of the constitutional issues dealt with by the High and Supreme courts. Comments by Mr. Justice Lynch in his conclusion in the JH case are also instructive:

If one looks at the claim to custody through the eyes of the parents they have a very strong case to be awarded custody of the child. If, on the other hand, one looks at the claim to custody through the eyes of the adopting parents they also have a very strong case to be awarded the custody of a child. That is why it is so very important in the circumstances of this particular case to look at it through the eyes, or from the point of view, of the child and the best way of doing so is, in my view, by posing and answering the question which I have already put above. I have come to the conclusion that the answer to my question is that there is not anything really worthwhile to be gained for the child by transferring her from the adopting parents to the parents. If custody were changed I think that the risk of long term psychological harm, and therefore of unhappiness, is sufficiently proximate to outweigh the contrary factors referred to above.

7 o'clock

The High Court considered the issue from the perspective of the child. People may criticise the courts for not taking all relevant matters into account but judges try hard to consider all the issues. For example, I was involved in a family law case involving a dispute over custody of a ten-year old child. The judge decided to take the child in question to a burger outlet at lunch-

time to ascertain the child's views. I do not accept the argument that courts do not consider the wishes of children. However, judges must also work within the rules. The problem in the Baby Ann case was that the Constitution prevented the court from taking all matters into consideration. The case was subsequently overturned in the Supreme Court, which found the following:

In the case, therefore, of a contest between the parents of an illegitimate child – who with the child constitute a family within the meaning of Articles 41 and 42 of the Constitution – and persons other than the parents as to the custody of the child, as this case is it does not seem to me that section 3 of the Act of 1964 can be construed as meaning simply that the balance of welfare as defined in section 2 of the Act of 1964 must be the sole criterion for the determination by the court of the issue as to the custody of the child.

This decision means that despite the relevant legislation - the 1964 Act - providing that the welfare of the child is to be the primary consideration, the Supreme Court found that its hands were tied because, in its opinion, the Constitution takes priority. This is one of the problems with the current system.

The Supreme Court also found the following:

Furthermore, notwithstanding the presumption of validity which attaches to the Act of 1964 and the absence of a challenge in these proceedings to that validity, the court cannot, it seems to me, as an organ of the State supplant the right to education by the family and parents which is conferred on the child by the Constitution unless there is established to the satisfaction of the court a failure on the part of the parents as defined in Article 42, s. 5 and 'exceptional circumstances'.

The referendum proposes to change Article 42.5 through the inclusion in the Constitution of this well thought out and an appropriate amendment which will address a complicated issue and ensure children have the rights they deserve. I wish the Minister well in her endeavours and thank her for acting in such a timely manner. Everyone must work to ensure the referendum is passed on 10 November.

Senator Denis O'Donovan: I support the Bill and welcome the Minister to the House. She took a keen interest in this issue during her time in the Seanad and I wish her well and congratulate her on bringing this topic to a head. I am also pleased to note that all the political parties and the Archbishop of Dublin, Dr. Diarmuid Martin, support the proposed constitutional amendment. I have supported taking this measure for many years, having been fortunate to chair the Joint Committee on the Constitution from 2002 to 2007. The committee included representatives of all parties, including the former Progressive Democrats and Sinn Féin, and Independent Members. During my time as Chairman, it examined this issue in the context of the family and concluded that the right of the child within the articles of the Constitution was smothered. It was the unanimous and unequivocal view of committee members that the right of the child in the Constitution should be elevated and we recommended constitutional change to this end.

The former Deputy Mary O'Rourke subsequently chaired another committee which studied this issue. The late Brian Lenihan, God be good to him, who preceded me as Chairman of the Joint Committee on the Constitution, was then appointed Minister of State with responsibility for children and he and his successor, former Deputy Barry Andrews, embarked on the process that led to this constitutional amendment, for which responsibility has now passed to the Min-

ister. I am delighted we have reached this point and I have no doubt the electorate will give a strong vote in favour of the amendment on 10 November.

I criticised a Fianna Fáil Minister in the previous Government for not acting quicker on this matter. However, as the Minister is acutely aware, it was critical to find the correct wording for the proposed constitutional amendment. In fairness to the Minister and her officials, having taken account of advice received and previous reports on this issue, they have arrived at the right recipe, as it were. History will tell if I am correct in that regard but if I am wrong, it will be disastrous.

I am acutely aware that the proposal will not provide a utopian solution to the issue of child abuse. Some people believe that once the proposed new article is enshrined in the Constitution, the matter will be resolved. Regrettably, as other Senators who can speak more authoritatively than I can on the issue of child abuse will know, more than 85% of cases of child abuse occur in the family circle or curtilage, so to speak, in that they involve someone known to the child or parents. There is a myth abroad that once the recommendations of the Murphy report into abuse by clerics in the Catholic Church have been implemented, we will have reached the end of the road. Regrettably, that is not the case.

I am confident the referendum will be passed because my knowledge of south-west Cork indicates there is great goodwill towards the proposal. Once the amendment has been passed, legislation will need to be amended to meet ongoing needs as the inclusion in the Constitution of the proposed wording will not, of itself, catapult matters forward. It will, however, raise the bar as far as children are concerned, which will be a major step in the right direction.

During debates with the various groups that came before the committees chaired by me and former Deputy Mary O'Rourke and arising from discussions with the Minister's predecessor, former Deputy Barry Andrews, I became concerned that, in elevating the rights of the child in the Constitution, one must be careful to avoid diminishing the rights or control of parents. I am concerned that a bright, articulate and bold or naughty teenager will use the rights inserted in the Constitution to get at his or her parents for the wrong reasons. This is always a danger and I am sure the courts will try to get to the bottom of the issue in case law.

This is the 31st amendment to the Constitution. I have examined constitutions around the world arising from my involvement in the Joint Committee on the Constitution and interest in constitutional law. Australia, which is a federal state, has had approximately eight constitutional amendments. Given that the Constitution dates back to 1937 and bearing in mind the link between the Irish and American constitutions, Bunreacht na hÉireann has probably been amended more often than any other modern constitution in the western world. Some of the constitutional amendments passed here arose as a result of our engagement in Europe, which has required that we pass certain treaties and so forth. However, amendments to the Constitution have been put to the people much more frequently than in the case of any other constitution in history, including India. Clearly, therefore, we are not afraid to go to the people to seek change. In this instance, I have no doubt that Minister spearheading the amendment is pushing at an open door.

I will urge anyone with whom I have any sway, both publicly and privately, to vote for the referendum to be passed. A good turnout in support of the proposal would augur well for the strength of the Constitution and send a strong signal about how society values child welfare and protection. I would be very disappointed if there were only a 40% turnout with only 37% for and 3% against. I would prefer a 60% turnout. Having it on a Saturday means no one can

have an excuse not to vote. In the past, Governments were castigated for having referenda on days when people were at college or could not get home from their work base in time to vote. I hope the citizens will not lose sight of this significant opportunity to ensure this amendment gets a resounding welcome.

This change has been in the making for the past 20 years. It advanced little by little and at times progress on it was frustratingly slow. However, as the Minister will agree, that extra time was essential to get the wording as right as possible. I believe the Minister has achieved that with this wording. I endorse this referendum and believe, both morally and legally, that it is important and right. I wish its passage every success and the Minister well in this. When she retires from politics many years from now, she will look back fondly on this legislation and put it on her chart of success. It was also a team effort as it had cross-party support which involved many years of exhausting dealings within committees. When an earlier wording came out several years ago, I was challenged in a debate on Vincent Browne's show that the term "citizen" was too broad and children may not be considered citizens. I wish the Minister and the referendum the best of luck. The referendum day will be an important one for the political and legislative history of Ireland. Hopefully, the next generation – I am a proud grandfather now of three – will have a happier place to live in than some had in the past and who should have been cherished more.

Senator Martin Conway: Cuirim fáilte roimh an Aire go dtí an Teach. I want to be associated with all comments made on this Bill. I am not going to get into repetition mode but the mere appointment of a senior Minister with responsibility for children showed the rights of children were at the centre of the Taoiseach's concerns. It is a commitment on which he should be commended. The nomination of Senator Jillian van Turnhout, chief executive of the Children's Rights Alliance, brought further consolidation to that principle. The morning after the first sitting of this House, I told the Taoiseach in his office that it was an inspired choice. Since then, Senator van Turnhout has become a close friend and I believe my words were well sung.

I am looking forward to campaigning for this referendum more than any other because it is the right thing to do. For once, as a society, we can say we are doing the right thing for the most vulnerable group in it who do not have the power adults have. Endorsing and supporting this referendum is a credit to the political system and the main Opposition party, Fianna Fáil. The work Fianna Fáil did prior to it is also a credit. All political parties must regret it took 17 reports to reach this point. However, it is never too late to do the right thing and correct the wrongs of the past.

Not one Oireachtas Member has come out against this referendum, which is a credit. I agree with the sentiments about the McKenna judgment and the need for 50:50 broadcasting balance. There needs to be some recognition that when there is a unanimous political view, this balance may not be necessary. Senator Ó Clochartaigh is correct that if people have an issue with this referendum, then we should hear them. It was also fantastic to hear the Archbishop of Dublin, Dr. Diarmuid Martin, endorse this referendum this morning. However, I am not surprised as he is one of the good guys.

We all have had experience through our clinics and through local knowledge of children who have been neglected, who should have had a better chance in life and who should have been in a better place in society. We have come across horrendous stories. Some of us have come across them directly in our advice clinics while more of us have heard them within our communities. Nearly every community has had some horror story of how children were mis-

treated. There are, unfortunately, the celebrated cases like the Roscommon case. There are also many other horrendous stories that we will never know about. Canvassing in local elections in 2009, I did not sleep for a week with what I discovered in one house. While the Health Service Executive, HSE, and social services were involved, they were constrained in what they could do as the children's parents were married.

Now the rights of children will be enshrined in the Constitution. It is bizarre the rights of property are already enshrined in it. I have every confidence the people will do the right thing and pass this referendum. I am delighted children will be to the forefront of political discourse and analysis for the next six weeks until the referendum and, I hope, for the week or two after it is passed. It is a good beginning. Under the Minister, Deputy Fitzgerald, the Government's approach to this area will be child-focused and legislation, where needed, will be brought forward. In spite of the fact we are a programme country and do not have our economic independence, along with the Minister, the Taoiseach and Senator van Turnhout, we must ensure the resources for backup child care and protection services will be found.

I listened with interest to Senator Healy Eames recount her personal experience of adoption and how the benefits of a loving family can facilitate the adoption process. If children deserve nothing else, they deserve equality. From my perspective as Fine Gael spokesperson in the Seanad on disability and equality, children with disabilities can often be treated blackguardly and certainly not treated with appropriate respect. There have been appalling examples of name calling and of how children with mental disabilities have been treated over the years. There will at least be a situation where their rights will be enshrined in the Constitution, just like the rights of every other child. We want a society where there are no barriers, where there is equality of opportunity for everybody and where young people enjoy the protection of society and the State, irrespective of who is in government, to ensure they are treated with respect and have an opportunity to enjoy education, healthy food and what many of us have had the privilege and the pleasure of enjoying. If only we had a society like that, we could call ourselves a civil society.

When this referendum is passed, we will at least be able to stand up the following day and say that the rights of children are enshrined in the Constitution. It is a powerful start. I wish the Minister well. I will dedicate myself to this campaign and to getting out to houses, on radio and onto the streets to explain to people why this is an essential referendum, probably one of the most important for the foreseeable future.

Minister for Children and Youth Affairs (Deputy Frances Fitzgerald): I thank all the Senators for their contributions. We have heard a wide range of contributions and a huge amount of personal experience shared across the House. The contributions have been thoughtful and insightful. I will deal with some of the particular issues on the legislation on Committee Stage tomorrow and I will confine myself to fairly general remarks at this point.

I was struck by one of the phrases from Senator Mac Conghail, when he stated that we will not resolve the cries of the past but we have a good guide to the future. That was true of the discussion here today. It was striking how many Senators spoke movingly about the significant legacy issues in this area. The debate certainly was a testimony to the great desire of so many Senators to see that changing and to ensure that we do not repeat past failings and move ahead and protect children in an appropriate way.

A point made by many Senators was that we must continue to be vigilant and that the price

of freedom is eternal vigilance. The price of ensuring that children are safe is ongoing vigilance, given some of the recent reports. Some of the facts which have emerged from recent reports show that, right up to 2010 and 2011, this is an ongoing issue and there are approximately 1,500 children every year who experience serious abuse in their family and where there are cases of child physical and sexual abuse. The public wants to ensure that those children are protected and that the State has the power to intervene in an appropriate way.

I thank all Senators for their contributions. As I listened, I felt I would really like the public to hear them. I do not know how much of this debate will be reported but whatever happens in that regard I hope that all Senators will have an opportunity in their own constituencies, at public information meetings and through local media such as press and radio, to make the kind of points they made here about our history, how we need to change and how this amendment can play a part in that.

I also take the point many Senators made to the effect that this is not a panacea. This is important constitutional change. I again acknowledge the contribution of so many to arriving at a point where I was able to publish a wording which to date has found fairly wide acceptance, almost all of whom I can think of have been named here today. Everybody contributed to the point where we are at right now. I am privileged to have the opportunity to bring this Bill to the House and to see the kind of support that there is for it.

I acknowledge the cross-party support because that is really important. In terms of the campaign in the weeks ahead, I hope that we will see that cross-party support reflected in the work on the ground around the country because one of the things we know about referenda is that people need information. People need to understand what precisely we are asking of them. If they do not understand, then they will vote “No”. It is important that we ensure people understand what this is about and what it is not about, as quite a number of Senators said.

The Government will have a strong information campaign. The referendum commission will be sending a booklet into every house. The Government also will be sending a booklet, the work on which we have only finished, into every house. I understand there will be a strong campaign by all of the political parties and while there is cross-party support here and significant support in the Dáil, I would not be in the least complacent about it. There is work to be done. There is information to get out there. I would say to Senators, as I did in the Dáil to Deputies, to use their voices in every place that they can to ensure that people understand this and support it on 10 November.

I thank Senators for the support they have given to the amendment in this House and to address some of the issues which have been raised. Quite a number of Senators asked about the type of legislation that will follow. I assure the House that, obviously, once the referendum is passed, the adoption legislation will be a priority. Equally, the tracing legislation, on which we have much work done, is a priority. The aspects in the proposed amendment which talk about the rights of the child and vindicating those rights, will be supportive of tracing legislation. If one is thinking about the rights of the child and the best interests of the child, clearly the right to have knowledge about one’s identity is an important part of those rights but we will deal with that in legislation. Quite a bit of work has been done and I recognise that there are many out there who are quite concerned about that. There will also be a need to review much of the child care legislation because the amendment contains a provision which states that matters “shall be” enacted, which is a strong provision. We will need to look at current legislation to see how it meets this new constitutional standard in a variety of areas.

There also are quite a number of areas where the principles that are in the Constitution can be brought forward at policy and legislative levels without needing to be in the Constitution as such. Quite a number of pieces of legislation can flow from the provisions that we are putting into the Constitution. Equally, the legislation for the child and family support agency will be introduced before the end of the year so that it will be established in January of next year.

I accept the point that many Senators made about resources. Clearly, constitutional reform is one aspect of working with children and families but, equally, there is the question of the level and degree of resources which we can make available. Senators mentioned, for example, families in direct provision accommodation. I was disturbed by that report. We need to act on it but resources are an issue, particularly at a time of economic difficulty. We are focusing so much as a Government on ensuring that we get our finances and economic situation in order, in order that we have more resources. As the economy grows and as we deal with the legacy issues, this is an area where there will be ongoing demand and where we need to commit resources as they become available.

I also thank the Independent Senators such as Senator Barrett, and Independent Members in the Dáil, for their important support.

I want to take up some points that the Irish Human Rights Commission made. Reservations notwithstanding, I am pleased that the Irish Human Rights Commission has given a broad welcome to the proposed wording of the constitutional amendment. It is strongly supportive of many aspects of the wording, in particular, the provisions on the best interest of the child and the provision on ensuring the views of the child are paramount. I completely understand that it would like to see the United Nations Convention on the Rights of the Child expressly referenced in the Constitution but I am happy that the direction that I have taken with the wording is the most appropriate way to go. When the joint committee examined this issue, it considered at some length how a constitutional wording could accommodate the provisions of the Convention on the Rights of the Child but did not find it feasible to do so because of the complex and difficult issues that would arise, particularly in respect of considering how its provisions would potentially conflict with other rights enshrined in the Constitution. Bearing in mind the significant body of work done on the issue, the Government did not set out to integrate the convention in its entirety into the Constitution but we did reflect certain standards set out in it. I have already outlined my own view of the importance of the convention in informing the principles behind many of the proposals in the amendment.

As I have noted previously, the amendment strikes a careful balance between the State's role in upholding children's rights and parental autonomy. Senators on all sides of the House have welcomed this balance. We recognise that the best place for a child is with his or her family but, equally, realise there are times when that is not the case, and we are strong on the kind of intervention needed to protect children.

Senator Mullen made a number of points about thresholds. The policy imperative is not to change the threshold of failure but to ensure that in considering failure the focus of decision making is the impact on the child. The amended Article 42.5 looks at the impact a failure has on the child rather than focusing on the reasons for the failure. This is an important shift and we also retain the words "exceptional" and "proportionate".

Senators raised issues in respect of the wording of the amendment to which I will respond tomorrow. I will briefly refer to some of the points made, however. Senator Henry spoke about

an 11 year old child who would love to be adopted. This is a poignant illustration of why we need these changes. As Geoffrey Shannon has noted, certain children currently exist in a twilight zone. Senator Healy Eames also made reference to this issue. This amendment deals with children who are caught in that situation.

I pay tribute to Senator van Turnhout for her contribution as CEO of the Children's Rights Alliance and acknowledge the role the alliance has played in forming public opinion. I understand the umbrella group will work to inform people over the next six weeks. It is developing a national campaign and will be putting up posters and going around the country to inform people about the arguments. As was the case with the stability treaty, we are determined to give people the information they need to make a decision but this will also require an effort from Senators and NGOs.

The amendment will play only one part in creating a society that is more child centred and responds appropriately to children and families. Several speakers pointed out the need for permanency planning and risk assessments for children to enter care. The issue of past failures on the part of the State was also addressed. The State will need to do its job properly but almost all children who come into the care of the State are offered care in the setting of foster families. The image of the residential institution no longer applies other than to very few children. We must put in place the proper standards and supports for these children.

Senator O'Donnell spoke about the disappearance of childhood. This is a broader issue but its truth is revealed when one sees the sexualisation of young children and the risks to which they are exposed. One of the reasons I received a positive reaction to the new retail guidelines is because people are concerned about this issue, whether in the context of new media or cyber-bullying.

I thank Senators for their contributions and look forward to their views receiving a wide audience during the coming six to seven weeks. I hope that by the end of the process people will understand why we are introducing this amendment. It has been sought for quite some time and we are now putting it to the people. At the end of the day, a referendum is for the people to decide but information is critical to any decision they may make.

Cuireadh agus aontaíodh an cheist.

Question put and agreed to.

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

Senator Maurice Cummins: Tomorrow.

Céim an Choiste ordaithe don Chéadaoin, 3 Deireadh Fómhair 2012.

Committee Stage ordered for Wednesday, 3 October 2012.

An Leas-Chathaoirleach: When is it proposed to sit again?

Senator Maurice Cummins: Ar 10.30 maidin amárach.

Adjournment Matters

Third Level Funding

Senator Kathryn Reilly: I thank the Minister for Education and Skills for coming to the House and his officials for contacting my office when this motion was originally submitted last week. I want to use this opportunity to raise a number of questions on the future of third level funding, maintenance grants and fees and I will leave it to the Minister's discretion to answer them. I tabled this matter in context of the report on funding for third level education which is due to be presented to him later this year.

Issues pertaining to the future of third level funding have come to my attention through meetings with various student organisations and other interested parties. Does the Minister accept that senior academics in Ireland receive, on average, salaries that are 35% higher than their UK counterparts and that the pay aspect of the higher education budget must be examined in order to prevent further cuts to the non-pay budget? Is it acceptable that higher education institutions have not made costed representations of their funding requirements to maintain quality while accommodating increased participation? Are these institutions operating at maximum productivity and what is the Minister's view of higher education institutions setting up limited companies to attract international students where they are used to pay staff over and above agreed pay scales?

A HEA study of the effect of the removal of tuition fees from third level education in the Twenty-six Counties found that thousands of students from lower middle class homes failed to advance to third level education, primarily because the current inadequate income thresholds for grants acted as an obstacle to students from these groups. Does the Minister consider he should focus on tackling the outstanding problems surrounding the threshold for student grants to allow for greater participation in third level education? Given that most institutions have resumed, students are seeking reassurance that they will not lose the grant and that the eligibility criteria will not be changed to prevent their younger brothers and sisters getting the grant. There has been much hearsay about the report of the capital asset test implementation group and if its recommendations, including the revised means test, will be taken on board by the Minister in the education budget for 2013. There is a fear among farm families with small businesses and low incomes that their children will not get student grants on the basis that the value of their farmland will take them over the income threshold irrespective of whether they derive any income there it. There is a view that income should be maintained as a basis for calculating eligibility for third level grants. The mere ownership of a few fields or a small shop premises cannot guarantee the income needed to maintain the farm with a business not to mention running a household or sending a child to college. When will the capital asset test implementation group report be published and discussed by the Cabinet?

There has been much discussion about the possible reintroduction of fees. Fees in education have been shown to be a disincentive to entrants to third level education and the introduction of free third level fees during the 1990s was supposed to transform Irish education and open up the possibility of obtaining a degree for a much greater number of people. Despite that, many from working class and lower middle class backgrounds were disproportionately excluded from education but I hope that disparity can be addressed.

Does the Minister accept that students from low income families will find it increasingly difficult to access higher education courses should the recommendations of the HEA be implemented? Are the increases in the student contribution outlined to 2015 sustainable for families

above the grant threshold? Is it possible that the Minister may be laying the foundation for the introduction of student loans by virtue of the increases in the student contribution which have been outlined? Does he appreciate the negative impact that a similar system had on students in the UK which showed a 17% drop in the level of participation?

Minister for Education and Skills (Deputy Ruairí Quinn): I thank the Senator for raising this important matter.

The Senator may recall that the national strategy for higher education to 2030, a 20-year national strategy for the development and delivery of higher education, was launched in January 2011. The strategy recommends a number of system changes that are aimed at supporting the objectives of the report, including a sustainable system of funding for third level education to allow for further growth and development with public funding more aligned to national priorities and needs. Arising from the strategy, the Higher Education Authority completed an initial study late last year on the sustainability of the current funding system for higher education. This HEA report outlines the scale of recent reductions in funding, the growth in student numbers and provides some evidence on the possible impacts of these developments on quality of provision.

Enrolments in higher education continue to increase significantly, with more than 160,000 full-time students, both undergraduate and postgraduate, enrolled in higher education institutions in 2010. Projections of future enrolments show that by 2018 this figure will rise to more than 218,000 and by 2030 to more than 280,000 students. In the short term full-time enrolment is projected to increase by more than 18%, 30,000, by 2014 over 2010 numbers.

The report makes it clear that immediate work is required to prepare for a longer term approach to a system that can be maintained through a sustainable funding base which will be able to address the continual expansion of the sector while protecting quality of education. The HEA has emphasised that the report is preliminary only and that substantial additional work now needs to be undertaken before comprehensive proposals can be developed as to how we can sustainably fund higher education into the future. The HEA is continuing its work in this area and further advice is expected later this year.

With regard to the level of maintenance grants for students, the Senator will be aware that, under the terms of the student grants scheme, grant assistance is awarded to students who meet the prescribed conditions of funding including those which relate to nationality, residency, previous academic attainment and means. The eligibility criteria for student grants is reviewed annually and set out in the student grants scheme and the student support regulations each year.

The reality of our current economic situation presents significant challenges that have to be reconciled with limitations on public resources. This is a stark reality which, unfortunately, means that changes to any public service provision, including the student grants, cannot be ruled out. Any decision on changes to the student grant scheme, including changes to eligibility criteria, will be considered in the context of budget 2013. I empathise with students and I am very conscious of the part played by the grants scheme in supporting families who are putting their children through further and higher education. However, the state of the public finances is such that tough decisions have to be made to control public expenditure and to ensure sustainability in the long run. For this reason it is the responsibility of the Government to take into consideration all areas of public service provision when formulating budget 2013. I will take the concerns of students into consideration during the budgetary process in this regard. I will

endeavour to protect, to the greatest extent possible, the most disadvantaged students in further and higher education.

Health Services

Senator Lorraine Higgins: I thank the Minister for coming in to take the matter of the potential provision of a primary health care facility in Portumna, County Galway. Primary health care is the way forward in the delivery of essential health services. These services are imperative to the people living in and around Portumna and its hinterland. Such a facility would provide a wide range of services essential for the well-being of members of the community to include the promotion of health and 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 operating as a one-stop shop.

Under the one roof, general practitioners, public health nurses, general nurses, social workers, community mental health nurses, dietitians, physiotherapists and occupational therapists will deliver such services. However, it must be recognised that the health system which serves the country is not fully integrated and we must try to achieve such a system within the term of the Government as committed to in the programme for Government.

I am aware from meeting interested parties recently that permission for a primary health care centre was approved by planners in Galway County Council some time ago and, as such, this is a ready to go site. I am also informed that the said facility was one that was to be prioritised under the previous Government but this never came to fruition during that time. We need better health for everyone in every community. That is why I ask the Minister to outline the plans as the health strategy should aim to deliver improvements in the personal experiences of many thousands of individuals who avail of health services every day. However, while I acknowledge that there is a list of centres approved throughout the country, I seek a commitment from the Department on the provision of such an important medical facility in Portumna within the lifetime of the Government. To that end I request that the necessary arrangements be made in the capital budget to bring such a facility to Portumna during the term of the Government.

Deputy Ruairí Quinn: I thank the Senator for her question. I very much welcome the opportunity to outline the current position with on Portumna primary health care centre.

As the Senator will be aware, the programme for Government sets out the 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 that will give people direct access to integrated multi-disciplinary teams of general practitioners, nurses, physiotherapists, occupational therapists and other health care disciplines. This is central to the Government's objective to deliver a high quality, integrated and cost effective health system.

A modern, well equipped primary care infrastructure is central to the effective 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-ordination between health providers. The infrastructure development, through a combination of public and private

investment, will facilitate the delivery of multidisciplinary primary health care and represents a tangible refocusing of the health service to deliver care in the most appropriate and lowest cost setting.

The intention to date has been that, where appropriate, infrastructure for primary care centres would be provided by the private sector through negotiated lease agreements. The Exchequer will also fund the delivery of some primary care centres particularly in deprived urban areas, small rural towns and isolated areas. In addition, a list of 35 potential locations for development by way of public private partnership, as part of the Government's infrastructure stimulus package, was published last July.

The provision of a primary care centre in Portumna has been progressed to date by way of a private sector operational lease process. In 2007 the HSE advertised nationally seeking expressions of interest to develop primary care centres by way of operational lease. Portumna was one of the locations included in the process. Expressions of interest were received and a number of sites explored. The HSE approved an offer to one of two applicants in 2008 and a letter of intent issued. In 2010 the applicant advised the HSE that it proposed to change the site for the centre as it had encountered difficulties in acquiring the original proposed site. The alternative site was acceptable to the HSE and to the GP practice supporting the development and project design was advanced in 2010 to 2011.

The applicant in question has had discussions with the HSE on a number of primary care centre developments it is promoting and seeking to fund, including Portumna. These discussions have recently concluded and the HSE expects to receive confirmation from the applicant that it is in a position to fund the primary care developments concerned. The HSE is endeavouring to progress the Portumna project as soon as possible.

I ask the Senator to keep in touch with my office and that of the Minister of State, Deputy Alex White, and I can keep her updated on progress.

Senator Lorraine Higgins: I appreciate the Minister providing further clarity on the matter and I look forward to the facility being progressed in Portumna.

Industrial Relations

An Leas-Chathaoirleach: I welcome the Minister of State at the Department Jobs, Enterprise and Innovation, Deputy Perry, to the House.

Senator Denis Landy: I too welcome the Minister of State to the House. On Monday, 27 August, management at the Gleeson Group terminated the employment of eight workers, the majority of whom are active SIPTU trade union members. It was claimed that the job losses were part of a redundancy issue and that they were not sufficiently skilled for the work that they had been doing for the previous number of years. The next day, when the workers finished their jobs, management hired agency workers to take over their roles in the company. As of today, management has repeatedly refused to meet union representatives and has declined an invitation to attend the Labour Relations Commission to discuss the matter.

People have a constitutional right to join a union and it is defended under unfair dismissals legislation. SIPTU has said that the Gleeson Group had unilaterally reduced wages without

written warning in breach of the Payments of Wages Act. As a Labour Party Senator and a life-long supporter of the trade union movement, this kind of disregard for workers' rights must be challenged at every turn. I have been told that the Gleeson Group has refused to meet SIPTU representatives and ignored any attempts to discuss changes to terms and conditions of employment with the union or the Labour Relations Commission. That is unacceptable behaviour from an employer. It is incredible, as we approach the centenary of the Dublin Lockout, that we still have people being marginalised and discriminated against. We must be careful, as citizens and politicians, and ensure that the recession is not used by employers to attack workers' wages and conditions unilaterally without a proper cause or explanation. The Gleeson Group's refusal to recognise SIPTU and to allegedly sack workers for organising to defend their rights and entitlements reminds me of the days of William Martin Murphy.

I ask the Minister of State if his Department is aware of the situation faced by these workers in Ballyfermot. Is the Gleeson Group, their employers, in breach of the Payments of Wages Act? Has the Gleeson Group sought a rebate of the statutory redundancy payment made to its employees? What stage has been reached in the plan to reform workplace relations structures? When will the plan be implemented?

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry): I thank the Senator for raising this important matter on the Adjournment. It concerns a dispute between the company and eight employees regarding the selection criteria used for making them redundant. The workers concerned have been engaged in a protest outside of the Cherry Orchard depot in Ballyfermot since 24 September. I understand that following a contract loss the company made 12 of its employees redundant on 27 August.

The redundancy payments scheme was established to compensate workers, under the Redundancy Payments Acts, 1967 to 2011, for the loss of their jobs by reason of redundancy. It is the responsibility of the employer to pay statutory redundancy to all eligible employees. An employer who pays statutory redundancy payments to its employees is then entitled to a rebate of a portion of that amount from the State. Where an employer can prove to the satisfaction of the Department of Social Protection that it is unable to pay the statutory redundancy to its eligible employees the Department will make lump sum payments directly to those employees and will seek to recover the debt from the employer. To prove inability to pay the employer must submit documentary evidence to confirm that this is the position.

Rebates to employers and lump sums paid directly to employees are paid from the social insurance fund. In order to qualify for a redundancy payment, an employee must have at least two years continuous service; be in employment which is insurable under the Social Welfare Acts; be over the age of 16 and have been made redundant as a result of a genuine redundancy matter meaning that the job is no longer available and that he or she is not replaced.

Under the Redundancy Payments Acts an eligible employee is entitled to two weeks statutory redundancy payment for every year of service plus a bonus week. Compensation is based on the worker's length of reckonable service and reckonable weekly remuneration and is subject to a ceiling of €600 per week.

The Senator has asked if the Gleeson Group has sought a rebate of the statutory redundancy payment made to the employees. Responsibility for the processing of claims under the redundancy payments scheme transferred from the Department of Jobs, Enterprise and Innovation to the Department of Social Protection in January 2011. I have made inquiries of that Department

and I have been informed that it has no record of receiving any claims against the Gleeson Group. It also has no information regarding recent redundancies or dismissals by the group or concerns employees or former employees may have on same.

I understand from newspaper and media reports on the matter that the employees concerned in the protest feel that they were selected for redundancy because they are members of a trade union. The company has issued a statement that this is not the case. An employer when selecting an employee for redundancy should apply selection criteria that are reasonable and applied in a fair manner. People are entitled to bring a claim for unfair dismissal if they consider that they were unfairly selected for redundancy or consider that there was not a genuine redundancy matter.

The Unfair Dismissals Acts 1977 to 2007 provide protection for employees from being unfairly dismissed from their jobs by laying down criteria on which the fairness or otherwise of dismissals can be judged and by providing an adjudication system and redress for an employee whose dismissal has been found to be unjustified. The Acts also specify a variety of instances where a dismissal would be deemed to be unfair.

8 o'clock

Section 6(2) of the Unfair Dismissals Act 1977 deems a dismissal to be unfair if it occurs for one of a variety of reasons, including if it results wholly or mainly from the employee's trade union membership or activities, where the times at which the employee engages in such activities are either outside working hours or are at those times during working hours when permitted by the employer.

The Acts provide a system of redress whereby complaints may be referred either to a rights commissioner of the Labour Relations Commission or, if such a hearing is objected to by either of the parties, to the Employment Appeals Tribunal. No complaints of this nature have been received by the Labour Relations Commission with regard to the Gleeson Group.

I urge the parties involved to have regard to the availability of the industrial relations dispute resolution bodies to assist them in seeking a settlement in this dispute. Even what often appears to be the most intractable of disputes is capable of resolution where both sides engage constructively and in good faith in the voluntary process. The principle of good faith implies that both sides in a dispute make every effort to reach an agreement and endeavour, through genuine and constructive negotiations, to resolve their differences.

Ireland's system of industrial relations is voluntary in nature and responsibility for the resolution of industrial disputes between employers and workers rests with the employer, the workers and their representatives. The State provides the industrial relations dispute settlement to support parties in their efforts to resolve their differences.

An Leas-Chathaoirleach: Senator Landy may ask a brief supplementary question.

Senator Denis Landy: I thank the Minister of State for his reply. By way of clarification on a number of matters in his reply, I understand that no redundancy payments have been sought by the Gleeson Group from the Department of Social Protection. Would the Minister of State agree that the fact that the Gleeson Group has not sought the portion of redundancy payments that a company in normal circumstances would be entitled to, in itself, is an admission that it is wrong in what it did. Under normal procedures, the group would have applied in

the normal way for the money and would have been given it without any questioning. Given that we have highlighted this matter, through the Minister of State's Department, to the Department of Social Protection and the facts surrounding this case, I sincerely hope that the relevant Department will not pay any portion of the redundancy payments until such time as this case goes in front of the Employment Appeals Tribunal, an application for which has been applied for by the workers' union. I seek clarity on those two issues. The matter has been sent for hearing and I ask the Minister of State, through his office, to ensure no payment is made to this company. Putting it bluntly, it would be a slap in the face to every trade union member in this country and every taxpayer who funds the payments if the Gleeson Group was allowed to get this 15% of the redundancy money by allowing it to apply after sacking these workers because they are trade union members. I ask the Minister of State to watch that space for me and those involved and ensure that nothing happens until the appeal has been heard at the Employment Appeals Tribunal.

Deputy John Perry: The reply states that the Department has informed me that it has no record of having received any claim against the Gleeson Group to date. No doubt the Minister will respond directly to the Senator on this issue as well. That is the current position.

Accommodation for Asylum Seekers

Senator Jillian van Turnhout: I welcome the Minister of State, Deputy Perry, to the House.

The Reception and Integration Agency, RIA, of the Department of Justice and Equality is responsible for the accommodation of asylum seekers in accordance with the Government policy of direct provision. According to RIA's latest monthly report, that of June 2012, there were 4,900 people in its live system, that is, living in direct provision accommodation centres throughout Ireland. Of this number, 1,723 were children. Of this number, 907 were children between the ages of 17 and five, and 816 were aged four years and younger.

The Minister, Deputy Shatter, is very aware of the Irish Refugee Council's report entitled, State Sanctioned Child Poverty and Exclusion: The case of children in accommodation for asylum-seekers, published on 18 September last. The report paints a bleak and worrying picture about the treatment and care of children in direct provision accommodation. It documents frequent instances of poverty, malnutrition and dietary related illnesses among young children in Ireland.

The findings of the IRC report are very much in keeping with the concerns raised by the Government's Special Rapporteur on Child Protection, Dr. Geoffrey Shannon, in his 2011 report, in which he highlighting "the specific vulnerability of children accommodated in the ... Direct Provision and the potential or actual harm which is being created by the particular circumstances of their residence including the inability of parents to properly care for and protect their children ...".

Dr. Shannon has also expressed concern about the "real risk" of child abuse in direct provision accommodation where single parent families are required to share with strangers and where families with teenage children of opposite gender are required to share one room. He cited, in support of his concern, the case of a 14 year old girl in a centre in Mayo who became pregnant by a male resident in the same centre in September 2011.

Given the parallels between Dr Shannon and the IRC's respective supports, I was surprised by the tenor of the response on behalf of the Minister to my colleague Senator Ó Clochartaigh's recent Adjournment motion that the IRC's findings and contentions simply "seems unlikely".

That said, I welcome that the Minister has directed that the report be comprehensively examined and any issues arising be addressed. I welcome in particular his directing that issues relating to child welfare be dealt with without delay. I would be interested to hear from the Minister about the logistics for this comprehensive examination, who will carry it out and when we can expect a report.

What we cannot lose sight of when we are talking about children in direct provision accommodation is the fundamental premise that a child is a child. Irrespective of country of origin and regardless of the application status of the parent or parents, the welfare and protection of children must always be at the forefront of what we do.

It is timely to be debating this Adjournment motion on the same evening as we passed Second Stage of the Thirty-First Amendment of the Constitution (Children) Bill 2012. In recent years the Oireachtas has spent significant time discussing horrific reports about the institutional abuse of children.

To get to the point of my question, what I am genuinely concerned about is that our treatment of children in direct provision accommodation will become our shameful report of the future. Like many others, I am doing my best to ensure this does not happen.

At this juncture, I will limit my questions to the following. Can the Minister confirm the number of children living in direct provision accommodation who have been born in Ireland or born to an Irish parent? Are the HIQA national standards for the protection and welfare of children for Health Service Executive children and family services, published in July 2012, applicable to children in direct provision accommodation?

I understand the RIA's child and family services unit is responsible for the monitoring and implementation of the RIA's child protection policy and does so in close partnership with the HSE child protection and welfare service nationally. I note, in particular, the standards stipulates that "Child protection and welfare services provided on behalf of statutory service providers are monitored for compliance with legislation, regulations, national child protection and welfare policy and standards". Features to meet the requirements of the Standard include:

3.4.1 Formalised agreements are in place for the provision of child protection and welfare services for children and families, which are sourced externally.

3.4.2 Formalised agreements include the scope of service provided, resources required to deliver the service, monitoring and governance arrangements, including compliance with national policy, Children First and relevant standards.

3.4.3 External service providers are monitored on a regular basis to assure the service provided to children and families is compliant with legislation, regulations, these Standards and national policy.

The national standards for the protection and welfare of children clearly apply to direct provision accommodation. However, in preparing for this debate I contacted HIQA and the RIA and nobody could assert this for me. I would like to know what arrangements are in place for

the inspection of direct provision accommodation centres in accordance with these standards.

Deputy John Perry: I thank the Senator for raising this important issue, to which I am responding on behalf of my colleague, the Minister for Justice and Equality, Deputy Alan Shatter.

The Reception and Integration Agency, RIA, of the Department of Justice and Equality is responsible for the accommodation of asylum seekers in accordance with the Government's policy of direct provision and dispersal. Standard 3.4 of HIQA's national standards states as follows:

Child protection and welfare services provided on behalf of statutory service providers are monitored for compliance with legislation, regulations, national child protection and welfare policy and standards.

These HIQA standards apply to the HSE children and family services or any subsequent agency which will take on the HSE's statutory functions under section 3 of the Child Care Act 1991. These functions include protecting and promoting the welfare of children at risk in the community and supporting and protecting children in the care of the State. Children living in the direct provision system are not in the care of the State. All live in a family context and their parents or guardians have primary responsibility for their care and welfare. Neither does the RIA accommodate unaccompanied minors; they are in the care of the HSE. While HIQA standards do not apply directly to the RIA, they apply to the HSE children and family services in the context of its role in dealing with children living in the direct provision system who are referred to it. Such referrals can be made under the RIA's child protection policy but may also be made by, for example, general practitioners, teachers, etc. Responsibility for child and family services is assigned to a specific unit in the RIA, the child and family services unit, the role of which is to manage, deliver, co-ordinate, monitor and plan all matters relating to child and family services for all asylum seekers residing in the direct provision system and to act as a conduit between the RIA and the HSE and, where necessary, the Garda.

The RIA and the HSE co-operate closely in meeting the needs of residents, particularly children, in all centres. Discussions take place through inter-agency meetings, health liaison officer meetings, medical screening service meetings, working groups on matters such as healthy infant feeding guidelines, child protection, psychological and other health service groups. The RIA has a child protection policy, based on the HSE's Children First national guidelines for the protection and welfare of children. This policy is being updated in line with the recently revised HSE's Children First policy published in July 2011. All staff working in RIA centres are Garda vetted and trained in the RIA child protection policy. The RIA takes its role regarding the welfare of children and vulnerable adults very seriously. It is satisfied that its child protection policies comply with all national standards and policies.

It is a difficult and complex matter to definitively establish, particularly in the short time involved, the number of Irish citizen children living in the direct provision system. In a recent report by an NGO it was described as a considerable number, but there is no evidence that this is so. In fact, the likelihood is that the cohort involved is extremely small. The number of people being accommodated in the direct provision system is just under 5,000 in 36 centres throughout the State.

The principal difficulty is that it is common for asylum seeker families to have a child born while residing in the direct provision system. In some cases, the parents concerned may have a

mistaken belief their child is an Irish citizen by dint of being born here. However, this clearly is not so, as since 1 January 2005 there is no automatic right to Irish citizenship. Some parents in this circumstance do not make an asylum application on behalf of the child and the exact nationality of the child only becomes definitively known when such an application is made, sometimes arising from, for example, a deportation order issuing against the rest of the family or the institution of legal proceedings. From a practical point of view, the RIA must continue to accommodate that child with his or her family, notwithstanding the uncertainty over the child's nationality or asylum status. The Minister has asked his immigration officials to examine this statistical issue in more detail and communicate further with the Senator in the matter.

Senator Jillian van Turnhout: I will pursue this issue. The standards should apply to these centres, as the RIA is a statutory agency. I do not agree with the interpretation put forward, but I will pursue it with the Minister. Equally, when he seeks the numbers of children from me - I note the date of January 2005 - I will point out that, potentially, children over the age of seven years are Irish citizen children but because of the status of their parents are residing in the direct provision system. I encourage colleagues to visit the direct provision centres. We talk about the Ryan report and what society knew what was happening in the past. It is happening in direct provision centres, on which the report in 20 years time will be shocking and damning if we do not do something now. The Minister is a very strong defender of children's rights and child protection, which is why I raise the issue.

The Seanad adjourned at 8.20 p.m. until 10.30 a.m. on Wednesday, 3 October 2012.