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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

SEANAD ÉIREANN

Dé Máirt, 16 Iúil 2013

Tuesday, 16 July 2013

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

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

The strategy, if any, the Government has to prevent the spread of Japanese knot weed along Irish roadways and if he will provide a policy which will oblige local authorities to address this matter.

I have also received notice from Senator Colm Burke of the following matter:

The need for the Minister for Justice and Equality to put in place legislation in accordance with the proposals published in the Law Reform Commission's Report on Civil Law Aspects of Missing Persons.

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

The need for the Minister for Jobs, Enterprise and Innovation to set up a taskforce to enlist the support of all enterprise agencies to provide an employment focus in Portumna in view of the loss of many jobs and many small businesses in recent times.

I have also received notice from Senator Marie Moloney of the following matter:

The need for the Minister for Health to clarify why a medical card has been withdrawn from a terminally-ill cancer patient (details supplied) in County Kerry.

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

Personal Explanation by Member

An Cathaoirleach: Before I call the Leader of the House, Senator Norris wishes to make a personal explanation to the House. Before calling the Senator I want to make it clear that I will not allow any debate on this matter. Once the personal explanation is made, the matter will be closed.

Senator David Norris: I thank the Cathaoirleach. I would like to explain what happened yesterday, put it in context and withdraw some of the words that gave offence. I was simply furious, having just possessed a copy of this mendacious document in which those of us who over the past 30 years have campaigned for Seanad reform were smeared in the nastiest way. This will be a very dirty campaign and it comes from the top. I was incandescent with rage. I accept that my language was intemperate. Had I been called for an explanation at the time I would have given one. I do not intend to go into a lengthy, linguistic explanation and try to defend what I said, which I could do if it was an academic discussion. I regret any offence but what I regret most is that this will be used in this dirty campaign as a diversion.

An Cathaoirleach: Senator, under Standing Order 33, which allows you to make the explanation, you have to be brief.

Senator David Norris: I will finish by saying that it was stated on the radio by the Minister for Public Expenditure and Reform, Deputy Howlin, that there was personal antagonism between myself and Deputy Doherty. That is untrue. I spoke to her last week and I sympathised with her on the horrible attacks about the abortion Bill, and I put that on the record of this House. There is no disagreement. There is nothing but friendship. I did not prepare anything.

An Cathaoirleach: Senator, I ask you to stick to the matter.

Senator David Norris: I did it off the top of my head and I am very happy to withdraw the comment and to say that this is a very valuable document because it shows a smoking gun in that the Taoiseach, Deputy Enda Kenny, was prepared to parachute people in who had failed in the Dáil election. That is a serious issue, not intemperate language from me, which I am happy to withdraw.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, motion re the proposal for a directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law and a motion re the Agency for Law Enforcement Cooperation and Training (Europol), to be taken on the conclusion of the Order of Business without debate; No. 2, the Protection of Life During Pregnancy Bill 2013 - Second Stage (Resumed), to be taken on the conclusion of No. 1 and to be adjourned not later than 3.45 p.m., if not previously concluded, with the contributions of all Senators not to exceed ten minutes and the Minister to be called on to reply not later than 3.35 p.m.; No. 3, Land and Conveyancing Law Reform Bill 2013 - Report Stage, to be taken at 4 p.m. and to conclude no later than 6 p.m.; No. 4, Prison Development (Confirmation of Resolutions) Bill 2013 - All Stages, to be taken at 6 p.m., with the Second Stage contribution of group Senators not to exceed eight minutes and those of all other Senators not to exceed five minutes, and Committee and Remaining Stages to be taken immediately thereafter.

An Cathaoirleach: Will the Leader clarify the arrangements for No. 2? He states it is to adjourn not later than 3.45 p.m., with the Minister to be called at 3.35 p.m. Must the Minister be called upon at 3.35 p.m.?

Senator Maurice Cummins: No later. He is to reply no later than 3.35 p.m.

An Cathaoirleach: Is the debate to conclude then?

Senator Maurice Cummins: If it is concluded. I am expecting that Second Stage will be concluded before the time.

An Cathaoirleach: Must the Minister be called at 3.35 p.m.?

Senator Maurice Cummins: Can I leave out that reference? I do not want to guillotine this Bill in any way. The reason I am including a time for the Minister to reply is that the debate may have concluded at that time. I will not conclude the debate until all Members have had their say on it. I suggest that the debate be adjourned at 3.45 p.m. if not previously concluded.

Senator Marc MacSharry: I thank the Leader for ensuring that everyone will have their say. We will not call a vote on the Order of Business today on the basis that many Members are waiting to speak and in order to deal with our business as quickly as possible.

I wish to raise a few issues. Certain publications this morning claim a HSE overrun of some €25 million and that the target for cuts will be the mental health services area and the money set aside for suicide prevention and so on. We produced a document entitled Actions Speak Louder Than Words, which was welcomed by all involved in suicide prevention and even by the Minister of State at the Department of Health, Deputy Kathleen Lynch. Sadly, very few recommendations in the document have been implemented thus far. Now a front-page report states that the funding in place for this year for the employment of community health officers and those involved in suicide prevention will only be made contingent on savings. The level of prioritisation being given to this area is not sufficient, frankly. Close to 600 people are under threat of dying in the year ahead as a direct result of suicide. It should not be the case that funding for suicide prevention is contingent on savings. If it were known that two planes were about to crash on a particular day at a particular time, we would do everything possible to prevent it from happening. Senator Gilroy, Senator White and many others have made significant contributions to the debate on this subject. It must not be the first thing to be put on the block when there are overruns.

Yesterday, FLAC and others warned that the mortgage arrears crisis is worsening and very little is being done. The response of the Minister for Finance, Deputy Noonan, which the Leader read to the House yesterday, is an abdication of responsibility by the Minister of the day. The people depend on their representatives and on the Government; they depend on the Houses of the Oireachtas to represent them. On the biggest financial crisis facing families throughout the country, to simply to say it is somebody else's problem - that it is for an independent body to deal with - is not good enough.

I will abide by the Cathaoirleach's instructions not to speak on the issue. However, if it is not possible before the end of this term, at the beginning of the next term the House should return early and invite all the senior news editors in the print and broadcast media to be our guests. I am sure Members would be happy to pay to invite them to have lunch here. I ask that they be invited to listen to a debate so that they can hear Members make the case and inform them of

what happens in this House. The House needs to be reformed; indeed, the current 60 Members and the many who have gone before us have proposed radical reform of the House. The news editors should be allowed to hear that for themselves.

I very much regret that the campaign on the abolition of the Seanad was launched yesterday by people who are not informed about the facts. Last week, perhaps as a dry run for yesterday's launch, the director of elections for the Government campaign for the abolition of the Seanad, Deputy Richard Bruton participated in a radio debate with me. I asked him whether he knew how many times his Government had amended legislation in the Seanad last year. The answer was silence. I said I would make it easier for him, and asked him how many times he, as Minister, had amended legislation in the Seanad last year. Again, there was silence. With the best of respect, I suggest that people engaged on whatever side of this campaign, when it gets under way, have the manners, decency and courtesy to inform themselves before pontificating about the way they would like to influence the people to vote.

Senator Ivana Bacik: Following on from Senator MacSharry's point, the Minister, Deputy Bruton, is the director of elections for Fine Gael in this campaign, not for the Government. That is an important point.

Senator Marc MacSharry: Fine Gael is the senior partner.

Senator Ivana Bacik: It is an important distinction.

Senator Mary M. White: He should inform the Labour Party.

Senator Marc MacSharry: It is collective responsibility. It is a coalition.

An Cathaoirleach: Senator Bacik, without interruption.

Senator Ivana Bacik: As the Senator well knows, there is a very important difference, particularly in a referendum campaign, between those who are working on behalf of the Government as director of elections and those working on behalf of individual parties. The timing of the launch yesterday was most unfortunate, as it took place before the Bill had passed through the House. I am glad the Minister, Deputy Bruton, clarified the cost issue this morning on "Morning Ireland" by explaining that the direct cost of the Seanad was quite a good deal less than the €20 million figure that was being bandied about yesterday. That is a very welcome clarification. I hope we will see some more clarification on those issues.

Senator Marc MacSharry: The cost is €8 million gross.

Senator Ivana Bacik: I renew a call to the Leader for a debate in the autumn on the need to change our culture and our procedures to ensure that our Parliament is more friendly towards diversity, and particularly towards gender diversity. Many of us have worked very hard for many years to try to encourage more women to enter politics. I am very pleased there will be gender quotas in place for the next general election. However, the use of sexist language in this Chamber is not helpful or conducive to encouraging more women or more young people to get involved in politics. It is most unfortunate when we hear sexist language in this Chamber or there is sexist conduct in the other House. The behaviour and language used in the past few days has been unhelpful. I hope we will have a respectful debate on all legislation before the House-----

Senator David Norris: I was told there would not be a debate on this, but if the Senator

wants a debate I will take her on.

Senator Ivana Bacik: I am not making-----.

An Cathaoirleach: Senator Bacik, I ruled on that matter yesterday.

Senator David Norris: I will certainly take you on about sexist language.

An Cathaoirleach: I ruled today that I am not allowing a debate on it.

Senator David Norris: I deny that I ever used it.

An Cathaoirleach: Senator Norris gave his explanation to the House.

Senator David Norris: I was told there would not be a debate on this.

An Cathaoirleach: And there will not be, Senator.

Senator Ivana Bacik: In fairness, I have made a call for this debate in a general sense-----

An Cathaoirleach: Senator, the matter is closed. Have you a question for the Leader?

Senator David Norris: This happened the minute I left the room, but I came back in to hear the Senator's rubbish.

Senator Ivana Bacik: That is my question for the Leader. I have asked the Leader about this on other occasions and I have placed on the agenda of the Committee on Procedure and Privileges a proposal that we look at the procedures of the House to ensure it is more gender-neutral and that we encourage more women to enter politics. The National Women's Council has done a great deal of work also on this matter and will be producing a report very shortly on how to generate and provide for a more women-friendly Parliament.

I call for a debate on the Magdalen institutions redress scheme in light of the very disturbing news today that the four religious orders involved in running Magdalen institutions apparently will not be contributing to the cost of the redress scheme set out by Judge John Quirke, which is estimated to cost in the region of €58 million. This is a most disappointing and regrettable stance being taken by the religious orders, who profited for many years from the unpaid labour - slave labour - of the many women and girls incarcerated in those institutions. We know the State was also complicit - there is no doubt - and it bears a heavy share of responsibility. However, the religious orders should be bearing some of the cost.

Senator Jillian van Turnhout: I will start where Senator Bacik finished with regard to the Magdalen laundries. We had a debate in the House earlier this year which was adjourned and not resumed. I ask for the resumption of that debate. I am incredulous that the four religious congregations have said they will not be contributing to any financial redress scheme. I do not accept that statement. We know that property belonging to just one of the orders was sold during the boom for €61.8 million. The Justice for Magdalenes group has estimated that the four orders received €266 million in property deals alone. The State fund will be a maximum of €58 million, but will range between €34 million and €58 million. It is unacceptable for them to say they will not be contributing.

The reports that were published today on mental health expenditure were *déjà vu*. The Official Report for the House would show that we had the same debate this time last year. We read

the same newspaper reports and we were reassured. In January 2013 the Minister of State at the Department of Health, Deputy Kathleen Lynch, assured the Joint Committee on Health and Children not only that we would have €35 million for this year but that we would also take last year's €35 million, for a total of €70 million. However, it has now been reported that critical positions in mental health will not be filled. How many debates have we held in this House on suicide? I want clarity rather than reassurances. I want to hear that the posts are being filled and that we are providing the community services that are necessary.

There has been extensive debate on the cost of the Seanad. I ask the Government to prepare an implementation plan on Dáil reform which would set out details, costs and timelines of that necessary reform. It is not acceptable to conduct a debate with only one side of the figures. I want to see the details of Dáil reform.

Senator Sean D. Barrett: I ask the Leader to arrange a debate on Northern Ireland, either among ourselves or with a Minister if one is available. I also ask him to consider inviting back the Orange Order, representatives of which addressed the House on 3 July 2012. Stormont is reconvening today to discuss that topic. Part of the problem with those who are now assaulting members of the PSNI and the police officers who have been drafted in from Britain is that they believe their community is under threat. When Mr. Nelson was in the House, he contrasted what happened to the minority population in County Antrim and the minority populations of counties Donegal, Cavan and Monaghan and asked which State was better at looking after its minorities. If people are so paranoid that they engage in such conduct, perhaps this House and this society can play a role. He referred to the nine Ulster counties in his speech, welcomed the invitation from the Leader as a formal recognition of the Orange Order's place in Irish society and stated that the order wants to contribute to the normalisation of relationships in these islands. He even quoted from the 1916 Proclamation on cherishing all the children of the nation equally. We need to reopen that dialogue. This House has a superb tradition in dealing with Northern Ireland and a new invitation to the Orange Order could only do good.

Senator Cáit Keane: A comment was made in passing that the debate on the Seanad will be dirty. It has not been dirty thus far and I hope that remains the case. I hope it is informed and instructive. Deputy Regina Doherty did not know the Seanad existed in 2007. There are a lot of people like her. I hope there is a bicameral versus unicameral debate.

I ask about the SUSI grants. A significant number of students are in distress, having been informed at this late stage that their applications were denied or that their appeals were not submitted in time, even though they may have e-mail confirmation that they submitted on time. I acknowledge that the Minister for Education and Skills apologised for the SUSI system approximately two months ago. I ask him to investigate it further because it is still not working. Students cannot access the system or are being refused grants even though they have e-mail confirmations that their applications were received. A student from County Donegal who was interviewed on "Morning Ireland" today was originally refused and subsequently given a grant. RTE was told about this before the student found out. In theory the system should be working well because it reduced the former 55 authorities to one agency. Theory is good but actually working on the ground is a different matter. It does not seem to be working. I want the Minister to do more than apologise. He should get to the roots of the problems because this distress cannot continue. I know of one student who is at the end of her first year in college and cannot afford to continue on to second year. It cannot go on like this.

I support Senator Bacik in her call for gender diversity. The Minister for the Environment,

Community and Local Government introduced a quota of 30% for women in politics. We cannot change a system from the outside; it must be changed from within. Until such time as we get more women into the system, it will not change. Women of Ireland have an opportunity to bring change from within.

Senator Denis O'Donovan: I support Senator MacSharry in regard to mental health. I praise Carl O'Brien for the wonderful articles he wrote on this subject, which were published in *The Irish Times* yesterday and today. Apart from political action on mental health, it is also important that the media focus on these areas. I rarely rise to compliment a journalist but Mr. O'Brien's articles bring a positive focus on the area of mental health.

I ask the Leader to arrange a debate or for the Minister for Agriculture, Food and the Marine to make a statement on the horsemeat scandal. I am concerned that a select committee of the UK House of Commons has targeted both the Department of Agriculture, Food and the Marine and the UK Department for Environment, Food and Rural Affairs. The Food Safety Authority of Ireland also presented evidence to that committee. The committee issued a report critical of the tardiness and lack of reaction on the part of our Department and recommended criminal sanctions, particularly against those in Ireland who flouted the law and gave our agri-food industry a bad name. I am sure the Minister will make a quick response to these criticisms, either in this House or elsewhere.

On a positive note, I laud the Minister for his continued efforts to respond to the disgraceful way in which the Faroe Islands and Iceland have monopolised the mackerel industry. He has acted through the EU, which now proposes to impose trade sanctions on the Faroe Islands and Iceland. The amount of mackerel they were catching totally overshadowed the entire quota for Europe. It is an appropriate move, although possibly it should have been done a year or two ago. I hope trade sanctions will be applied against these small nations which are doing terrible damage to our fish stocks.

Senator Jimmy Harte: I support Senator MacSharry in asking the Minister of State at the Department of Health, Deputy Kathleen Lynch, to clarify news reports on the €35 million or €70 million in funding which the mental health services expected. For the sake of all those affected by mental health issues, I ask that the Minister of State reassure the public that the funding remains available and that the HSE is going to get its act together. This money has been committed and ring-fenced. I am sure Members will agree that clarity is needed. Last week we had the debacle of the drugs for cancer patients and the House had to extract an explanation from the Department of Health. There appears to be a trend of the HSE making announcements without consulting the Minister or staff at local level.

It has been claimed that each Senator gives rise to €40,000 in computer costs per annum. My computer cost €500. I do not know where the €40,000 figure came from but we need a reasonable and balanced debate rather than picking figures from the air to suit election campaigns.

11 o'clock

Senator David Norris: I would like to express concern at the Government's plans for developing casinos in this country. They are giving licences for 40 casinos. There is great hypocrisy in this. We are told that it would be a mistake to legalise drugs and that if they had the opportunity, they would not have legalised alcohol or tobacco, but here they legalise another highly addictive pursuit. This is so recognised that just as tobacco companies hypocritically set

up organisations to combat smuggling and so on, the gambling industry now contributes to centres for addiction for the people that they victimise. We now have a situation where 40 casinos are going to be allowed into Ireland. We do not know where they will come from. It is quite likely that organised crime will be involved. It is a great comment on this Government that we have gone from a casino situation with the gambling banks to a situation where we are going to try to run the country on casinos. That is absolutely lamentable.

Senator Deirdre Clune: The Snowden affair has cast a light on data protection issues and we all need to be aware of them. We need to know what kind of information companies like Facebook, Twitter and Google are gathering, what are they doing with that information and how they are using it. The German Chancellor Angela Merkel suggested yesterday that as Facebook was headquartered here in Ireland, it is bound by Irish law and thus Germany's very strict data protection laws were mute. We hear reports of officials in Berlin and in other European cities saying that Ireland and the UK are perceived as the lowest common denominator in terms of privacy. Is this the case? I do not know. We certainly need to know what is going on and what level of information these companies are gathering and the information they are holding outside Europe. We need to have a debate on this in the Chamber and across the country. We need to know what is happening at European level as well. The Minister for Communications, Energy and Natural Resources and the Data Protection Commissioner, Mr. Hawkes, certainly need to engage in this debate because information is being gathered on each one of us as we use these platforms. To whom is this information being released and for what purpose is it being used? The debate has not ignited, but the Snowden affair has cast a light on how vulnerable we are, and how private information can be used and can be traded.

Senator David Cullinane: Tomorrow, hundreds of former Waterford Crystal workers will protest outside the gates of this Parliament for their just entitlements, their pensions and the compensation they are rightly due because of the failure of the State to meet its obligations under the EU insolvency directive. It is again a case of workers having to take to the streets to get their just entitlements. They were here a few months ago, as the Leader is aware. I held an information briefing in the AV Room of the LH2000. The legal representatives, the union and the workers spelled out exactly what they were seeking, which was simply a meeting with one of the Ministers to discuss how the workers would be compensated. On behalf of the cross section of Oireachtas Members who attended that meeting, I was asked to write to the Minister for Finance and to the Minister for Social Protection. Both replied to say that they would not meet the workers. We then went back and asked their officials to meet with the trade union, and the officials have refused to meet them. It is simply not good enough that the State is again dragging its heels, hiding behind the courts and not compensating these workers. They deserve to be properly compensated. The State has been found, in the European Court of Justice, to have failed in its obligations to those workers for not properly transposing a European Union directive. Why are we again making it more difficult for those workers to get justice? Why are we constantly delaying the time when those workers get paid?

The Leader will know that those workers deserve their pensions and compensation, and if they are to receive that compensation, it would be a significant boost for the local economy in Waterford city and for the south east. More important, it is about justice for those workers. I ask the Leader, and every Senator in the House, to use their influence to ensure that justice is done for the former Waterford Crystal workers.

Senator Denis Landy: I welcome yesterday's announcement by the Minister for Justice and Equality, in co-operation with the Minister for Public Expenditure and Reform, of the re-

sumption of recruitment of gardaí in Templemore, County Tipperary. This will be good for the force and for the local economy in Tipperary. It also is a positive sign that life is returning to normal in this country. Every organisation needs new recruits to replace retiring staff and to bring in fresh blood. Earlier this year, the Garda Commissioner stated that the force should not drop below 13,000, and I think this has been acknowledged by the actions yesterday of the two Ministers. Can the Leader inquire from the Minister for Justice and Equality when the training will start, how many recruits will be taken on board initially, and whether this will be ongoing training? In other words, will the training centre in Templemore remain open after the first batch of trainees come in?

I support Senator Cullinane's comments about the Waterford Crystal workers. Many of them are from my own town of Carrick-on-Suir. However, it is not true to say that both Ministers refused to meet them. They explained in correspondence that they were unable to meet them, in view of the fact that the matter was now going into the courts here in Ireland and could prejudice the outcome of that court case. That is the reason they did not meet the workers. I will be there tomorrow to support them in any way I can, and I know the Leader, who is from Waterford city, will also do the same.

Senator Labhrás Ó Murchú: I would also like to ask the Leader to ascertain the position regarding the Waterford Crystal workers. We met with them in the AV Room a few weeks ago after their rights had been vindicated in Europe. It would be regrettable if they were returned to a limbo after seven or eight years.

I commend Senator Barrett. He has set the right tone regarding the Orange Order. The Leader might consider convening a meeting of the CPP today to issue an immediate invitation to the Orange Order to come back to the Seanad. I believe they would accept that invitation at this time. We would be doing a lot of good in helping to calm what is happening in the North at the moment. Senator Barrett is 100% right that the orange traditions and the people who are committed to them feel threatened. During the peace process, I hosted a visit by the late David Ervine and more than 200 people turned up from different walks of life. It gave us an opportunity to understand the perspective of those who come from an Orange tradition. A few years ago I was asked to meet a delegation of people who represent the Orange traditions. I had a very fruitful four or five hours with them, and the message that Senator Barrett is putting forward is the same message that I heard on that occasion. They told me that they felt that their traditions were being diminished and diluted. This was not in a political sense. These were the traditions which they embrace and to which they are committed. If there is to be any real meaning in the Good Friday Agreement, it has to be one of inclusiveness. In the same way that the Seanad broke the mould by bringing the Orange Order down here, it would be wonderful to have dialogue right now. The Leader has been exceptionally good on this area. I do not think any Senator would object to coming back here in a week or two. It will not be any good in September or October. Senator Barrett has put his finger on the urgency that exists at the moment.

Senator Catherine Noone: I agree with Senator Clune's comments on data protection and privacy, following the Snowden controversy and Angela Merkel's recent call for an agreement on EU data protection rules. This comes at an interesting time. As it stands, Ireland and Britain are perceived as the EU's weak link when it comes to privacy. If a German Facebook user is to be guided by any law, it will be German law, which is something we should not welcome. The proposed EU regulation would eliminate such wriggle room on privacy issues; thus, the heated negotiations in Brussels can be understood. It presents a challenge but also opportunities. We would be well placed to become a hub for data protection and Internet security should

we choose to embrace an enhanced EU data protection directive. I call on the Leader to arrange a debate with the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte, on the whole area of privacy and data protection.

If the Cathaoirleach will indulge me, I wish to raise an issue that I mentioned yesterday, although I was cut short because I was over time, apparently. It is to do with healthy eating. I commend Grainne in the Oireachtas Restaurant on her healthy eating initiative. She has gone to a lot of effort to introduce healthy foods and to encourage healthy eating in the Houses, and has displayed calorie counts and so on. It will probably continue in the Houses, which I would very much welcome.

While I was researching VAT, I noted the anomalies in regard to food. VAT on fruit juice, bottled water and toothpaste is 23%, while, bizarrely, VAT on cooking fat or oil, steak and kidney pies and potato waffles is 0%. It may seem like a minor issue to talk about food but it is highly important to the health of the nation, and the major obesity crisis we are facing represents a huge cost to the taxpayer. If we could make some money by taxing certain foods, even at the rate at which other foods are taxed, it could be very useful. I call for a debate on VAT rates.

Senator Ned O'Sullivan: Like other Senators, I express my deep disappointment at the decision by the religious orders not to pay their share to the compensation fund for their victims. It is really regrettable and one wonders if these people have learned anything, because it sends out a very bad message. Is it that they do not have the funds, or are they are not prepared to cough up? Now that we are coming to the end of the abortion debate, I hope the Catholic hierarchy may be able to take its eye off sexual politics and ask these orders to make a contribution. I am sure it could be very persuasive in that regard.

I was not in the Chamber yesterday for the Order of Business but I was extremely shocked by the statement by the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, about the cost of the Seanad. The fact that there was a heated debate here has probably taken people's eye off the central issue, which is that a Government, before a Bill was properly promulgated in the Houses of the Oireachtas and seen by the President for his consideration, embarked on a campaign to run a referendum. Can one imagine the uproar there would have been if the Government had stated that once the Protection of Life During Pregnancy Bill 2013 had been passed by the Dáil it would be passed by the Seanad, would be approved by the President, would not be presented to the Council of State and would not go to the Supreme Court for review?

Senator Mary M. White: The Leader needs to respond.

Senator Ned O'Sullivan: In the interests of democracy - we have been joking about the burning of the Reichstag but we are coming close to that type of climate - it is essential that the Minister, Deputy Bruton, comes to the House, before we go any further in considering the Bill to abolish the Seanad, to explain the rationale behind his assumption that the Bill would be passed and the arrogance of that, which is an insult to Uachtarán na hÉireann and to the people, and to account for the fabrications and porkies he has been telling about the so-called savings which will accrue. The Minister of State at the Department of Foreign Affairs and Trade, Deputy Paschal Donohoe, said it would be €50 million, but now the figure is €20 million. On the radio this morning, the Minister, Deputy Bruton, said it would be approximately €9 million. I maintain it will be nil because the Taoiseach wants to replace the Seanad with a Star Chamber, which we will find will cost €10 million. I will not propose an amendment to the Order of

Business in order to facilitate debate, but it is essential that the Minister, Deputy Bruton, comes to the House to explain himself.

Senator John Gilroy: I support comments made by Senator Marc MacSharry, Senator Jillian van Turnhout and others on newspaper reports of a proposed reduction in the €35 million ring-fenced this year for mental health services. The same amount was ring-fenced last year but I understand why that money was not fully spent because it takes time to roll out and put in place the structures under which staff can be recruited. However, it is totally unacceptable this year. Will the Leader ask the Minister of State at the Department of Health, Deputy Kathleen Lynch, to come to the House today or at least to issue a clarifying statement on this issue?

I have worked for the past 30 years in mental health services and it is with dispiriting regularity that the minute health budgets come under pressure, the first cutbacks are always targeted at mental health services. It is always said in the profession that we are the poor cousins of the health services. If this cut is true, it is a step too far and one that I will not support. The Minister of State, Deputy Lynch, should clarify it as a matter of urgency.

I wish to comment on a further newspaper report at the weekend on mental health services. Some nameless editor proposed that the terms of the Fair Deal nursing home scheme be extended to cover mental health and disability. This would be an enormously retrograde step because it is, in effect, saying that if one suffers from a mental illness, one is not on a par with someone who suffers from a physical illness. We have made great strides in reducing the stigma associated with mental illness, although, as I said yesterday, given the recent debate on the Protection of Life During Pregnancy Bill 2013, I suspect much of that progress is merely lip-service because some of the ancient and distressing attitudes towards mental illness were latent in many of the arguments made. Will the Leader ask the Minister of State, Deputy Lynch, make an urgent statement to clarify whether the €35 million ring-fenced for this year will be protected and whether it is proposed to extend the Fair Deal scheme to cover mental health and disability?

Senator Brian Ó Domhnaill: Ba mhaith liom tréaslú leis an Seanadóir Barrett agus an Seanadóir Ó Murchú i dtaca leis an méid atá ag tarlú sna Sé Contae faoi láthair. Is ábhar mór díomá é dúinn go léir go bhfuil na heachtraí sin ag tarlú oíche i ndiaidh oíche. It is unfortunate, and Senators Sean Barrett and Labhrás Senator Ó Murchú summed it up very well. I was in Belfast last week on the Newtownards Road. I know the areas where the trouble is brewing quite well. We should play a role and I hope the Leader will reflect on the proposal by Senator Ó Murchú, which is a fair one. I would be very supportive of sitting an extra day to discuss the issue.

I refer to political opportunism and the announcement yesterday. Unfortunately, I was not here for the discussion on Seanad abolition during yesterday's Order of Business, but I commend the Leader on his contribution, which was well stated and reflected the mood of this Chamber. It is regrettable that misinformation is being fed to the media and the public in order to gain political advantage out of this Chamber's future. It is not our future, because we can come and go, but the Seanad will be no more. Senator Ned O'Sullivan articulated the situation very well in his statement that the cart was put before the horse in making an announcement. That is treating this House and the Office of the President with contempt, which is regrettable. It shows the manner in which the Taoiseach and the Cabinet want to force this issue through and use every means at their disposal to do so. I appeal to Senators on the Government side, although I appreciate that it is not easy to vote against one's own Bill. Can we agree, however, to look at amending a section or lines in the legislation in order that it can be reverted back to

the Dáil? We should not go with the consensus that the Taoiseach and the Government are seeking on this issue, rather we should reflect on the legislation. Report Stage is due to be taken in the next couple of days, but we should come together, work as a united group, leave politics to one side and come up with an amendment to refer the Bill back to the Dáil and delay the agenda which has been established by the Taoiseach.

Senator Martin Conway: The nice weather we have had in the past couple of weeks is welcome, but it brings with it problems. One significant problem which is annoying many is the increase in the volume of litter on beaches and in holiday resorts. What people, when they come to these resorts, enjoy their amenities and then dump their rubbish, fail to realise is that somebody must clean it up and that it costs money to do so. I, therefore, seek an increase in litter fines. The on-the-spot litter fine, at €150, needs to be doubled. If people are not prepared to do the decent thing and bring their rubbish with them, if they are caught, they should be fined. The amount of people fined for throwing their litter around the place is derisory and I would like to see an increase in that number. Ultimately, we need to see an educational programme being introduced in schools to make children aware that it is unacceptable to litter our beautiful country.

Senator Terry Brennan: Unfortunately, the good weather has brought many tragedies to different communities throughout the country and many young people have drowned. On Sunday evening last there was a call that a young person had fallen into the sea from the east pier in my home town of Carlingford and within minutes the air and sea rescue service, ambulances, Civil Defence and the river rescue team had all congregated on the pier. Searching went on for hours until dark. Before leaving for Dublin the next morning, I was amazed that it appeared the search had been called off. I have been in communication since and learned that it had been called off, as, apparently, it had been a hoax call. At this time of year, when tragedies have happened in many communities, as I have said, it is a dastardly act and incomprehensible. It is my hope and wish that the perpetrators will be brought to justice as soon as possible.

As I stated yesterday, I support the call for the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, to come to the House to explain his fictitious €20 million figure for the cost of the Seanad per annum. Another Minister has told us that there would be no reduction in costs, as the costs of the Seanad would be transferred to the new. There are two important men around the Cabinet table giving us different messages and I would like to have it confirmed what the true costs are? How many staff will lose their jobs and what is the net cost of the Seanad?

Senator Tom Sheahan: I call on the Leader to invite the Minister for Education and Skills, Deputy Ruairí Quinn, to the House to put one question to him, that is, are those in the education system within his remit adhering to the Haddington Road agreement? A parent who came to me last week has a son with Asperger's syndrome. Such pupils are prescribed a scribe at State examinations - the junior and leaving certificate examinations - but they do not have one for Christmas, Easter and summer examinations. While the man concerned and his wife are doing a great deal of work at home, they find that their son is regressing because, while he has the information in the head, he cannot transfer it to the biro. He has, however, done well. He did well in the junior certificate examinatin and is now going on to take the leaving certificate examination. He is doing very well in most subjects. There is only one subject in which he is somewhat weak. How can one explain that the State will only provide a scribe for somebody with Asperger's syndrome at State examinations level and nothing for other examinations? I asked the parent that question and he replied that the teachers were providing that service in good faith but that they had now withdrawn it. I want to put that question to the Minister.

While we all understood the Haddington Road agreement was between both sides, are there conditions attached to it? I suggest any child with Asperger's syndrome should be provided with a scribe at any examination.

Senator Michael Comiskey: I welcome the commitments given yesterday in St. Angela's College by the Taoiseach on the future of the college. That is good news. It was a pity and I am sorry that I was not able to be there, but I was here on business. It is something for which others and I have been lobbying for more than 12 months to ensure the future of St. Angela's College will be guaranteed. It has been providing teacher training for many years and it is important that it be maintained. I encourage students who will be taking up third level education courses in September to ensure they apply to SUSI and the Department for their grants by the end of July in order that there will not be any delay and a repeat of the problems experienced last year. It is important that the Department process all applications in good time and get grants out to students on time.

Senator Maurice Cummins: Senator Marc MacSharry raised the question of HSE funding for mental health and suicide prevention services. My information is that the funding is ring-fenced. The Minister of State at the Department of Health, Deputy Kathleen Lynch, has said so previously in the House. I am sure she will confirm that is the position and that all posts that are to be filled will be filled this year, despite newspaper headlines to the contrary.

Regarding the debate on the abolition of the Seanad, a number of Members have raised the question of what was discussed on the Order of Business yesterday in relation to the comments of the Minister, Deputy Richard Bruton. Mr. Kieran Coughlan, Accounting Officer for the Oireachtas Commission, told the Committee of Public Accounts that the direct cost was €8.8 million. That should be acknowledged at this stage.

Senator Marc MacSharry: Gross.

Senator Maurice Cummins: Whatever the other extraneous charges are, one can make what one wants of the figures, this the figure the Accounting Officer for the Oireachtas Commission gave to the Committee of Public Accounts and any other argument is superfluous. The point has been made. The argument has been-----

Senator Marc MacSharry: Won.

Senator Maurice Cummins: -----won. There should be no further debate on the costs.

Senator Mary M. White: The people should be told.

Senator Maurice Cummins: The Senator is interrupting again.

An Cathaoirleach: The Leader without interruption.

Senator Maurice Cummins: Every time I speak, she interrupts.

Senator Mary M. White: I like Senator Cummins very much, actually. He knows that I admire-----

Senator Maurice Cummins: I thank the Senator very much and I appreciate that.

Senators Bacik and O'Sullivan and several others raised the same matter. I take Senator O'Sullivan's point on the timing of the statement that was made. It was ill advised at a time be-

fore any legislation had been passed through this House. I have relayed those points and agree with Members who said the statement yesterday was ill advised and badly timed.

Senators Bacik and van Turnhout referred to the Magdalen institutions scheme, as did Senator O'Sullivan. It was stated the religious order should make a contribution. It was pointed out by Senator van Turnhout that the debate on this item was adjourned. I will try to have it resumed as soon as possible.

Senator van Turnhout and other Members made points on Dáil reform and the costs involved. I am sure it will arise in the debate on whether the Seanad should be retained. Senators Barrett, Ó Domhnaill and Ó Murchú called for a debate on Northern Ireland. I will try to arrange to have one, possibly before we finish for the summer.

With regard to the request to have representatives of the Orange Order before the House again, I am not so sure it would be a good idea at this point. As I said to the representatives who were present, the order should engage in meaningful discussions, now more than ever before, with communities and the Parades Commission. That would certainly assist in addressing the violence that has been escalating for a number of days in Northern Ireland and which we do not want to see again. The Orange Order has a very strong part to play in reconciliation. I encourage it to engage with the communities and the Parades Commission in coming to agreement on current and future parades.

Senators Keane and Comiskey referred to the higher education grant scheme. Certainly, problems arose with the scheme last year and this year. The Minister has acknowledged that there were problems. It is now time to sort them out, because we cannot have a recurrence of what happened last year. I refer to the problems encountered by parents and students in respect of the scheme. We all acknowledge that teething problems occur when new schemes are put in place, but they should be sorted out at this stage. The officials should have learned from their mistakes, and I hope that is the case.

Senator O'Donovan referred to the horsemeat scandal, the House of Commons committee and its targeting of Ireland and the Department of Agriculture, Food and the Marine. This is a very serious matter. I am sure it will be addressed and that the allegations will be rebutted vehemently by the Minister, Deputy Coveney. I am sure he will make a remark on the matter in due course.

I noted Senator O'Donovan's comment on mackerel quotas and the abuse of fishing rights by the Faroe Islands and Iceland. The Minister, Deputy Coveney, supported the United Kingdom, France and Spain yesterday at a meeting of the Council of Ministers and pushed strongly to have trade restrictions imposed immediately by the European Commission against Iceland and the Faroe Islands as a result of the continuous, unacceptable and irresponsible fishing of mackerel. We all realise that the Minister has been calling for the implementation of trade measures for over 12 months. He actually mentioned this in the House when last speaking about fisheries. I hope that the European Commission will agree to proceed to implement the measures and that there will be action rather than words at this stage. We have waited long enough for the Faroe Islands and Iceland to comply with regulations regarding overfishing. Since they have not complied, sanctions should be imposed on them.

Senators Harte and Gilroy referred to mental health issues. I have addressed this.

Senator Harte implied that €40,000 per Senator per year was being spent on IT. I do not

know where this figure came from. If we are paying that much for IT services, we should find a different provider. IT services could be provided for a hell of a lot less than €40,000 per Member. There is a need for the Accounting Officer to consider this if it is the case.

Senator Norris referred to casinos. I understand the legislation on casinos will be published soon. The legislation mentioned in the newspapers today is probably to regulate private cards clubs around the country. These are really glorified casinos that have been operating outside the law for a number of years. I would welcome the regulation of that sector. Another Bill will be required to deal with online gambling. I refer to the Betting (Amendment) Bill. We will have ample time to discuss these matters in the coming months.

Senators Clune and Noone called for an informed debate on the content and use of information held by social media sites. Their point was very relevant and I will ask the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, to update us on the matter. Perhaps we could also obtain a comment from the data protection officer.

Senators Cullinane, Landy and Ó Murchú mentioned the Waterford Crystal workers. As found by the European Court of Justice, the State failed the workers. There is no question about it; it has been proven. Like Senator David Cullinane, I made contact with the Minister for Finance, Deputy Noonan, and the Minister for Social Protection, Deputy Burton, on the matter. I understand from their responses that their advice is that the court proceedings must be allowed to take their course. There is no doubt that the workers have been waiting far too long to be compensated. They deserve to be and will be compensated. Senator Cullinane is calling for justice to be done and I assure him that I will be pushing not only for justice to be seen to be done but for it to be done. I fully support the efforts of Waterford Crystal workers to have their rights vindicated in this regard.

Senator Landy welcomed the recommencement of Garda recruitment, a point raised by Senator Wilson yesterday on the Order of Business. Senator Noone referred to the healthy eating initiatives and the differences in VAT charges for various foodstuffs. We can raise this during the debate.

We have commented on the matter raised by Senator O'Sullivan. I take his point on the timing of the statement made yesterday on the Seanad Bill. Senator Gilroy referred to mental health services. The House has decided that the next Seanad Public Consultation Committee will deal with adult mental health. That is another reason for us to discuss the matter in the House. I am sure the debate will be well informed by people involved in the mental health sector who have focused on the issue of adult mental health. We will have an opportunity to discuss the matter in the House.

I think I have answered Senator Ó Domhnaill's query on Northern Ireland. We will debate Report Stage of the Bill on Seanad abolition tomorrow.

Senator Conway raised the issue of litter on beaches. He is right. There is nothing as bad as seeing litter scattered all over a beach at the end of a day. I wish to take the opportunity to compliment all of the local authority workers on the excellent job they do to clean up beaches on a daily basis. People must take responsibility and bring home their rubbish. Recently I heard it mentioned on a programme that Abbeyshrule, one of the cleanest villages in the country, has no litter bins because its inhabitants believe that people should bring home their litter. That initiative has proved successful in Abbeyshrule, so it should succeed in every part of the country.

Senator Mary M. White: Hear, hear.

Senator Maurice Cummins: Senator Brennan referred to hoax calls being made to emergency services in Carlingford. Again, this is a disgraceful situation that happens far too often in many parts of the country. Do hoax callers realise that they could cost a person his or her life by calling emergency services away from them? I agree with the Senator that fines should be imposed. I hope that the hoax callers will be brought to justice as they deserve.

Senator Sheahan mentioned that children with Asperger's syndrome receive assistance during State examinations but not for school examinations. He made a good point and it is worthy of discussion. We do talk about treating all the children of the nation equally. The Senator should consider tabling this as a matter on the Adjournment so he could receive a specific answer. I also noted the points he made about the Haddington Road agreement.

Finally, Senator Comiskey welcomed the announced retention of a college in Sligo. He also urged people to apply early to SUSI for grants this year.

Order of Business agreed to.

Proposed EU Directive on Freedom, Security and Justice: Referral to Committee

Senator Maurice Cummins: I move:

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

(i) Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law - General Approach, and

(ii) Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA,

copies of which were laid before Dáil Éireann on 12th June, 2013 and 3rd April, 2013, be referred to the Joint Committee on Justice, Defence and Equality, in accordance with Standing Order 70A(3), which, not later than 18th July, 2013, shall send a message to the Seanad in the manner prescribed in Standing Order 73, and Standing Order 75(2) shall accordingly apply.

Question put and agreed to.

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

Debate resumed on amendment No. 1:

To delete all words after ''That'' and substitute the following:

"Seanad Éireann declines to give the Bill a second reading for the following reasons:

(1) The X Case judgment, correctly interpreted, does not create a binding precedent with respect to the application of the criterion for a lawful termination of pregnancy (i.e. the test of 'real and substantial risk to the life of the mother') to circumstances in which the risk to the life of the mother is one of suicide. The lawfulness from a constitutional perspective and the appropriateness from a medical and public policy perspective of extending that test to such circumstances was conceded by the parties to that case, was therefore not argued before the Court and, accordingly, formed no part of the ratio of the decision which is binding as a matter of precedent.

(2) Further, and independently of the foregoing, there is no legal obligation upon the Oireachtas, as a matter of Irish law, to enact any legislation dealing with the provision of abortion on grounds of suicidality, not least in circumstances where there are substantial ethical, medical and public policy reasons not to enact such legislation.

(3) The judgment of the European Court of Human Rights in A, B & C v Ireland does not oblige Ireland, as a matter of either Irish or international law, to make lawful, or to maintain as lawful, a right to abortion on grounds of suicidality.

(4) It is dangerous, irresponsible and unjust to legislate for the creation of a specific statutory framework for the provision of abortion as a method of suicide prevention in circumstances where:

(i) there is an absence of evidence that abortion has any positive effect on women's mental health or that it has any positive effect in preventing suicide;

(ii) there is evidence to suggest that abortion may have a negative effect on women's mental health and is associated with an increased risk of suicide;

(iii) there are clear public policy reasons for not formally recognising suicidality as a legitimate means by which additional rights or services may be acquired or accessed or by which the rights of others may be abridged or wholly overridden.

(5) The Bill is unconstitutional by reason of its endemic failure to respect the equal right to life of the unborn child in accordance with Article 40.3.3. This failure is manifest in several provisions and omissions of the Bill including:

(i) The absence of any objective standard (e.g. reasonableness, evidence-based clinical practice, relevant guidelines etc) by reference to which medical practitioners must form an opinion for the purposes of certifying an abortion in accordance with the Bill. This represents an unwarranted and unexplained departure from the usual standard of care required of clinical decision makers under existing medical ethics and Irish law.

(ii) The absence of any provisions expressly requiring that all alternative courses of action (including non-medical courses of action) are to be fully explored, offered and exhausted before abortion is contemplated as a possible means to averting a risk arising from suicide.

(iii) The absence of an unconditional entitlement on the part of medical practitioners who are asked to make a certification or to review the refusal of a certification to have access to all medical records potentially of relevance to the proper assessment of the risk to the life of the mother.

(iv) The absence of any express term limit to the provision of an abortion on grounds of suicidality.

(v) The absence of any express provisions prohibiting the certification of an abortion under section 9 in respect of a viable unborn life.

(vi) The absence from the Bill of any reference to or provision for any medical procedure other than one during the course of which or as a result of which

unborn life ''is ended''.

(vii) The absence of any provision to allow for the best interests of the unborn child to be represented by an advocate on his or her behalf in a manner similar to that afforded by the Bill to the mother by means of rights of appeal and representation. The unborn child is a legal person with a constitutionally recognised right to life and, it follows, a right to be consulted in an appropriate way before the taking of any decision which may directly affect his or her rights in a material way. As with any other person who lacks capacity to participate in a consultation process, the best interests of the unborn child should be represented by a person acting on his or her behalf for the purposes of any consultative process to which the unborn child is entitled as a matter of constitutional law.

(viii) The absence of adequate reporting requirements to ensure that the provisions of the Bill are being complied with in practice and to facilitate a proper review of its operation on an on-going basis. At a minimum the Bill should require the following particulars to be contained in the relevant reports: (1) the total number of notifications received by Minister/reviews carried out, (2) the clinical grounds for medical procedures carried out pursuant to section 13 certification, (3) the gestational age of the unborn child whose life is to be ended by a certified medical procedure, (4) the actual outcome for the mother and unborn child of every certified medical procedure.

(ix) The absence of any penalty for knowingly making a false or misleading statement in relation to the notification or reporting requirement (such as is found in the Mental Health Act 2001).

(6) The Bill fails to adhere to international precedent with respect to the recognition and protection of the right to conscientious objection for all persons who may be involved in the carrying out of an abortion, including non-medical or ancillary staff and institutions. The Bill equally fails to protect the constitutional and human right of medical and nursing personnel not to be required to assist in arranging for another

medical practitioner to carry out an abortion.

(7) The Bill taken as a whole represents a backward step in terms of promoting and improving in Irish hospitals the practice of the two-patient model of care during pregnancy that ultimately best serves the welfare and safety of both women and their unborn children.

(8) There remains in Irish society a culture of respect for the humanity and equal right to life of the unborn child that is largely under threat across the Western developed world. This culture is grounded in the belief that an unborn human being deserves protection precisely because he or she is so dependent, weak and vulnerable and not despite the fact that he or she is so dependent, weak and vulnerable. The Bill taken as a whole sends a message, ungrounded in medical reality, that the deliberate killing of an unborn child is sometimes acceptable and necessary in order to provide the best possible medical care for women in pregnancy. Enshrining this misrepresentation in legislation can only undermine the existing culture of respect for unborn life.".

- (Senator Feargal Quinn)

An Leas-Chathaoirleach: Senator Paul Coghlan was in possession last night and had just started.

Senator Paul Coghlan: Yes.

An Leas-Chathaoirleach: Therefore, he is entitled to the full ten minutes, although I might deduct ten seconds.

Senator Paul Coghlan: l thank the Leas-Chathaoirleach and ask him to let me know when I have two minutes left.

I welcome the Minister of State again. I thank him for his attendance and the work he has put into the matter. I approach the Bill from a pro-life standpoint. As has often been said, this is a complex and sensitive issue about which one needs to remain calm and avoid division while respecting differences.

The issue is about the life of the mother and of the unborn baby. We must be conscious of the fact that abortion is prohibited in Ireland and no change is envisaged in that regard. In fact, the prohibition on abortion is reset in the Bill and severe penalties will apply to any person or body responsible for the unlawful termination of unborn life.

On the issue of suicide, there has been much evidence from the hearings of the Oireachtas Joint Committee on Health and Children. However, it is necessary that we have legal clarity for medical practitioners where medically necessary terminations are permissible.

Of course we must work to save both lives, but the life of the unborn baby is consequent on the life of the mother. Not one of us would wish to be in a situation in which a decision must be made, but we must provide legal clarity where the life of the mother is threatened. We must remember that what is being proposed in the Bill is within the parameters of the Constitution, the X case and the case of A, B and C *v*. Ireland. There is no constitutional change proposed and there is no change in the law. We must remember that constitutional rights already exist as a result of the X case, which dealt with the risk to a woman's life from a suicidal intent. The Bill

restricts the circumstances surrounding the procedure to those pertaining to the rights already confirmed by the Constitution. It is not open to us to deny that the right already exists because of the Supreme Court's ruling in the X case.

As the explanatory memorandum sets out, a referendum was held in 1983 that resulted in the adoption of the provision that became Article 40.3.3°, which states:

> The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

The interpretation of that amendment was considered in the case of Attorney General *v.* X and others in 1992. The Supreme Court held that if it were established as a matter of probability that there was a real and substantial risk to the life, as distinct from the health, of the mother, and that this real and substantial risk could only be averted by the termination of her pregnancy, such a termination was lawful. A termination of pregnancy arising from a risk to life from suicide was deemed lawful under this judgment.

The issue was revisited in the judgment of the European Court of Human Rights in A, B and C *v*. Ireland, which placed Ireland under a legal obligation to put in place and implement a legislative regulatory regime providing effective and accessible procedures whereby pregnant women could establish whether a termination would be carried out in accordance with Article 40.3.3° as interpreted by the Supreme Court in the X case. Last December the Government approved the implementation of the judgment of the European Court of Human Rights in the A, B and C case by way of legislation with regulations within the parameters of the Article as interpreted by the Supreme Court in the X case.

The Bill aims to give effect to the Government's commitment to legislate in this area. It is important to remind ourselves that the Bill does not provide for any new rights and will not lead to the introduction of abortion on demand in Ireland. Rather, it clarifies the very rare circumstances in which doctors can intervene where there is a real risk of the woman losing her life during pregnancy. The equal right to life of the unborn has been upheld and the obligation of the medical profession to save both lives where possible is confirmed. In that connection, it is important that we hold what is dear to us and enshrined in Article 40.3.3°.

The general prohibition on abortion in Ireland is restated and severe penalties will apply to any person or body responsible for the unlawful termination of unborn life. In the case of a real and substantial risk to a woman's life arising from self-destruction - in other words, there must be intent rather than mere ideation - additional safeguards are being put in place, with the involvement of gynaecologists, psychiatrists, obstetricians and the general practitioner involved in the individual case.

Reporting and monitoring requirements will be put in place to ensure the availability of full and transparent information on the number and nature of medical terminations. All procedures must be notified to the Minister within 28 days. An annual report will be published that will detail the number, nature and location of any terminations that have been certified. The Minister for Health has also been given the power to suspend the service in any hospital if he or she believes the provisions of the Bill are not properly adhered to. This is an important safeguard that has been added.

What has been provided for in this Bill is a very restricted process and can only be applied in

very rare life-threatening situations. This country is one of the safest countries in the world for childbirth and will continue to be so. Considerable resources have been devoted in recent years to supporting women who find themselves in crisis pregnancy situations. This has resulted in a significant reduction in the number of Irish women opting to travel to Britain for abortions and it is imperative we continue to support women in these very difficult decisions.

The Bill creates a rigorous process around the issue of suicidal intent and the termination may only be proceeded with once a certifying specialist is satisfied all alternative treatments have been attempted or ruled out. Abortion is not a treatment for suicide. The Bill recognises the reality that, unfortunately, the right already exists and puts in place a process to prevent the right from being abused. The process and the safeguards are preferable to leaving an unregulated right in existence, which could be open to abuse.

The Bill will not confer on a woman any right to insist that the life of an unborn child be deliberately ended. On the contrary, the constitutional obligation on doctors, to save both lives if possible, is reiterated in the Bill and means, in practice, that the ending of a pregnancy with a viable foetus will be the birth of a child. The doctor has two patients in these cases – the mother and the child.

I recognise that the President has the sole right to call the Council of State and refer a Bill. I hope he will call in the Council of State and refer this Bill. A number of people and institutions have indicated they intend to institute court proceedings to challenge certain aspects of the Bill. It is preferable, given all that has happened, to have a full test of the Bill, which only the President can institute.

In 1992, there was no psychiatric evidence. It was a long time ago. We have had Oireachtas Joint Committee on Health and Children hearings on which the Chairman, Deputy Jerry Buttimer, was complimented. The sole surviving judge from the 1992 case, Hugh O'Flaherty, recently pointed out that in his view the judgment is moot and may not be binding on the Government. It is incidental or, as learned counsel will understand, *obiter dicta*.

Deputy Alex White: I must respectfully say the retired judge was wrong in what he said.

Senator Ivana Bacik: Clearly wrong.

Senator Paul Coghlan: I respect what the Minister of State is saying. I have great time for the Attorney General, who offered contrary advice to the Government. The Government felt obliged to take that advice. In view of the matters being put into the public arena, it is preferable to have a full seven judge court examine all aspects in full detail. If there is doubt, it will be removed or referred back to the Legislature and the Government. Hopefully, the President in his wisdom will decide to call in the Council of State and have such consultation and referral.

Senator Terry Leyden: I welcome the Minister of State to the House. I served in that Department as well. The title "Protection of Life During Pregnancy Bill 2013" is inaccurate; it should be titled the abortion Bill 2013. Section 9(1) provides:

> It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where— [...]
>
> (i) there is a real and substantial risk of loss of the woman's life by way of suicide

This is the basis of the Bill being brought through the House by the Minister for Health, Deputy James Reilly, and the Minister of State, Deputy Alex White, to legalise abortion without regard to the viability of the unborn child. In his speech yesterday, the Minister stated:

> Section 9 deals with a risk to the life of the pregnant woman from suicide. There are recognised clinical challenges in accurately assessing suicidal ideation, for example, the absence of objective biological markers. Therefore, this assessment requires that more safeguards are put in place.

In evidence given to Joint Committee on Health and Children, Dr. Sam Coulter Smith, master of the Rotunda Hospital, stated that termination is not a treatment for suicidal ideation and that the Bill is not evidence-based. Dr. John Sheehan, consultant psychiatrist at the Mater Hospital and UCD, stated "There is no evidence base to indicate that abortion prevents suicide." That is why I am voting "No" to this blatant abortion Bill. No amendment will change my vote unless section 9 is removed.

Section 17, dealing with conscientious objection, makes no provision for other hospital staff, such as porters and clerical support staff. I hope the Bill does not pass but if it does they will be forced to co-operate in the abortion of a viable child. No provision in the Bill exempts them on the basis of conscientious objection. It exempts doctors and nurses and other staff but I do not see anything in the Bill that exempts all staff associated with that abortion. That must be included in the Bill because otherwise people will lose their jobs when they refuse to co-operate. It may be a clerical assistant or a porter bringing the young woman to the operating theatre who could conscientiously refuse to co-operate and assist in this particular abortion. There is no provision for Fine Gael, the Labour Party and Sinn Féin Deputies and Senators to have conscientious objection without expulsion. Fianna Fáil is the only party allowing Oireachtas Members to vote for or against the abortion Bill. I welcome this progressive decision. I have spent fifteen and a half years in the Dáil, 11 years in the Seanad and I was a Minister of State for six and a half years. I have never voted against the Fianna Fáil Whip. It is a great relief to all of us to be allowed to vote as our conscience dictates.

In 2012, 185,122 abortions were carried out in England and Wales. More babies have been aborted than people died in the Second World War. That is the stark reality. I commend the heroic conscientious objection by Deputy Peter Mathews, Deputy Lucinda Creighton, the former Minister of State, and Deputies Billy Timmins, Terence Flanagan and Brian Walsh. Those men and that woman showed how they felt. They had the courage of their convictions and I welcome Deputy Peter Mathews to the Public Gallery. They showed their mettle. The way the Minister of State, Deputy Lucinda Creighton, was treated by the Taoiseach and the Government was disgraceful. Never in the history of the State has a Minister of State been fired over the telephone without a proper Cabinet meeting being called to decide on her position.

Senator Imelda Henry: She resigned.

Senator John Gilroy: Senator Leyden should keep it honest.

Senator Terry Leyden: Her resignation was demanded by the Taoiseach on the night of the vote.

An Leas-Chathaoirleach: The manner in which that occurred is not a matter for the Bill.

Senator Terry Leyden: It is.

An Leas-Chathaoirleach: No, it is not and I am ruling that the Senator should move on.

Senator Terry Leyden: It is a debate on Second Stage. The number of people from Ireland going to England is obviously a worrying trend. There has been a reduction but last year 3,982 women were registered as being from Ireland.

12 o'clock

That is a large number but it is not necessarily related to suicidality. We cannot judge, condemn or condone any situation the women found themselves in. I will not make a judgment on that matter.

I dealt with the amendment to the Constitution in 1982 and 1983, which was wisely inserted by the late Charles J. Haughey and Garret FitzGerald. There was pressure at the time from the pro-life movement but they went ahead with the amendment. Perhaps it was wise. If it was not in place, would the Government, forced and pressurised by the Labour Party, not be prepared to go further than the Bill even envisages? Those two leaders gave leadership and the amendment was made to the Constitution meaning the unborn is protected to some extent. The Supreme Court may decide that the Bill is unconstitutional if it is passed by the House, although nobody should be so presumptuous to think it will be passed by the House.

David Steel who was, unfortunately, the author of liberal abortion in England said the Government would make a mistake if it went ahead with plans to legalise termination on the grounds of a threat of suicide. The Scottish peer, whose 1967 Act permitted abortion up to the 28th week of pregnancy, said an Irish law which decides who can avail of a termination by ticking boxes would be "very difficult to implement". He has a burden of responsibility for the number of people who have died through abortion and have been aborted in the intervening years. The evidence is clear. When I attended a Council of Europe meeting in Strasbourg, there was a debate about a proposal to liberalise abortion, on which the Labour Party representative abstained to my surprise. This significant proposal cannot be implemented legally because of our Constitution. I naturally voted against it, as did the Fine Gael representative. A Canadian senator with observer status at the Council praised this great liberalisation. She pointed out that her father, who was mayor of Toronto, had great humanity, wisdom and kindness because he helped many women to secure legal abortions in the Netherlands because they were not permitted in Canada. He made arrangements for them and she was proud of that. She told me about a young married woman who approached him. She had seven children and was expecting her eighth. The Senator's father arranged for her to have the eighth child aborted in the Netherlands. I am an eighth child and my mother brought me into the world in difficult times but she was pro-life. I thank her for that courage and commitment.

We are all impressed by where we come from and everyone plays a part in the jigsaw that is this world. "What a wonderful world", as the famous song goes. Does the Minister realise what he is doing depriving a viable child of the right to enjoy what we are enjoying now by approving an abortion? A viable healthy child of up to 28 to 30 weeks will be left to die on a table in some hospital. The Government has gone too far in this regard. I recognise all the mothers on this island who have brought children into the world. I would never judge anyone who makes a decision under enormous pressure. It was not a nice environment in the 1960s or 1970s for women who fell pregnant. They were treated abominably by the State. What happened in the Magdalen Laundries is well known.

Passing this legislation will not rectify or change the past but it will influence the future. I appeal to my colleagues to vote "No" to this Bill. I thank those who have sent cards and postcards or called to make their points well known. I acknowledge them for their efforts. I am comfortable. I was here in the 1980s and 1990s when abortion referenda were held and in 2002 when a good abortion referendum was defeated by extreme right wing people. Deputy Micheál Martin, who was Minister at the time, was courageous bringing that forward. We had it practically through only for the last minute intervention of certain people.

I respect everyone's view on this sensitive issue. We all have our own positions and nobody has a monopoly on wisdom. I respect the Government parties' decision to do what they feel is right and proper. That is their view and we have our individual views. I will not disrespect anyone's view or the decision they make on this Bill.

Senator Jillian van Turnhout: I welcome the Minister to the House. I also welcome the opportunity to share my deliberations on the Bill.

As a member of the Oireachtas Joint Committee on Health and Children I attended the six days of hearings on the legislation. Over three days in January we discussed the implementation of the Government decision following the expert group report and over an additional three days in May, we considered the heads of the Bill before us. The hearings provided a forum to discuss the legal, medical and ethical issues relevant to the legislation and we heard from experts, often espousing contrary views, from each of these disciplines.

I fully support the Government's decision to legislate to implement Article 40.3.3° as interpreted by the Supreme Court in the X case. However, I have concerns about the Bill. The principal point of contention is section 9 - risk of loss of life from suicide. Suicide in pregnancy is real. It is a real risk to the life of a pregnant woman and it happens. I am concerned about us drawing a legal distinction between a risk of loss of life emanating from a physical or mental health condition. No such distinction is enumerated in Article 40.3.3° nor was a distinction made by the majority of the Supreme Court in the X case. Separating physical and mental health in the wider public debate on mental health and efforts to destigmatise mental health illness is a regrettable and retrograde step. I fully agree with Senator Gilroy who spoke yesterday on this issue and endorse his view. During the hearings and my own research I encountered conflicting legal reasoning and argument around the suicide question. However, I remain unconvinced about the need to distinguish between the manner through which a "risk of loss of life" manifests. The conclusion of the expert group was that a differentiated treatment does not appear to be required for medical or practical reasons.

It is strongly my view that sections 7 and 9 should have been merged. I remind my colleagues of the examples we heard about how suicide can and does manifest in pregnancy: a woman with an eating disorder, who had taken three overdoses in the course of her pregnancy because she could not deal with the additional stress of the pregnancy on top of her psychological disorder; a woman who was pregnant as a result of paternal incest; and a woman who was in an abusive relationship, in which the level of physical violence and abuse had increased during the pregnancy - she was trapped, frightened for her safety and suicidal. Many contributors to this debate have stressed their belief that "abortion is never a treatment for suicide". I refer to Dr. Anthony McCarthy who rightly points out that "abortion is never a treatment for suicide, but neither is counselling, psychotherapy, antidepressants or anything else. There is no treatment for suicide."

Over the past few weeks we have heard much use of the word "conscience", which is a "person's moral sense of right and wrong, viewed as acting as a guide to one's behaviour". I assure the House that in each and every decision I take as a Senator I apply my conscience. I did so when I voted against the cuts to respite care, blanket cuts to child benefit, cuts to disability services and the targeting of lone parents in successive budgets. I do not reserve my conscience to be used only for specific legislation. I would like greater consistency on children's rights issues in these Houses in the future.

Throughout this debate, the term "pro-life" is frequently used as a calling card to identify opponents to the Bill. I object to this terminology and its connotation. In supporting the Bill, is the upshot that I am not pro-life? I assure the House I am absolutely pro-life, both of babies and women alike. A delegation of so-called pro-life Senators and Deputies went on a "Search for Truth" trip to the US earlier this year. I believe others have gone on previous occasions. This trip was apparently funded by the Family & Life organisation, which, according to its own website, is opposed to the MMR vaccine. It suggests as an alternative that we wait for the development of a product that is outside the current limits of science. The MMR vaccine has been proven to save lives. It is reprehensible that any Member could purport to be pro-life and yet associate with an organisation that is against the HSE vaccination policy which is about saving lives. I call on Senators who availed of the funding for the trip to state clearly whether they support the HSE's vaccination policy.

I am extremely concerned about the scope and potential application of section 22 of the Bill. The penalty provided for is too severe and the scope of the provision is too broad. A penalty of 14 years in prison and an unlimited fine represent an extraordinarily onerous sanction. Presumably, 14 years is anticipated to be the starting point for a judge in deciding what sentence to impose in the event of a successful prosecution, which will be reduced on the basis of mitigating factors and circumstances. Some 152 years after their enactment, we will ensure the chilling effect of sections 58 and 59 of the Offences against the Person Act 1861 is carried forward into the Bill. Is this really what we want to do? I was struck by the implications of the section for young girls sourcing abortifacient tablets over the Internet, which potential scenario was hypothesised by several Deputies in the Dáil. I find it hard to envisage that any court would see fit to sentence a 15 year old child to 14 years imprisonment for bringing about the termination of an unwanted pregnancy. It would fly in the face of the sentencing principle of providing for light at the end of the tunnel. The penalty is highly unlikely to act as a deterrent, given the likely lack of capacity for reasoned and rational thinking of a terrified 15 year old pregnant girl.

Section 22 is not justified as a means of protecting society. Why are we, as legislators, proposing to enact it? Let us be honest. It is a way of appeasing people who are opposed to the Bill and would oppose it no matter how it was drafted. They are fundamentally opposed to the principle. The penalty suggests to them that they should not worry because where people deviate from the strict limits set out in the law, the State will bear down on them with an iron fist. This is no way to determine an appropriate sentence for a transgression of a law on a complex issue involving potentially vulnerable, scared and desperate women and girls. It is barbaric. If the potential imposition of a custodial sentence longer than that applied to most rape, incest, violent sexual assault, murder and manslaughter cases was required to allow some Members to support the Bill, I am disappointed. The provision is potentially very dangerous. Women and girls who have taken abortifacients and develop serious life-threatening complications will be extremely unlikely to seek timely medical help in the face of a 14 year prison sentence. Are we really purporting to introduce a law entitled the Protection of Life During Pregnancy Act which,

by its own sanction, may put women's and girls' lives at risk?

I am concerned about the silence in the proposed legislation on children, particularly young girls. The X, C and D cases involved children under the age of 16 years, including children in State care. The Bill is silent on the complex issue of consent for minors for access to medical treatment. It does not distinguish between women over the age of 18 years who have the right to refuse or consent to medical treatment and under-age girls, for whom there are no clear laws governing issues of capacity and consent. I cannot imagine the unbearable situation of a child who has been raped by someone they trusted, is now pregnant and in the care of the State. Parents will normally be asked to give their consent to medical treatment on a child's behalf. The law is unclear with regard to under-16s who seek access to medical treatment without their parent's knowledge or permission. We must remember that consent also includes the right to refuse. We continue to bury our heads in the sand when it comes to the scenario I have outlined which, while unimaginable, occurs in Ireland. We are uncomfortable about facing up to this reality and dealing with it appropriately. We have a responsibility, as legislators, not to compound in the legislation the voicelessness of children in the care of the State. We need distinct legislation to clarify issues of capacity and consent where the patient is under the age of 16 years.

After careful consideration, much thought and despite the concerns I have raised, I support the Government's decision to legislate as proposed in the Protection of Life During Pregnancy Bill which deals only with rare and complex circumstances. As some fear and have resisted, the legislation will be the starting point of a wider public and political debate in which are considered what others have argued, 21 years after the X Case ruling, are the contemporary issues which should be central to the present debate, including fatal foetal abnormalities, pregnancy as a result of rape and incest and wider reproductive health considerations. These issues will direct a spotlight on the eighth amendment of the Constitution. The people will no doubt be called upon to inform the Government of their wishes through a referendum. That is the beauty of a popular sovereignty. The will of the people will win out and inform the Legislature on changes, if required, to our legal arrangements. Debate around social change is to be welcomed and embraced if we are to evolve and grow as a society.

Senator Sean D. Barrett: I welcome the Minister. The Minister and the Ministers of State at the Department of Health, Deputies James Reilly, Alex White and Kathleen Lynch, have collectively paid the House great attention, which we appreciate. I join Members who have thanked Deputy Jerry Buttimer for organising the hearings on the issues which are the subject of the Bill. I also welcome Deputy Peter Mathews to the House. The Oireachtas Joint Committee on Finance, Public Expenditure and Reform is significantly poorer following his removal over the issue of the Bill. He has great expertise in that regard. Having said that, I support broadly the Bill with all of the reservations set out by Senator Jillian van Turnhout. I listened with great interest to Senators John Gilroy, David Cullinane and Deirdre Clune on the issue yesterday. The Bill is unlikely to have any significant impact on the number of women going to the United Kingdom annually for abortions. It has been 4,000 a year for 30 years. The legislation does nothing for the victims of rape, incest, fatal foetal abnormalities or the victims of under-age sex. A 14 year old lady said to me that we could look at the issues of rape and incest.

In the research I have looked at a human embryo is called a foetus eight weeks after fertilisation or ten weeks after the last menstrual period. When we talk about the foetus, are we really talking about an embryo? Is that really as serious? Things have changed since the penalties were set out in the 1861 Act. What was being prosecuted in 1861 may have been something completely different from what is happening today. Progress is made on issues and scientific

and other knowledge changes. I agree with Senator John Gilroy's comments yesterday that Savita Halappanaver might have been saved from sepsis had the abortion she required been carried out on the dreaded Tuesday. That alone makes the Bill worth supporting.

I am concerned about the provisions on registrars and recording. We ought to observe doctor-patient confidentiality in these matters. I acknowledge that the Minister wishes to monitor things, but I am not sure we should seek to undermine the doctor-patient relationship or punish hospitals which may have a different tradition or way of doing things. Diversity is important in these matters.

I note from Senator Feargal Quinn that 80% of Italian doctors have conscientious objections. We should also think of the 120,000 to 150,000 people with conscientious objections who went to England. Staff are being somewhat precious, to say the least, in their objections. The victims have been the women who have had to leave the jurisdiction. The woman's consent is always required, not just for nine months but for life thereafter. Rearing children and preparing them for life is a major task, not lightly to be entered into. Family planning can go wrong. Some of the examples given yesterday included people in late middle age going to England. They decided for themselves that they had had enough children, that they could not cope or that the risk of abnormalities had increased. We leave them with the responsibility to rear these children and ought to take into account the reasons they felt it necessary to go to England.

As Senator John Gilroy told us eloquently yesterday, suicide is an illness. If we knew what could prevent it, we would all be better off. Senator John Gilroy and Deputy Dan Neville have worked in this area for ages. I recall Gerry McEntee, an eminent surgeon, choking up in a radio interview as he spoke about the pain of not understanding what had happened to his brother, the late Deputy and Minister of State Shane McEntee. If we had the answers when it comes to suicide, we would be more successful in our efforts to prevent it. We are contemplating saying to a troubled teenager that we do not believe her when she says she is suicidal. The members of the panels who will make these decisions will be taking the risk that the woman or girl will subsequently take her own life. I would find it very difficult to take that chance.

I agree with other speakers that the penalties for illegally performed abortions, inherited from the 1861 Act, are excessive. We are coming out of a very dark age in terms of the treatment of women in this country. We had, in effect, an incarceration society, with 20,000 people installed in various mental hospitals, reformatories and Magdalen laundries, some with no prospect of release. There was also widespread physical brutality in schools and abuse of children and women on a broad scale.

It is a pity that section 7 provides that a woman will only be entitled to a termination where there is a risk to her life as opposed to her health. I would not like to be in that type of situation, but I appreciate the difficulties the Minister faced in framing these provisions. There is immense complexity in the requirements, whereby decisions in these cases will be made, including the unanimous approval of three medical practitioners, after which a woman might have to appeal to a review panel of ten medical practitioners. One wonders how our already stretched health service will cope with all of these review panels and so on, as set out in sections 9 and 10. I also have concerns about the provision that a review must take place within seven days. If we are talking about the development of an embryo into a foetus, why are we wasting seven days in examining the pregnant woman? I am also concerned about the requirement for various reports to be sent to the Health Service Executive. Why does it have to be involved in all of this?

There is a requirement for a new respect for women and the problems they have encountered in the past and are still encountering today. Why are they travelling to Britain in such large numbers? Why did we incarcerate so many people in mental hospitals, reformatories and laundries? Why was there so much child abuse? Why was so much of it covered up and why are those who were found to have engaged in it and the institutions to which they belong refusing to acknowledge their guilt? Women who become pregnant against their will or better judgment do not merit the type of demonisation we have seen in the course of this debate. There are many before them in the line who are surely more deserving of our disdain.

At the same time, we are seeing an honest and sincere attempt to redress wrongs that have accumulated over a very long period. The contributions of the Senators I mentioned have been outstanding. The Oireachtas committee, under the chairmanship of Deputy Jerry Buttimer, also made an outstanding contribution to the discourse on this issue. There is a huge generational gap, with young people generally unable to countenance what all the bitterness and disputes are about. I appreciate the difficulties and constraints the Minister faced in framing the legislation, but I would have gone further than what is contained in the Bill. Notwithstanding the work that remains to be done to improve the lot of women in Irish society, I will be supporting the legislation. Perhaps if we had more women in positions of authority in the churches, in medicine and Parliament, some of the problems we have been discussing in recent months might not have arisen.

Senator Cáit Keane: The issue of conscience is to the fore in this discussion, but we should remember that one person's conscience is not better than anybody else's. One might be led to conclude in the course of this debate that conscience is one sided, but that involves a misinterpretation of the word which comes from the Latin word meaning to know or have knowledge. Knowledge of oneself, particularly when it comes to one's morals and instincts about what is right and wrong, is very important to me as a legislator. Pangs of conscience or an uncomfortable inner voice are very helpful when I am trying to decide what is the right thing to do in a particular situation, whether it involves, for example, a reduction in resources for vulnerable people in our society or, as in this case, an issue of life and death.

I want to make it clear that nobody has told me what to do in regard to this legislation. I am speaking and voting for the Bill because I believe it is the right thing to do, not because of the dictates of the Whip. I would not submit to that type of constraint on this issue which I accept is a difficult one for many. What I know with certainty, however, is that I would have great pangs of conscience if, in the absence of this legislation, a woman were to commit suicide because she was denied an abortion. If I did not support the Bill and such an event were to take place, I would have to conclude that I was not just a bit guilty but very guilty. That is why I am supporting the Bill, including section 9. Even if suicidality in pregnancy is rare, it can and does happen, as we saw in the X case. Dr. Anthony McCarthy, an eminent psychiatrist, told the Oireachtas committee that it did happen. I take advice on this issue from scientists and other experts, including the expert advisory group on abortion. The bottom line for me is that in a case of suicide, both mother and baby will die. There is a stark choice to be made and my conscience dictates that I must support these provisions.

My other reason for supporting the Bill is that I am a legislator and these provisions reflects the current law of the land. We are not changing that law but merely giving clear legislative effect to it. I have a religious faith which I value greatly, but my primary motivation must be to fulfil my role as a legislator. As a member of the Fine Gael Party, I knew before the general election that an expert group would be established to make recommendations on this issue.

What is the point in seeking the advice of experts if one is simply going to reject their expert scientific advice? The Bill provides for the existing rights of women and offers clarity and certainty to the doctors who treat them. In fact, its provisions will make it more difficult for women to obtain an abortion in this country on the basis of suicidal ideation. We are not bringing in abortion on demand. Any woman who has an abortion in this country in circumstances other than where it is the only means of saving of her life will, under the provisions of section 22, face imprisonment for up to 14 years. Many Senators have commented on the draconian nature of this penalty. The same point was raised in the Dáil, but the relevant amendments were not accepted. The Offences against the Person Act 1861 is the law under which doctors are operating, a situation which could not be allowed to continue. Doctors need certainty and to know they are protected under the law. We are, after all, a litigious society.

On 16 December 2010 the European Court of Human Rights, in its ruling in the A, B and C case, noted "a striking discordance between the theoretical right to a lawful abortion in Ireland on the grounds of a relevant risk to a woman's life and the reality of its practical implementation". The court noted that since the X case, no criteria or procedures had been laid down in Irish law, whether in legislation, case law or otherwise, by which the risk to a woman's life could be measured or determined, leading to uncertainty as to its precise application. This is where we, as legislators, find ourselves today. We are giving the law of the land practical application. It is our duty - whether we like it and regardless of our personal views, religious or otherwise - to remove the legal uncertainty that has pertained for the 30 years since the eighth amendment was endorsed. The people have subsequently given their view in two referendums on the X case ruling. One is forced to conclude that if men could have babies, legislators, who are mostly male, would have changed the law long ago.

A recent report by Dr. Margaret Oates of the Royal College of Psychiatrists indicates that suicide was the main cause of death among pregnant women and young mothers in the United Kingdom. Nobody in Ireland is gathering these statistics. I compliment the Minister and the Ministers of State on the work they have done in setting out this provision of the Bill. It is clear that a great deal of thought went into it. We will now have monthly reports and an annual report to the Minister on the statistics in this regard, which will ensure what is set out in the legislation is implemented, nothing more, nothing less.

A journalist with the *Sunday Independent*, a person, as she pointed out herself, who has experienced both pregnancy and suicidation, although not simultaneously, observed in a recent article that it was, in her view, highly unlikely that any pregnant and suicidal woman would submit herself to the interrogation, intimidation and potentially fatal mental distress of having to explain herself, first, to her GP and, subsequently, to two psychiatrists and an obstetrician. She went on to say that therefore, the flight to London will still remain the choice.

It is difficult to judge. Since the X case ruling, 100,000 women have travelled to the UK, or 4,000 per year so far as we know, but there is nobody counting. Senator Marie-Louise O'Donnell asked how many of those would have committed suicide. We do not know because we do not know. Heads are buried in the sand because it is happening somewhere else. It is alright as long we do not know, because it is not happening here.

I have heard it said that the word "suicide" in legislation will normalise suicide, as if it will go away if we do not talk about suicide, or it will be less likely to happen. I am not going to pretend to be an expert on suicide. Indeed I heard an eminent psychiatrist on the radio - I think it was Professor McCarthy - who said we all seem to be experts in here on clinical judgment

on suicidology. I am not, and I am listening, but I cannot take the chance of not believing a woman who may be brave enough to present herself to the four people mentioned in the Bill to say that she is suicidal. I cannot say "I do not believe you." I do not believe the women of Ireland would do that. Moreover, I have to trust the experts in the field who will be charged with making that decision following a clinical assessment. I am not a clinician; I am a legislator and I have to abide by the law of the land. It is not made easy in the Bill and rightly so, because we do not want it made that easy, but the 14 year sentence is another day's discussion.

I have listened to views that we should have guidelines only, but the expert report also noted that guidelines alone will be subject to legal challenge. This Bill may be subject to legal challenge as well, but we have to wait to see if that happens. We will provide legal protection to the medical practitioners and that is what they are looking for. The expert group has done its job and presented its report to the Government. Why ask the experts if we are not going to take the expert advice? The Minister has ensured that he will now be able to evaluate what is happening in each hospital and ensure that the Bill is being implemented.

This debate is very sensitive and everybody recognises that. I pay tribute to Deputy Buttimer, who was able to chair the debate in a courteous and sensitive manner. This legislation is very restrictive and fatal foetal abnormalities have not been included. Article 40.3.3° of the Constitution would have to be changed to accommodate this, and such a change would have to be put to the people. This Bill is not opening the floodgates, as has been suggested. At the inquest into Savita Halappanavar's death in Galway, Dr. Peter Boylan stated that if a termination had been carried out on the first, second or third day after she was admitted, then "on the balance of probability" she would be alive today.

We all have to use our best judgment. My conscience is no better or worse than that of anybody else, and I respect everybody's conscience. I will finish by quoting Dr. Rhona O'Mahony, master of the National Maternity Hospital and her contribution on the Bill during committee hearings in this house. She is a lady who I admire and respect and who is in the business of saving the lives of mothers and small babies every single day of her life. She stated:

> Women should be allowed terminations if there is a risk of dying by suicide, even without the Supreme Court ruling on the X case, which determined this to be constitutionally lawful. Suicide is death...We are legislating here for the risk of death. When you commit suicide, you die. The baby dies. The Bill is not about legislating for suicidal intent in pregnancy. This Bill is not about suicide, it is about the risk of a woman dying...Any legislators who wanted the suicide grounds removed should ask themselves if they were certain women would not die as a result...Are we all absolutely certain that when a woman, who does not plan to be pregnant, who is so distressed by her pregnancy that she tells us she wants to kill herself, can we all sit here and say 'I am absolutely certain she will not kill herself?'"

She said that here in this House. I cannot choose not to listen. I am supporting this Bill of my own free will.

Senator Thomas Byrne: Colleagues will know that I have found this a very difficult issue, as it has been for many colleagues on all sides of the House. I have not really taken part in public debate on the issue, but this was slightly unavoidable during the recent by-election in Meath. I have listened and read with great interest on all sides, and that is one of the difficulties. I have heard very few people in the debate whose expertise is not coloured by political views one way or the other. I certainly do not believe the exaggerated claims on both sides of the debate.

However, two figures who have impressed me are the masters of the Rotunda Hospital and the National Maternity Hospital. They are the people I feel should be given the most hearing. I found them to be genuinely compassionate people whose mission in life is to protect and deliver life into the world. These are the people who should be given most hearing, along with some of the psychiatrists who I found impressive as well. I paid particular attention to these views during the debate.

We have all been asked political questions on this issue, I have always stated that I am pro-life and would always wish to uphold the equal right to life of the mother and unborn child, as expressed in the 1983 referendum. The X case decision in 1992 presented all concerned with huge challenges, not least Ms X herself. I cannot imagine how she is feeling throughout the debate, nor indeed the thousands of women who have gone through abortion and travelled abroad for it. Many of them regret that but many have gone through it, regrets or not. This is a difficult time for them. The Supreme Court itself in 1992 was faced effectively with the challenge of legislating for the 1983 referendum, and in doing so, it criticised the Oireachtas for not legislating. There is no doubt that the X case presents challenges for Governments and for the people. However, it is untrue that no Government has done anything since the X case. In 1992, the Fianna Fáil Government put forward a referendum effectively to overturn the X case. Unfortunately, the entire pro-life movement and a section of the church, led by Archbishop Connell, recommended a "No" vote. The Fianna Fáil Government also put forward a referendum in 2002. This narrowly failed, but was scuppered by some on the extreme right wing, as Senator Leyden stated. We would not be here without those referendum defeats, and this is a pity. The very fact that we have had two referenda to overturn the X case means that the X case is settled law in Ireland, and the only way to overturn it is through a referendum.

I am concerned about moves by respectable lawyers to develop theories calling into question the validity of Supreme Court judgments that they do not like. Therefore, I find the language in Senator Healy Eames's reasoned amendment not to be at all persuasive in the first part. Furthermore, I find it strange and unconvincing that the motion states further down that this Bill is unconstitutional. Every Bill passed by the Oireachtas is presumed to be constitutional until the Supreme Court decides otherwise. It may well be that the Supreme Court will have a chance to rule on this Bill under Article 26 or through some other means. However, even those opposing this Bill should not pre-empt the decision. I am opposing this Bill today, but my opposition to the Bill is not to be interpreted as supporting the reasoned amendment of Senator Healy Eames, which goes way too far and is not a balanced amendment.

After the 1992 referendum, the constitutional review group discussed the issue of abortion in its deliberations. The group included High Court judges and it recommended introducing legislation at that time. They stated that the legislation should cover matters including definitions, protections for appropriate medical intervention and certification of real and substantial risk to the life of the mother, and a time limit on the lawful termination of pregnancy. In subsequent hearings at the Oireachtas, Dr. T.K. Whitaker, chairman of the group, expressed similar views. Nearly 20 years after the review group recommendations, the Government has refused to insert time limits into section 9 in particular, and that is strange. The worrying consequence of this failure by the Government is that the Minister for Health recently conceded on radio that the Bill, with no time limit, will effectively force an early delivery of the baby in some cases. The Minister further conceded that this would probably result in more babies suffering damage because of premature delivery. The Minister said it was inescapable that the laws allowing pregnancy to be terminated would result in more children being delivered in a premature state,

a condition which would ultimately mean health difficulties for the baby. In my view, this is an extremely strong reason to vote "No" to the Bill.

The argument opposing this view is that one cannot put a restriction on a constitutional right. I do not believe this and neither does the Government. The Government is actually restricting the X case by putting three doctors in place, and many colleagues have pointed to this as a kind of pro-life reason to support the legislation, and I accept what they are saying. There is no doubt that the three doctor requirement is an improvement on the X case. Accordingly, if the X case can be restricted in that manner, I do not see how it cannot be restricted to cover the circumstances that the Minister described in a radio interview.

I also cannot ignore the large number of psychiatrists who oppose this Bill and the procedures set out in it. As I stated, I found both the masters from the Rotunda and Holles Street hospitals to be very convincing. Both accepted the need for legislation to clarify the law for doctors in the course of life-saving treatment. The argument for legislation, therefore, is very convincing and essential. Dr. Coulter Smith said "that on the positive side we, as a profession, would like some clarity and comfort from the fact that what we do is covered by legislation and would like legislation to back up the Medical Council guidelines." He did, however, state the legislation should be left broad, short and clear and take into account advances in medical technology. He subsequently referred to difficulties and dilemmas arising from the legislation.

I cannot support legislation which is supposed to give clarity to doctors when one of our senior doctors stated it would cause difficulties and dilemmas. I am also disappointed that the legislation is not accompanied by further action by the Government to deal with crisis pregnancies. It is disappointing that the Government is not bringing in any further help for women and families in crisis pregnancy situations. These crisis pregnancies continue, as do the Ryanair flights. From government down, a national hypocrisy continues, whatever way one votes on this legislation.

Whatever happens, I do not believe this legislation will open the floodgates to abortion. However, the admission by the Minister for Health that children could suffer disability due to absence of time limits and the concerns of Dr. Coulter Smith suggest this Bill does not provide the clarity required but, in fact, creates further difficulties and dilemmas for doctors, mothers and babies.

I thank all in this House, my family and friends, as well as doctors and other medical professionals, for discussing this legislation with me. It has been very difficult, especially when one has a free vote. Ultimately, I must do what I believe is the right thing to do. I appreciate and acknowledge that the Government has a difficult job. It needs to legislate in this area. However, when Dr. Coulter Smith stated this legislation will cause difficulties and dilemmas, the Oireachtas is not doing the right job.

Senator Marie Moloney: I rise to add my voice in support of this legislation and to welcome this debate. Is Ireland a piece of land or is it its people? If our answer is the people, then, whether we like it or not, abortion is a part of life in Ireland. Whether one is pro-life or pro-choice, there is no getting away from that. Although abortion might not be legally permissible in this country, it is a reality for the four thousand Irish women who make the long and lonely journey to the UK each year to avail of abortions there. We need also to be aware that any Irish woman who has access to the Internet can purchase pills online which will induce the end of her pregnancy. Abortion is an everyday occurrence in Ireland and is a reality for women the length

and breadth of this country.

I say that not to imply that I, in any way, support the provision of abortion on demand, nor would I ever do so. I say it because some of the people contributing to this debate need to stop acting like ostriches and take their heads out of the sand. To listen to some of the arguments from those on the pro-life side of the argument, one would be led to assume that Ireland is abortion-free, a place where no abortions are ever carried out and where the means by which a woman can procure an abortion are beyond reach. The reality is, as we know, incredibly different.

That is why this Bill, however limited in its scope, seeks to bring some clarity to the situation and to fill the vacuum in law that has existed since the 1992 X case judgment. It seeks to give medical professionals legal clarity when they are faced with life-saving decisions, difficult and harrowing decisions in their daily lives as doctors, gynaecologists and obstetricians. This morning I had a telephone call from a midwife who claims that the decision will fall on them. This cannot be allowed to happen. Decisions must be made by the consultant.

It is easy to forget that, as women, we place all of our trust in medical professionals when we are vulnerable and in need of medical help during pregnancy. I want to know that if a doctor treating my daughter, my daughter-in-law or any woman is faced with a crucial decision which they need to take in the best interests of the mother and the unborn, that they can do so with the best possible legal and legislative protection for their actions. I say this as a mother and a woman who has known the pain of having lost a baby. I was very glad of those medical professionals' help when I needed it.

The reality is that every day medical professionals are faced with life and death decisions. It is easy to forget that. In a moment, they often have to decide quickly on how best to protect the lives of their patients and those decisions are not always simple. Life is not simple.

Through all of this debate, I have often thought of one such situation that sometimes, although rarely, faces medical professionals, namely, the case of Siamese twins. We have all read of situations where one twin has been spared through the sad and awful loss of another. The saving of one life, instead of losing both, often means the loss of another. Medical professionals are also often faced with the difficult decision of who will be the recipient of an organ donation. Do they give it to someone with a disability or to someone, who with it, could lead a long and healthy life? My point is that in medicine, as in life, nothing is simple. Nothing is black and white. Sometimes, hard and difficult decisions have to be made, decisions that some may think are incorrect but are necessary to save lives.

For years, women were treated as second-class citizens. They were not allowed to vote or to sit on juries. They were victims of physical and sexual abuse, as seen in the Magdalen laundries, or subjected to medical abuse, as in the case of symphysiotomy. Many women who went to their local clergy for help in domestic violence were told they had made their beds and would have to lie in them. Where was the compassion and humanity during those times?

Thankfully, we have come a long way. However, there are those who feel they have a right to have a say when women are in danger of losing their lives over a medical condition brought on by pregnancy or in the more controversial case of a pregnant woman or young girl who is suicidal because of the pregnancy. We all know the different reasons why women feel like that. Obviously, there will be suicidal women who are pregnant but that is a different story.

I put my trust in the medical professionals who have spent years training and who will, first and foremost, do everything possible to save both mother and baby. Only as a last resort and following consultation with other professionals will the termination of the pregnancy take place.

I also put my trust in women that only those who really are suicidal will present. I have listened to the hearings, the ongoing debates, the radio interviews, read the Bill and newspapers, as well as meeting with delegations from both sides of the argument. I have heard the argument there is no need for the suicidal clause to be included in this Bill, saying that it only happened in a minute number of cases. If that is the case, then there is no need for concern as it will only apply in a minute number of cases. What sane woman would pretend to be suicidal and put herself through the intensive process of proving she is suicidal just to have an abortion? That same woman could travel to England and have one over there without putting herself through the tight process here. Today, if a woman presents as suicidal, then the medical professionals will do all they can to help this woman through this difficult time. I have no doubt they will follow on with the same process following the passing of this Bill.

My final point relates to conscience. To listen to some people on the anti-abortion side of this argument one would be forgiven for thinking that they are the only ones with consciences. Let me assure them that, like many others, I have wrestled long and hard with my conscience. The pro-life campaign - and may I add that I consider myself pro-life, a supporter of the life both of the mother and the unborn - would have us believe that it has a monopoly on conscience. It does not and I think it is unfair to suggest so.

There is no doubt that this is a very emotive subject. My conscience has influenced my conclusion that we as a Legislature need to provide our medical personnel with a clear and proper legal foundation in their work, particularly when it comes to treating a pregnant woman with suicidal tendencies. I believe that this Bill does that and I urge Members to support it.

Senator Kathryn Reilly: At the centre of this Bill is the protection of life, the protection of the woman. When one looks back at its history one finds this re-emphasised at every turn. In 1992 the Supreme Court found that the Constitution guaranteed a woman the right to terminate a pregnancy where there was a real and substantial risk to her life including the threat of suicide. Since that judgment we have had two referenda and the judgment of the European Court of Human Rights, all of which reaffirm this right.

To their credit, Fine Gael and the Labour Party have kept the promise made in their programme for Government and commissioned the report of the expert group on the judgment in the case of A, B and C *v*. Ireland, published last November. It found that legislation and regulations in accordance with the X case would give constitutional, legal and procedurally sound effect to the judgment of the European Court of Human Rights. Far from being a prescription for so-called abortion on demand this approach will underpin the extremely restrictive nature of the 1992 ruling in the X case. Some people have sought, and will continue to seek, to undermine the need to include suicide. I have listened carefully to those arguments. In many cases personally I find them disrespectful to women and deeply hurtful. The Supreme Court ruled on the issue and stated that where the threat of suicide posed a real and substantial risk to the life of the woman and where no other intervention could save her life then the termination of the pregnancy is lawful. That was the case in 1992 and it is the case today.

The *Oxford English Dictionary* defines crisis as "a time of intense difficulty or danger". It

defines danger as "the possibility of suffering harm or injury". The establishment order of the Crisis Pregnancy Agency defines crisis pregnancy as one "which is neither planned nor desired by the woman concerned, and which represents a personal crisis for her". The reality that we must face is that crisis pregnancies happen every day. Women find themselves in precarious positions. They find themselves in turmoil. Some can accept their pregnancies after the adjustment to their lives, some make alternative arrangements, many women travel to England but there are many who are utterly desperate which is defined as "feeling or showing a hopeless sense that a situation is so bad as to be impossible to deal with", so impossible that ending their lives is a reality, often where a combination of factors has pushed them into such a black hole.

The social stigma around being unmarried irks me, as do other facets of Catholic guilt that have borne down very heavily on Irish women across history and seen such issues as the Magdalen laundries, Dr. Neary and symphysiotomy visited upon them. Underlying mental health issues is another factor, as are the dire economic circumstances that we face. These factors, or a combination of all three, or indeed more, are the realities that women face and that have put very many women into this situation. In the A, B and C *v*. Ireland case, the European Court of Human Rights criticised the inclusion of harsh criminal sanctions in Irish law as a significant chilling factor for women and their doctors. Criminal law can impede access to lawful sexual and reproductive health services information which can include family planning because of the chilling effect it can have on women who are very fearful of public prosecution. Some of these criminal laws perpetuate the stigmatisation and women start to feel discrimination and prejudice when they are accessing lawful health care. The Irish Family Planning Association has reported that women going for counselling on their options in a crisis pregnancy situation are terrified of the possibility of going to jail and they feel like criminals when they try to access basic information. The UN special rapporteur on the right to health stated on his visit to Ireland in December 2012 that "criminal laws and other legal restrictions disempower women, who may be deterred from taking steps to protect their health, in order to avoid liability and out of fear of stigmatization."

Today we are talking about life not health but the situation holds that when culture and the law paints a woman as a criminal or puts a scarlet letter on her when she may not have access to certain services and if she already has underlying mental health problems, she may turn to suicide or other desperate acts. As Senator van Turnhout and some medical professionals have said, no-one claims that abortion is a treatment for suicidal ideation but it may be required to save a woman's life when all other options have been exhausted because ultimately the alternative is a dead woman in these narrow situations. Very often in this House we have lamented the curse of suicide. It may have come up in the context of the economic crisis. Now it seems that if a woman is pregnant and suicidal we are ignoring reality. That is the ostrich situation. It is very clear that most citizens want this legislation although it does not mean that they are "pro-abortion" or in favour of abortion, it is a simple recognition of the fact that in real life situations where a woman's life is at risk there is an expectation that interventions will be made to save that woman where all else has failed. It is difficult for some Members of the Oireachtas to hear that people support this legislation. That is a minority view which is sincerely held and I respect that. This is a democracy.

After 20 years I believe that the democratic will of the people should be reflected in our institutions in our legislation. There has been much talk of the need for Deputies and Senators to vote on the Bill with their conscience. Like Senators van Turnhout and Keane, I vote with my conscience on every Bill. When, for example, I opposed cuts to child benefit because of

their impact on family and child poverty I did so with my conscience and when I opposed the imposition of the property tax I did so because of the additional financial hardship it was imposing on people in the local economy. Today, when I speak in support of this Bill I do so because my conscience tells me that where a woman's life is at risk and I have no option but to ensure that medical professionals have the legal clarity that they need to ensure that her life is saved. This debate is not about the right to terminate a pregnancy, it is about the right to life, the right of women to receive whatever medical intervention is required to save our lives, something 41 Members of this House will never have to deal with personally.

Despite many gains over the years we continue to live in a society that fails to treat women equally. We need only look at the Oireachtas, the lack of women and the treatment of women here, to confirm that there is still a long way to go to achieve full equality but what more fundamental right can a person have than for his or her life to be respected, to be saved? We are not opening floodgates. We are preventing the closure of a coffin lid when we protect the life of the woman. This Bill is not perfect and there are sections that I have genuine difficulty in supporting, such as criminalisation and sanctions. Its fundamental purpose, the protection of the life of women during pregnancy is such a basic right that I do not see how people cannot support it and I will give it my full support.

Senator Fidelma Healy Eames: I thank Senators Feargal Quinn and Mary-Ann O'Brien for moving my reasoned amendment to the Bill yesterday. This Bill has been a momentous journey for me. I came to this debate with an open mind. I was not and am not part of any campaign, pro-life or pro-choice. From the outset, my sole concern has been to ensure that any changes are in the best interests of expectant mothers and their unborn babies.

Ultimately, this Bill is about allowing abortion in the case of threatened suicide. The absence of evidence to underpin this approach for a woman threatening suicide is addressed in my reasoned amendment on the Order Paper. A central point of agreement at the hearings of the Oireachtas Joint Committee on Health and Children was that abortion is never a treatment for a woman with suicidal feelings.

1 o'clock

Why then is the Government ignoring this and proceeding to sanction the taking of an innocent baby's life when there is no evidence that this will save the mother's life? The evidence shows that abortion may damage the woman mentally. I have met women from Women Hurt who have had abortions and who have confirmed this. I have also met Ms C who was only 13 years old at the time she was raped and became pregnant. Her harrowing testimony describes how the health board took her to England for an abortion against her family's wishes, robbing her of at least ten years of her life and leaving her with severe mental health after-affects from abortion, including suicide attempts. She had been under the impression that she was going to England to get the baby out. She did not know that her baby would die. When she asked for the body of her baby to bury it, there was none. She was only 13 years of age. This is an outcome of the X decision - a side of "liberal, modern, compassionate and caring Ireland" about which we do not like to speak. A local Fine Gael member put it rather well last week. She said that if we offer abortion to a woman because she claims to be suicidal and then find she is suicidal afterwards, what do we offer her then? Surely, we would do what we should have done originally. By committing abortion on the flawed suicide ground, have we not done her a grave injustice and changed her life path forever?

I found it interesting listening to commentators on the radio congratulating male Deputies for making what they termed "pro-woman" speeches by supporting abortion. It highlighted just how one-sided and prejudiced the debate has become. What is pro-woman about pressing ahead with a law that runs contrary to the expert psychiatric evidence from two sets of hearings? This is a serious charge that the Government has not answered. What is pro-woman about airbrushing out of the debate the stories of women like Ms C? What is pro-woman about conveniently side-stepping the story of Emma Beck, the young English artist who died by suicide after aborting her twins? The coroner at her inquest recommended that women be told about the possible negative effects of abortion before they go through with it. That is sound advice. What is pro-woman about ignoring that? Why did the Government ignore the concerns of Dr. Sam Coulter Smith, master of the Rotunda, or the statement of 113 Irish psychiatrists? These are professionals who treat people with suicidal feelings every day. Their statement highlighted the deception in this Bill that abortion is a treatment for suicidal intent. It is not in the best interests of women and their unborn babies to railroad through legislation for abortion simply because the Labour Party wanted it.

Have we completely lost it, have we learned nothing from other countries? Women cherish their babies. When women are in difficulty why are we not striving to be the most "pro-woman country" in the world by offering them real help and hope instead of violent solutions? If some of the speeches I heard yesterday were made 30 or 40 years ago I would probably agree with them. We have a shameful past. Knowing that Ireland consistently ranks 5th in the the world for protecting women in pregnancy, it is disappointing that some people continue to mislead the public simply to justify a pro-choice stance.

The Government insists that this legislation is about saving women's lives. If I thought for a minute that the legislation was about preventing a tragic death like that of Savita, I would be supporting it, but it is not. It is disgraceful that Savita's death has been hijacked to get abortion over the line. We know that a catalogue of medical errors led to her tragic death. We know that had her infection been spotted in time, that the doctors would have intervened to save her life. That is medical practice.

Another assertion in favour of the Bill is that it is restrictive. It is only as restrictive as the two-most pro-choice psychiatrists in the country. I am not saying that this law will lead to abortion on request overnight. However, the legislation is based on bogus grounds that in other countries has led to wide-ranging abortion. The assurances given by the Minister that this will not happen here are just assurances. They carry no weight once the law is passed. There is nothing in the legislation itself to prevent two pro-choice psychiatrists from signing away the life of an unborn child once they claim it is their "reasonable opinion." Given that there are no appropriate clinical markers to judge whether or not the intervention is necessary, they are free to sanction as many abortions as they wish. This absence of any objective standard by which medical practitioners must form an opinion is in my amendment.

What does this say about our concern for the right to life of a defenceless unborn child? To me, it shows a failure to recognise the humanity and existence of the unborn. The legislation before us, for the first time in our history, allows the direct and intentional destruction of unborn human life in situations where there is no medical evidence to support that intervention. It saddens me that some who voted for the legislation in my party call it a "pro-life" Bill. The Labour Party has campaigned for 21 years for X case legislation. Its campaign was never about life-saving treatments for women. It was always about the provision of abortion in Ireland where the life of the baby is ended. That is exactly what this Bill provides for. Let us not pretend oth-

erwise. The Labour Party will not stop here. It is already campaigning for repeal of the eighth amendment. It is significant that the decision in the X case is not binding because the X case was not argued, a fact clarified at the hearings from legal experts. Furthermore, the European Court of Human Rights, does not require Ireland to legislate for the X case, rather to clarify the existing provisions for pregnant women. We can do this without legislating for the X case.

This legislation, I contend, is unconstitutional. It provides no advocate for the unborn. There is no equality for the baby consistent with Article 40:3:3°. The Bill fails to adhere to international standards about conscientious objection. There are no time limits. The Bill allows for abortion up to birth. If as Minister, Deputy James Reilly, says that viable babies will be delivered alive, let us amend the legislation.

The legislation will have a profound impact on our culture. There is absolutely nothing consoling or hopeful in the Bill. It sanctions the ending of human lives rather than trying to do everything possible to safeguard life and in the process it deceives the expectant mother.

There has been far too much emphasis has been placed on the assurances given by the Minister, to assuage people's consciences, and far too little focus on what the Bill actually permits. There are no pathways to care offered for suicidal women. They were refused on Report Stage in the Dáil despite Deputy Lucinda Creighton's best efforts.

My own personal story has shown me the great chance life is. Today I am a mother of two great kids because two other mothers chose life. I know that life is a gift. Our responsibility as citizens and legislators is to look out for one another, particularly the most vulnerable in society. This legislation goes to the core of everything we stand for. We have an obligation to welcome everyone in life and protect everyone in law, the very least we can do for future generations.

The amazing advances in ultrasound technology illuminate the truth that the unborn child is a human being. In 1967, when the abortion law was introduced in Britain, politicians could have pleaded ignorance to the humanity of the unborn. In 2013, we do not have that excuse. I do not want to lose the Fine Gael Party whip but I do want to exercise my human right to make a conscientious decision. Almost every western democracy provides for a free vote on moral issues like abortion. Why do we not have the confidence to trust our parliamentarians to make the right decision, without a whip? I have been a committed member of Fine Gael for many years, the party that made a solemn promise to voters not to legalise for abortion. It saddens me greatly that Fine Gael has broken this promise. In the words of Thomas Moore: "Any public servant who would forsake his private conscience for the sake of his public duties leads his country down the short route to chaos."

In closing, I want to quote from a woman who e-mailed me. She said: "This Bill is particularly important to me because I am a woman, I am a psychologist and I am pregnant. This legislation is meant for me. It is meant to make me feel more protected in pregnancy, but it does not. I know that as things currently stand in Ireland, without any legislation, that I will not be denied any treatment needed to save my life even if it leads to the unintentional death of my baby. I feel fully protected by that." Who could argue with that clarity? I agree that is reaffirmed in sections 7 and 8 of the Bill. With a heavy heart and aware of what it will mean for my future in Fine Gael, but knowing that I have the best intention for expectant mothers and their babies, I cannot support the Bill as it stands.

I ask colleagues on all sides of the House to support my reasoned amendment. I thank

everyone for listening and for putting so much depth of feeling into their own presentations.

Senator Averil Power: I welcome the opportunity to contribute on this important legislation. I was an adopted person. I have always been deeply conflicted on the issue of abortion. When people speak about unwanted pregnancies I cannot but reflect on the fact that I was one. I was the unplanned daughter of a single woman for whom keeping me was never a real option in the Ireland of 1978. I am grateful for the fact that adoption gave me a chance both to be part of another family and to get to know my birth mother and half-siblings later in life, and when some on the pro-choice side speak of abortion as a simple women's rights issue without a thought for the life of the unborn child, it upsets me greatly. However, so too does the utter lack of compassion that extreme pro-life groups show towards women in distress, particularly when that lack of compassion encompasses women whose lives are at risk, victims of rape or incest, or those whose babies cannot survive outside the womb.

Abortion is never desirable, but sometimes the consequences of unavailability are worse. Despite significant advances in medical science and the excellent care provided by our hospitals, situations arise in which continuing with a pregnancy may cost the mother her own life. Thankfully, such cases are rare, but they are very real. There is no doubt in my mind that in such circumstances everything possible must be done to save the mother's life, including termination of her pregnancy where this is necessary.

As matters stand, an Irish woman has a constitutional right to an abortion where continuing with her pregnancy represents a real and substantial risk to her life. This was clearly established 21 years ago in the X case. However, the failure of successive Governments to legislate for the X case has meant there is still no proper framework in place through which requests for such terminations can be decided upon.

Abortions have been carried out in Irish hospitals since the X case. We do not know how many have taken place and in what circumstances or if, in the absence of regulation and reporting, some hospitals are carrying out more than they should be. Equally, we have no idea whether others are being overly restrictive and putting women's lives at risk by denying them life-saving treatment. This Bill is designed to rectify that problem. It will ensure that, regardless of what hospital a woman is in, the same procedure will apply, the same clear criteria will have to be followed and the same safeguards will be in place to protect both the mother and her unborn child. The Bill provides that every effort must be made to save both lives where this is possible. An abortion will not be sanctioned unless it is absolutely necessary to avert the risk to the mother's life.

It has been claimed by some groups that this Bill provides for late abortions, right up to birth. That is simply not true. The legislation clearly states that once the foetus has reached the point at which it could survive outside the womb, early delivery will be used instead of termination. Every effort will be made to ensure the baby survives, as would be the case with any other premature baby.

The protections that the Bill provides for the unborn child are absolutely vital. The baby has a right to life too and every step should be taken to bring it safely into the world, but in the event of conflict, where the mother's life is at risk, priority must be given to saving her life.

Several Members have expressed concerns about section 9 and its provision for termination of pregnancy where the risk to the mother's life comes from suicide. I expect amendments will

be tabled on Committee Stage to delete this provision, as they were in the Dáil. I will not support those amendments for a number of reasons. First, it is simply not possible to legislate for the X case without including a provision for suicide. As Members will be aware, the X case was to do with suicide. X was a 14-year-old child who had become pregnant as a result of a brutal rape and was determined to kill herself rather than give birth to her attacker's baby. To exclude suicide from the Bill would be to completely ignore the substance of the X case and refuse to do our constitutional duty as legislators. It would also amount to a deliberate and anti-democratic denial of the will of the people as expressed in successive referendums in which they have rejected attempts to row back on the X case.

The second reason I cannot support these amendments is that it would be utterly hypocritical of me to support the deletion of section 9 from the Bill when I cannot honestly say that I would not support the decision to request a termination by somebody in the circumstances faced by X, for I know in my heart that if a 14-year-old girl I knew was raped and I was convinced she would end her own life if forced to go through with the pregnancy, I would do everything I could to support her. I would talk it through with her and I would try to convince her to go for counselling before making any decision. I would hope she could find a way to continue with the pregnancy and either keep the baby or put him or her up for adoption, but, ultimately, I would understand if she could not, and I believe that most Irish people would too.

For the reasons I outlined at the start, I believe that abortion is always a tragedy. However, losing the lives of both mother and baby is far worse. Over the course of this debate, several Members have referred to suicidal ideation in distrustful and cynical tones. The implication, whether one intends it or not, is that mental health problems are not as serious as physical ones. This is deeply worrying. For too long, those with mental health problems have been stigmatised in this country. As a result, many suffer in silence instead of seeking help. Tragically, increasing numbers of men and women are taking their own lives. In fact, suicide now claims more lives than road accidents. No doubt the stigma and shame associated with mental health difficulties have been significant contributory factors to this needless loss of life. For this reason, it is insensitive and downright dangerous to dismiss the issue of suicide in the way that some have in debating this legislation. I accept that mental health problems are more difficult to diagnose than physical ones and that is why I believe it is appropriate that the Bill provides for a much more restrictive procedure where termination of pregnancy is being sought on grounds of suicide. In such cases, three medics must unanimously agree that granting a termination is the only way to save a woman's life. It should be remembered, whether this Bill passes or not, that abortion is already legal in this country on grounds of suicidal ideation. Nothing in this Bill changes that fact. The only difference is that as matters stand, an assessment by a single psychiatrist could facilitate an abortion.

Some commentators have claimed that women will feign suicidal thoughts in order to access abortion. Not only is this deeply offensive, it is also utterly unrealistic. Let us not forget, as was pointed out earlier, that abortion is freely available in the United Kingdom. Faced with a choice of being interrogated by three doctors in an Irish public hospital and having a suicide diagnosis on their medical records for life, I believe that most Irish women will continue to travel to the United Kingdom, even after this legislation is passed. Personally, I cannot see the provisions in section 9 being used except in extreme circumstances such as where the woman is restricted from travelling because she is a minor in the care of the State.

It has also been claimed that the provisions of the Bill are opening the door to abortion on demand. In support of this claim, Members referred to the fact that when legislation was in-

troduced in Britain in the 1960s the outcome was ultimately more liberal than envisaged. That may indeed be true, but the United Kingdom is totally different from Ireland in that it does not have a written constitution. It is precisely because the Constitution contains explicit protection for the right to life of the unborn that more liberal abortion legislation can never be introduced in this country unless the people vote for it in a referendum.

My party decided to allow a free vote on this Bill. I initially argued that we should do so in November last because I believe that no Member on either side of the debate should be forced to vote against his or her conscience on an issue such as this. It is a dreadful shame that the Government parties have not taken the same approach. I do not agree with Deputy Lucinda Creighton on this issue - in fact, Lucinda and myself have not agreed on most issues since our days together in Trinity College as students - but she did an excellent job as Minister of State with responsibility for European affairs and it is ridiculous that she was forced to resign that post for taking a stand on an issue that would simply not be subject to the Whip in any other democracy.

For my part, my conscience tells me that I must vote in favour of this legislation for all the reasons I have outlined. It is not a decision at which I have arrived lightly. I have listened to the informed debate on this issue for many years. I have met different interest groups on both sides of the debate. I have read all of the letters and e-mails that have been sent to me, and I appreciate the fact that so many over the past few months have taken the time to do so and to share with me their personal stories and their views on such a sensitive topic. The circumstances of my own birth mean that this is a particularly emotive issue for me.

I will never support abortion on demand but, as I stated at the outset, I recognise that a termination of pregnancy is sometimes necessary to save a woman's life and believe that a proper and consistent framework must be put in place to deal with such situations. This Bill does exactly that - nothing more, nothing less - and that is why I will be supporting it.

Senator Katherine Zappone: I welcome the Minister of State, Deputy Alex White, to the House.

I want to begin my remarks by commending the leadership of the Minister for Health, Deputy Reilly, which is rooted in his determination to protect life during pregnancy and, as he stated in the Chamber yesterday, "to clarify for women what it is they are legally entitled to". Taken at face value, it is quite astonishing that the determination to achieve these two policy and legal objectives creates such controversy and conflict but they do and they have.

The Minister required and received critical support from his Cabinet colleagues. In this regard, I commend the Taoiseach and Tánaiste, the Minister of State, Deputy White, the health committee chairman, Deputy Jerry Buttimer, and all of the members of the health committee who robustly represented all sides of the debate. All of them were faithful to their duties as law makers. I especially thank Senator van Turnhout for keeping all of the members of her group so closely informed of what was going on in the context of the committee. At the time Senator Bacik was a student and was threatened with prison I was teaching ethics in Trinity College. I thank her for keeping those of us who taught ethics out of our ivory towers.

Dr. Rhona Mahony said in the Chamber when she gave evidence to law makers that women need to be listened to and need to be believed. She also asked what is a substantial risk to life and answered the interpretation of substantial risk is not the same for all people and the

mother's opinion is key.

The Supreme Court's decision in the Attorney General *v.* X case requires three things to be established before an abortion can be administered. First, there must be a risk to the life of a pregnant woman. Second, as a matter of probability that risk to life can only be averted by termination of the pregnancy. Third, the foetus must not be viable or on the cusp of viability. In my view the determination of a matter of probability must take account of the pregnant woman's view. What kind of society would not do that? Women are and ought to be viewed as primary agents in decisions about sexuality and reproduction. Recently I tweeted that women are moral agents and several people tweeted in response the question "what does that mean?" I responded by stating that women have the capacity to make ethical decisions or something of that notion in 140 characters.

Furthermore, our laws must always create room for women to exercise their ethical capacity. Women are embodied moral agents and not simply disinterested and detached observers. So women's knowing, through their bodies, is a prime source for ethical decision-making. It is not the only source but a prime source.

No culture has yet been found in which conscience is not recognised as a fact. It has always been viewed as integral to ethics, a functional guide for action and a capacity for ethical evaluation. It is not enough to invoke conscience simply because one feels strongly about something or spontaneously judges that a certain action is the morally correct one. Sincerity alone is not sufficient. The conscience that most fully carries moral authority and to which one can appeal is the conscience that is continually self-critical, aware of the dangers of ignorance, bias, prejudice, selfishness, ignorance, arrogance and self-sufficiency. Pregnant women have such a capacity and can and do exercise this capacity in the process of human reproduction.

The intention of the Protection of Life During Pregnancy Bill 2013 is outlined in its memorandum and reads:

> The main purpose of the Protection of Life during Pregnancy Bill 2013 is to restate the general prohibition on abortion in Ireland while regulating access to lawful termination of pregnancy in accordance with the *X* case and the judgment of the European Court of Human rights in the *A, B and C v Ireland* case. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not.

The Bill achieves these intentions.

Yesterday, the Leader, Senator Cummins, with a deeply reflective and articulate response detailed the impact of the legal vacuum surrounding our termination laws. He argued that the Bill will put in place a legal framework that can effectively close those gaps. We do have a legal vacuum. I have listened to or read the evidence presented to the Oireachtas and it is my view that a risk to life emanating from the possibility of suicide is a risk to life. Also, the pregnant woman's interpretation of how this risk to life can be averted must be a prime consideration in subsequent decision-making to terminate, or not. The Bill before us allows for this. I was also persuaded by Senator van Turnhout's rationale that sections 7 and 9 should have been merged. I am aware of the medical and legal rationale for the merger.

There are many things that the Bill does not do, as outlined by Deputies and Senators. I shall outline one of the prime things that it does not do. It does not adequately challenge a

flawed human rights analysis operative in both past and current abortion debates. The analysis presents the abortion decision as a competitive antagonism between an abstract holder of rights, the foetus or the unborn, and the pregnant woman. This view says that we have two equal and, in every respect, same rights holders that are in a competitive contest for survival. Is the unborn a person constitutionally? I do not think so. I recognise that taking on this issue is outside of the confines of the Bill. I believe that these are the debates that lie ahead for us and we stand on firmer ground to have qualitative debates because of this Bill.

The Bill does not legislate for termination in cases of fatal foetal abnormalities. The Government has argued that it is only obliged to deal with the issues that relate to the European Convention, the implementing of the A, B and C judgment and the X case and that it is not obligated to go any further. Obligated by whom or what? Why is this an issue for another day? It may be for another day in light of political strategy and tactics. I do not agree that it is for another day in light of ethical considerations and international human rights obligations.

What are the ethical considerations? If the pregnant woman is an embodied moral agent and her life circumstances, social and economic conditions, as well as physical and mental health, are key sources for an ethical decision - and that means a good decision - why will our law not allow for this now? My understanding is that the State has argued that fatal foetal abnormalities could be legislated for within the confines of the existing constitutional restriction. As Deputy Clare Daly pointed out in the other House, if our constitutional provision and protection equates the life of women with that of the unborn then if there is no life to protect the constitutional protection does not exist.

What are the international human rights obligations? As pointed out by the Irish Council for Civil Liberties, recent case law from the European Court of Human Rights on the issue of reproductive rights is relevant to us here. A number of cases relating to Poland indicate that the states of the Council of Europe are obliged to ensure that women seeking lawful terminations are not exposed to inhuman and degrading treatment contrary to Article 3 of the Convention on Human Rights. The view of the Irish Council for Civil Liberties is that the current treatment of women with pregnancies involving a defined set of fatal foetal abnormalities would be covered by this provision. I cannot make rational ethical sense of omitting procedural rights for women in these instances. Should the law allow for this not all pregnant women will choose to terminate in this circumstance but some would and should be allowed to do so. Therefore, I shall support an amendment tabled by my colleagues, Senators Marie-Louise O'Donnell and Fiach Mac Conghail, to include the provision in the Bill.

In conclusion, I have another prime concern about the Bill. Others have spoken of section 22(1) which states: "It shall be an offence to intentionally destroy unborn human life." In effect, those women who engage in termination in the Republic of Ireland are criminalised. Why is a termination when the mother's life is at risk not equated with an intentional destruction of unborn human life? Why is a termination for other reasons only defined as "intentional destruction"? There have been many cases, many of which have happened beyond these shores, when Irish women chose to terminate their pregnancy because of impoverished life circumstances or the violent context in which she became pregnant. To describe her action as intentionally destroying unborn human life is not necessarily true and certainly not in all cases. Why is a termination described as "intentional" if the life of the mother is not at stake but "legal" if it is at stake? I understand this may be related to an article of the Constitution, but its effect is that we will continue to criminalise those women who cannot afford or choose to travel for a termination, even if they have exercised their moral agency to terminate and followed their

conscience. There is great irony in politicians arguing that they must follow their conscience in legislating, with which I agree, but that they want a law which prohibits a pregnant woman from following hers.

Senator Paul Bradford: I welcome the opportunity to say a few words on this very important but sensitive legislation. It is fair to say a ten minute contribution in no way allows a Member to discuss the full range of matters before us, but I trust that in the normal tradition of the Seanad, our Committee Stage amendments and discussion will allow us the scope and latitude this most serious topic deserves.

For many months, particularly the past 12 months, this House has focused on a very regular basis on the subject of abortion and abortion law. During these discussions there has been much robust debate and argument and many of us have sometimes been a little politically rough in our choice of language. I say to my friends and colleagues in the Labour Party, particularly Senator Ivana Bacik with whom I have clashed on this subject on many occasions, that this is in the course of normal politics. I also say to Senator Ivana Bacik and her colleagues that on this issue and perhaps many more they are my political opponents, but they are most certainly not my political enemies. I hope we will work together in a constructive way on many more political matters.

I welcome the Minister of State, Deputy Dinny McGinley, although I am not sure how fervently he wishes to be here to listen to this debate. Most of my Fine Gael colleagues would have to concede that we did not expect to come to a place in our political lives where our party, leading the Government, would bring before us abortion legislation, albeit limited. We can play with words and I suppose that traditionally one of the great fallacies of Irish politics and one of the reasons we, as a society, so often find ourselves in difficult places is that we try to remove from reality what is before us.

We are debating legislation to provide for abortion. It cannot be argued otherwise. It goes against the very fabric of my party and what we said before and during the general election campaign. It does not stand up to scrutiny to say this legislation is the result of the programme for Government. I say this once again because it is rather disturbing to hear Minister after Minister time and again say this was a commitment in the programme for Government. The programme for Government committed to the setting up of an expert group to look at a range of solutions. Political scholars, not in the distant future but in the near future, will begin to examine the make-up of the expert group, its terms of reference and the fact that its hands were tied. This legislation was literally a done political deal. Last week on "Prime Time" Senator Ivana Bacik was very fair and honest when she said this was happening because the Labour Party was in government. The Fine Gael side of the House knows that if there was a Fine Gael majority, we would not be dealing with this legislation. Some people ask why it has taken so long, while others say we have ignored the courts and judgments in the past 20 years, but, as we heard at the hearings from academics, scholars and legal people on both sides of the argument, there never was, nor is there, an obligation on the Government to proceed in this fashion.

The most interesting thing about the hearings, which many of us attended over the course of two weeks, was that we could all readily agree that our hospital and health professionals were people of extraordinary skill, courage and commitment. Every one of them, when asked directly by me and others if they had ever been hindered in taking whatever steps were necessary to save the mothers of Ireland in our maternity wards, said "No." It is a pity we have ignored that. Many of those experts warned us that what they did not want was to have to bring a new

book of law into their hospitals. They were looking for clarification, guidelines and regulations. They wanted us to ensure they could take whatever medical steps were necessary, but we are going about the solution in a very roundabout fashion.

I am sure that when the Government took the decision - it was probably taken when the programme for Government was being signed - to introduce this, albeit limited, abortion legislation, public relations people started to work on the language required to sell the message. Mantras emerged with depressing frequency among some of the witnesses before the Oireachtas joint committee, some of the Ministers and some of the supporters of the legislation on the Government benches. We hear the phrase that it is all about saving women's lives. Every citizen, not just every Member of this Parliament, believes fervently and absolutely in saving women's lives. Surely this is at the core of health policy in this country. Every doctor, nurse, consultant, man, woman and child fully supports the need to do everything possible to save women's lives.

We hear the phrase that this is not new legislation, that it simply codifies the law. Has it ever been the case in this republic that we have spent 12 months holding hearings and having pre-legislative discussions simply to codify the law? This is a change in the law and there is no point saying otherwise.

We are also told, as part of the public relations mantra, that it is a question of no new rules or laws. Again, I contend that is simply public relations spin. We will deal with this more substantially on Committee Stage.

I refer to the core of the difficulty in which some of us find ourselves politically and which will begin to seriously divide politics and Irish society once people reflect further on the passing of this legislation - section 9 which contains the suicide clause. I am not surprised that it is only in the past ten to 15 days that the public has tuned into what is at the core of the Bill, namely, the suicide clause which marks the difference between good and bad medical practice and which will, in my humble uneducated view, open the door to abuse of this law. It will force Irish medics to do what they have not done before, that is, practice medicine without science. If we introduced another health care provision or if we were to talk about a new treatment for cancer, heart problems or arthritis which all of the experts said was not a treatment and might even be dangerous, I do not think the Minister would even get to finish his Second Stage speech before he or she would be laughed out of the Oireachtas, yet that is what we are doing in section 9. We are enshrining in Irish law something which we know to be, at best, unhelpful and, at worst, very dangerous. I am sure we will have a debate on Committee Stage on the constitutionality or otherwise of and the obligation of dealing with what people call the suicide clause.

I listened with interest and empathy to Senator Averil Power who rightly warned us to tread carefully in the area of mental health and suicide. Suicide and the threat of it present a genuine problem on the island. However, in attempting to resolve the issue - the dreadfully painful psychological problems and fear and anguish of pregnant women with suicidal ideation or suicidal thoughts - surely we should be able to aspire to a better solution than simply offering abortion. We speak about the need for women to be at the core of this legislation and how right is that argument. However, I hope every Member of this and the other House has a better ambition for the future of Irish women than simply abortion.

When I look across the globe at countries which have so-called liberal abortion laws, including the United States, Britain and most of the countries in Europe, are the women of these

countries in a so-called better place medically or from a health perspective than the women of this country? I think not.

The legislation will obviously be passed by the force of numbers. I hope we will move quickly and with a degree of unity to attempting to tackle genuinely the problem of the 4,000 or 5,000 Irish women who go to Britain for abortions every year. That is the real tragedy. Many women wanted to come to the committee hearings here to tell their stories. As it was an uncomfortable tale, they were not allowed. We must not talk about punishing these people or cast them as lesser beings. These women need our absolute support and encouragement. We need a national conversation as to why we tell 4,000 Irish people that abortion is a better cure than having their baby, being supported and obtaining the services they need to help them make a choice which is difficult in the short term but offers lifelong rewards. I hope that when the debate has concluded with all of its political ramifications, we move on to dealing with the problem faced on a daily and weekly basis by women in this country who fear their pregnancy will ruin their lives. If they had the scope, space and support, they would take a different route and find that life offers much better possibilities.

Those are my initial observations. I am grateful for the flexibility and look forward to Committee Stage during which we will focus on the legislation in more detail and, in particular, on section 9, which represents a bridge too far.

Senator Brian Ó Domhnaill: Ba mhaith liom fáilte a chur roimh an Aire Stáit go dtí an Teach. I have listened today and yesterday to the contributions of colleagues in the House. I realise fully that this is a divisive and controversial Bill which will see the culture on abortion in Ireland change forever. Abortion is always a violent response to a crisis. In our desire to be compassionate to women, let us not lose sight of the fact that there are at least two human lives involved in a pregnancy. Either human rights begin with human life or we engage in a dangerous policy of creating categories of lesser lives.

I pay tribute in particular to the five Government Deputies who voted against the legislation, including Deputy Peter Mathews, who is in the Visitors Gallery. They put their consciences first. As Martin Luther King said, cowardice asks if it is expedient, expedience asks if it is politic, vanity asks if it is popular but consciences asks if it is right. There comes a time when one must decide that while it is neither safe nor politic nor popular, one must act because conscience tells one it is right. Who am I to question another person's conscience whether he or she supports the legislation or is against it? Why should Deputy Eamon Gilmore's conscience in supporting the legislation determine the consciences of people who oppose it? That is simply wrong. It was a grave mistake that the Government parties did not allow Senators and Deputies to vote freely in accordance with their consciences. The manner in which the five Deputies, one of whom was an able and professional Minister of State, have been treated by their party leadership and the Government has been deplorable. We can deal with that as the debate goes on.

I have major problems with the legislation. It will involve the most significant vote I will have cast in my short time in the Seanad. It will be a vote on a life and death issue. The problems I have are legal and medical. Abortion in itself is never a treatment for suicide. The legislation as compiled is deeply flawed. The Supreme Court ruling in 1992 was based on the information that was available at the time, namely the opinion of a psychologist rather than a doctor or psychiatrist. The information is now over 20 years old and clearly outdated. We learned that in the Oireachtas committee hearings in January and again in May. Incontrovertible evidence shows that the risk of suicide is 33% to 50% lower in pregnant females compared

to non-pregnant females of a similar age. However, the risk of suicide increases significantly after an abortion. Pregnancy appears to confer a protection against suicide. This has been shown in studies published by the *British Medical Journal* in 1996 and the *American Journal of Psychiatry* in 1997. Indeed, Finnish studies on all registers in the country between 1987 and 1994 found no case of suicide in pregnancy and a three-fold increase in suicide for those in the first year after an abortion.

Doctors always update their practice. They would not continue to practise medicine on the basis of opinions, guidance or procedures which were 20 years old. That would be outdated. Not one Senator would go to a GP who was practising out-of-date medicine. Why are we legislating then for a procedure which will end the lives of unborn children based on a judgment which is clearly out of date? The risk of suicide in pregnancy is estimated at one in 250,000. It has a 3% positive prediction value. The inclusion of suicide will mean a high false positive rate. Assessing suicide is subjective and extremely difficult, as we have learned from medical experts. Pro-life and pro-choice psychiatrists are the first to admit that they cannot accurately predict suicide. Consequently, there may be a large number of terminations to potentially get it correct. This opens the floodgates over time. Studies have shown that one must predict 30 suicides to get one correct. Reviews demonstrate that 35 babies would have to be aborted to ensure one correct decision. How much more must one say to show that this is clearly wrong? Anyone who listened to all of the medical evidence offered on the pro-choice and on the pro-life side will know. Deep down, the Government knows this is flawed and the wrong way to go.

Crisis pregnancies often present late when it is very difficult to give an accurate age of the baby. The Bill allows pregnancies to be terminated up to term. Of those that would survive delivery at 25 weeks, 50% would be left with conditions such as cerebral palsy and severe disablement, including mental retardation, blindness and hearing problems. The State will have induced disability by way of induced prematurity in what would otherwise have been healthy babies. It is not in the public interest to carry out terminations at the cusp of viability or post-viability for reasons of suicide. Problems of prematurity exist until approximately 37 weeks. Not even modern medicine can prevent them. Will these children be taken into State care? It would be a new low in Irish health care, similar to countries with poor human rights records, and come shortly after the Government cut mobility allowance for the disabled. The foetus has no constitutional rights unless it makes it out of the womb alive. Ironically, after 24 weeks, the foetus has fewer rights than in the United Kingdom which has liberal abortion laws. This represents a new low in Irish health care.

Minister of State at the Department of Health (Deputy Alex White): That is wrong.

Senator Colm Burke: That is not true.

Senator Brian Ó Domhnaill: Why are there no term limits? We are introducing the most liberal abortion laws anywhere on the planet. That is a fact.

Senator Colm Burke: The Senator should read Article 40.3.3°.

Senator Brian Ó Domhnaill: This represents a new low in health care provision. The Supreme Court's judgment concerned an early termination and a different result might have been achieved if it had concerned a later termination. Dr. Sam Coulter Smith, master of the Rotunda Hospital, who gave the consensus view from the hospital said the inclusion of suicidal intent as grounds for a termination was not evidence-based, posed major ethical dilemmas for obstetri-

cians and could lead to an increase in the number of women seeking terminations. Currently, all over the world obstetricians intervene to deliver a baby early if the mother develops serious physical problems such as very high blood pressure, toxaemia in pregnancy, etc. However, this is not termed an abortion if it happens in the third trimester owing to the skill of the obstetrician in bringing the pregnancy to as near to term as possible and by intervening when the balance starts to shift from the mother or sometimes the baby. The proposed legislation is unclear on what will be termed an abortion, which will skew the data collected for monitoring. This is also causing a problem for obstetricians and was mentioned at the recent Oireachtas hearings.

All pregnancies terminate, with the majority doing so at term, but terminating a pregnancy early in the third trimester because of a physical illness is different from intervening to prevent suicide on two counts. First, the medical evidence in favour of intervening is much stronger in the case of a physical illness and can be validated. Second, as the babies are wanted, both mothers and obstetricians do all they can to save both as far as practical with respect to the timing of the intervention.

I have more to say, but we will have an opportunity on Committee and Report Stages. It is deeply alarming that we are introducing a culture that will see abortion legalised. I do not subscribe to the argument that it is confined legislation. How can we say it is confined if the limit in Canada is 16 weeks, in Germany, 12 weeks and in the United Kingdom, 24 weeks and that we will have abortion available up to full term?

Senator Susan O'Keeffe: That is not true.

Senator Brian Ó Domhnaill: Will someone point out to me-----

Senator Susan O'Keeffe: On a point of information, that is clearly not the case.

Acting Chairman (Senator Marie Moloney): As there is no such thing as a point of information, I ask the Senator to, please, resume her seat.

Senator Brian Ó Domhnaill: I will pose the question to the Minister-----

Acting Chairman (Senator Marie Moloney): The Senator's time has concluded. He had ten minutes in which to pose questions.

Senator Brian Ó Domhnaill: -----to find out where time limits are contained in the Bill. Perhaps that might answer some of the queries from the far side. Where are the time limits?

Acting Chairman (Senator Marie Moloney): There is a time limit in the debate.

Deputy Alex White: Has Senator Brian Ó Domhnaill read the Bill?

Senator Brian Ó Domhnaill: I have, from cover to cover.

Acting Chairman (Senator Marie Moloney): There will be time to debate it further on Committee Stage.

Senator Mary Moran: I thank the Minister of State for attending. To take up the point raised by Senator Brian Ó Domhnaill, he asked about terminations, but the point is that it concerns early delivery. Some 22 years ago I had a child at 28 weeks who lived against the odds. Therefore, it does happen.

This Bill is 21 years late. The current position is unclear and uncertain and the Bill will bring clarity for mothers who are pregnant and the country. I have thought long and hard about the Bill. I have wrestled with my conscience and looked at the pros and cons. I have consulted people with very different opinions and would like to think I have respected both sides of the argument. I respect everyone's decision. We had a clear debate yesterday evening and I am sorry the media picked up on a 30 second jostle rather than what was said in the excellent debate.

As legislators, we have been given a duty to vote on the Bill. It is a decision on which many in this and the Lower House have deliberated long and hard. I approached my decision as a legislator, a woman and as the mother of five children, three of whom are daughters. When I look at it as a mother, if it was one of my children, someone I knew or a pupil I had taught in school who had come to me distraught, I would do everything I could to support her in whatever decision was made.

I doubt whether there is anyone in either House who does not support life. We all support it. This is an extremely sensitive debate involving many difficult decisions for some. The Bill will not change anything in law, a point that has often been lost in the debate. It is doing exactly what it says, legislating for a decision made by the Supreme Court 21 years ago, but it will not change anything. The decision has been kicked down the road by successive Governments. The Bill recognises that we must take our heads out of the sand and deal with the issue of abortion. It will not change the fact that 4,000 people leave the country every year to have an abortion. It will not change the fact that people will continue to seek an abortion in the Unided Kingdom and other countries, but it will protect the life of the mother in the event of a medical emergency or at risk of suicide. I do not believe, as some have argued, that it will open the floodgates to abortion in the country. We had the same argument after the divorce referendum, but that did not happen. The procedures a woman must go through as a result of the legislation, if she is suicidal, will be more rigorous than in going to England.

Some of the comments made about the suicide clause were particularly offensive. We all profess to take the issue of suicide and depression as a serious subject, but some of the comments made in debates, publicly and in the House, show a clear lack of understanding of mental health issues. It is insulting to women to imply that they will claim to be suicidal in order to have a termination. That seriously denigrates mental health issues and implies suicide is not a serious health issue. It takes a backward step from the progress made in recent years. Suicidal ideation is a serious medical condition and every bit as real as any physical symptom and sometimes more real. It can be a hidden illness. I have known people who appeared to be the life and soul of the party, who were always in great form. In the past year someone who was vivacious and full of life committed suicide in the small hours of the morning when alone. We do not know what goes on in people's minds and we do not know how they think, nor should we judge.

While researching for this debate, I came across an unknown case. Three weeks before the tragic death of Savita Halappanavar, a lady who was 38 weeks pregnant with twins took her life two weeks before she was due to deliver. Who can say suicide is not linked with this issue? If the legislation had been in place, perhaps we might have been able to save three lives, instead of a father losing his wife and two children and the children losing their mother and siblings. The Bill will protect the rights of women and give them peace of mind in knowing they will be safe and looked after.

Yesterday comments were made in the House criticising Members for referring to comments

made by religious orders prior to the debate. Certain members of the church have been vocal in their condemnation of the Bill and willingly entered the debate and condemned Oireachtas Members.

2 o'clock

I am a practising catholic who has listened to both sides of the debate but again last Sunday I was subject to comments such as "Let us pray for those who trample on the life". I support the Bill but I would never trample on anybody's life nor do I like being told by those who oppose it that I will answer for it in the next life or hearing, "Father, forgive them for they know not what they are doing". These comments are offensive and they have nothing to do with the debate. The veiled threat of excommunication if one votes in favour of the Bill is difficult to understand. The church says every life is sacred, with which I agree, but what about the children who were abused and who had their innocence robbed by members of the clergy and, worse, had it covered up by other members of clergy? This is completely hypocritical.

I refer to the actions of some of those who claim to be pro-life. Last week, many people on both sides of the debate were outside the gates of Leinster House. I welcome their views and comments and I have read all the letters and postcards during my deliberations. Videos of dead foetuses and posters, which are up all over the country, implying the Bill will open the floodgates to abortion are offensive and untrue. They scare people and sometimes scare innocent children, some of whom were outside the gates late at night last week with their posters. That was nothing short of scaremongering.

The Bill will protect women and give them the right not to be afraid while pregnant. We need to move on and face the fact that women seek abortions. The legislation will not open the floodgates but it will protect the woman whose life is in danger, physically or mentally. Reference has been made to the long history of treating women as second class citizens in this State. There was a time we were forced to give up work when we married. We have also endured the Magdalen Laundries, the symphysiotomy scandal and controversies surrounding contraception and divorce. I recall my mother saying when I was a child that she needed to be churched by a priest every time she had a baby before she was allowed to receive communion again as if having a baby was a sin. Similarly, I have met women who were subjected to the barbaric acts of symphysiotomy and pubiotomy and I am grateful we have come a long way since then.

I have not made my decision lightly. I have thought long and hard and I have consulted many people on both sides. However, this decision must be made by women. We need to protect women and life and this legislation will provide an opportunity to do so.

Senator Trevor Ó Clochartaigh: Cuirim céad fáilte roimh an Aire Stáit. A cháirde, seasaim anseo inniu os bhúr gcomhair le mo thacaíocht a thabhairt don reachtaíocht fíor thábhachtach seo. Fáiltím roimh an deis mo smaointe i leith na reachtaíochta seo a chur in iúl. Tá cuid mhaith daoine ag rá gur cóir an díospóireacht seo a fhágáil ag na mná agus nár cóir go mbeadh tuairim ag na fir faoin ábhar. Cé go dtuigim an pointe sin, ní aontaím leis. Baineann an reachtaíocht seo le sláinte na mban, le sláinte leanaí agus baineann sí le gach fear, bean agus páiste ar an oileán seo de bharr na himpleachtaí atá inti ó thaobh sláinte poiblí, seirbhísí tacaíochta do mná atá ag iompar clainne agus ár gcuid freagraíochtaí dár gcomh-shaoránaigh.

There is a great deal of debate as to what expertise we, as Senators, have to offer citizens regarding the scrutiny of legislation and debates on the implementation of laws that affect all

of them. When it comes to this legislation, I cannot claim any specific expertise but I can bring my life experience to bear on the momentous decision we are being asked to take. As a father of five who was present for the birth of all my children, I probably have a unique insight into the anxiety that surrounds couples at birth and the interaction with our health services in this regard. My wife and I have also had to deal with the trauma of miscarriage and the emotional upheaval that goes with losing a child. This is an experience many people have had to deal with and it is part and parcel of our humanity and the inevitable and inscrutable cycle of life and death.

Thankfully, all my experiences with the health services were positive. This is particularly important to emphasise, as all my children were born in University Hospital Galway, which has rightly been subject to intense scrutiny of late because of the appalling way in which Savita Halappanavar was treated there. I hope that, at the very least, her case will ensure no woman will ever have to suffer such a systemic failure again in an Irish hospital. Based on my experiences, however, I must, in particular pay tribute to the midwives, nurses, anaesthetists, doctors and junior doctors who were fantastic during the births of my children. I believe this is the experience of the majority of people who interact with maternity services in Ireland and this is borne out by the success rate for child births in this country and the low mortality rate among mothers and children during child birth.

I refer to why I support the legislation. Thankfully, it would never have applied to the births of my children. We never had to deal with a situation where the life of the mother was in danger. These occasions are rare but that is what the legislation pertains to. Thankfully, we never had to deal with a situation where the health of the mother was in danger. These cases are more common but the legislation does not allow for intervention in those cases. I know people who are in this position currently. In their case, the legislation would not apply as the life of the mother is not in danger, although the prognosis post-pregnancy is alarming. Thankfully, my wife and I never had to deal with the situation of suicidal ideation during pregnancy, which is part and parcel of this debate but we had to deal with post-natal depression and all the upheaval and anxiety that goes with that. This gave me an insight into the fragile and complex nature of a woman's mental health, particularly around child birth, and it is an area that has been distilled down to a simplistic and naive analysis by some who oppose the legislation.

Thankfully, my children were born to parents who were overjoyed at their births and relieved no complications resulted for them or their mother. This is not the case for every child born in Ireland today. When I analyse the legislation, I try to put myself as far as possible in the position of those to whom it will apply when it is enacted. The legislation is limited in its approach. It provides for medical intervention in pregnancy in specific circumstances, not when the health of the mother is in danger, not if the women is pro-choice and wants to end the pregnancy, not when she has been subject to rape or incest and not when the husband thinks the life is in danger but when in the professional opinion of experienced medical doctors, her life is in danger. Only then can an intervention be made. An intervention in any other circumstances is a crime with a maximum penalty of 14 years in prison.

Life is not black and white and medicine is not a cut and dried science. Doctors differ and patients die. Every case can have its own complications and peculiarities just as every one of us has individual differences and every child born is an unique individual with his or her own personality and physiological needs and challenges. My own experience has been of five incredibly different births. We have experienced long drawn out labours and a labour that had us rushing to hospital just in time for the birth of one child. This legislation deals with cases in

which there are difficulties and complications. This could happen to any woman at any time. Medical complications do not discriminate on grounds of race, social class, intellectual ability or other factors. Any of our wives, sisters, daughters or friends could find themselves in need of intervention of this type and I want doctors to have legal clarity as to what they can or cannot do, not just for those close to us but for any woman having a baby. Doctors face great dilemmas every day and I have immense respect for their ability and commitment, particularly in our inadequate hospital system in which they and nurses find themselves under tremendous pressure. Inevitably, a small number of doctors will find themselves faced with a pregnant woman whose life is in danger. Every doctor has a duty as a result of the Hippocratic oath he or she has taken to do all he or she can to save human life, wherever possible. The dilemma doctors will face will involve a woman whose life is in danger when there is another life to consider. They will use every option available to them to try to save both lives. This legislation will support them in doing so. Where they consider it is not possible to save both lives, they will have the option of trying to save the life of the mother by intervening in the pregnancy. They will make every effort as part of that intervention to save the life of the child in question. Neither the life of the child nor the mother can be guaranteed, no matter what intervention the medical team makes. Medicine is not that simple. Life is not that simple. If it were, this legislation would not be so contentious.

This legislation clarifies, rather than changes, the constitutional position on these matters. Primary legislation will clarify the responsibilities of doctors in this regard. If my wife's life had been in danger during childbirth, I would have been dependent on the expertise and judgment of the medical professionals dealing with the birth. In circumstances such as these, decisions often have to be taken under extreme pressure and very quickly. Any factor that causes a lack of clarity legally or ethically must, therefore, be tackled by us, as legislators, to allow such decisions to be taken as expediently as possible.

Much ill-informed debate on this Bill would seem to imply suicidal ideation is a fictitious element and not a real sickness, that it can be dealt with by some counselling and that is not really a threat to life. I do not concur with that analysis. The safeguards in the legislation, stipulating that two psychiatrists and an obstetrician must make a call, and the appeals mechanism will be more than enough to ensure sufficient care will be taken in this area.

I am a practising and active Catholic, albeit with a relatively liberal ideology. I have discussed this legislation with many good friends, among them members of the clergy. Some support and some oppose the legislation, but that does not make them better or worse Christians. There have been very vocal campaigners at polar opposites in the campaigns we have witnessed. There are very small minorities at either end of the spectrum, whereas the vast majority of citizens favour the Bill, for many of the reasons I have outlined. The majority agree with the Supreme Court's rulings and the voices of people of good conscience who voted in two referendums with the effect of stipulating that this legislation is not only right and necessary but also very much overdue.

Ar an mbunús sin, táim ag tacú leis an reachtaíocht seo agus táim ag impí ar mo chomhSheanadóirí an rud céanna a dhéanamh. Tá an reachtaíocht seo píosa fada ag teacht, ach tá sí ag teastáil go géar. Molaim an Rialtas as í a thabhairt chun cinn. Ní raibh an díospóireacht seo éasca. Tuigim na pointí atá ag teacht ó ghach aon taobh agus tá ómós agam do na Seanadóirí ar fad atá ag cur a gcuid tuairimí chun cinn anseo. Tá an lá seo fíor thábhachtach, tá an reachtaíocht seo fíor thábhachtach agus tá sé fíor thábhachtach go dtabharfaidh muid gach tacaíocht di.

Senator Mary Ann O'Brien: I thank the Minister of State for attending to listen to us today. I also thank Deputy Jerry Buttimer and the health committee for all of the work put into this Bill.

The Bill has been the subject of much debate during recent months and dominated the political agenda. The abortion issue is one that always causes heated debate, with extreme voices on all sides preventing a mature conversation about the issues involved. Without doubt, the Bill, given its complexities, has been the most difficult for me and my colleagues to prepare for and on which to reach a final position since entering the Oireachtas. Ever since the X case, there has been a need but not a requirement for legislation to clarify the test to be used to determine whether a woman is entitled to a termination of pregnancy. Our constitutional arrangement for the avoidance of any doubt is provided for in Article 40.3 of the Constitution. It states, "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right".

I am the mother of five children. I lost two of these precious children, one at 38 weeks and one at 18 months. I am well aware that every situation for a pregnant mother is personal to her and her baby. Far be it from me or any of the rest of us to stand in judgment on any woman. However, I find it very difficult to stand by and forget about the rights of an unborn baby because an unborn baby does not have a voice. It does not have the two legs that allow me to stand up here and speak. Having spent many months in a neonatal unit in this city with my own little baby, I marvelled at the extraordinary advances in medicine that could save the lives of tiny babies born from 22 to 27 weeks and allowed them to proceed to lead super lives and make a difference on this planet. In the same breath, I find it difficult to come to terms with what happens on the other side of the coin. I refer to when a baby, for some of the reasons we discussed in the House yesterday and today, receives specialised treatment. Consider the circumstances where the specialised treatment may lead to the baby's life being exterminated. Why does this baby not have the right to receive specialised, extraordinary neonatal treatment instead of heading for extermination? I have pondered over, discussed and wondered about whether one life is worth more than another. Has one baby at 23 or 24 weeks the right to life and the medical advancements of this wonderful world of ours, while another must have its life extinguished?

The overwhelming majority of people believe there is the right to a termination of pregnancy where the life of the mother is in danger if the pregnancy continues and that this danger can be alleviated if the pregnancy is terminated. Every citizen, without doubt, believes in that right for a mother. Today, in every maternity hospital in the country that view informs practitioners' thinking, but that is not what are here to discuss. Let us be clear that any mother whose health is at risk today will be saved if that is the correct approach.

A major concern I have about the Bill pertains to the gestational time limits. Would it be fair to state the lack of a limit in the legislation will put us in the unusual position of not having a limit when compared with the majority of European countries? I examined all of the legislation throughout Europe and really struggled with the fact that there was no time limit in our legislation. I share the view expressed by Deputy Róisín Shortall in the Dáil last week that if the Bill is passed, as it stands, the lack of gestational limits could result in the extraordinary scenario in which a woman may be granted a termination of pregnancy on the grounds of suicidal ideation, while her child may be born unwanted and possibly with multiple disabilities from its early delivery. From experience, the State has a far from perfect record in taking care of children with profound and life-limiting conditions. The Bill, as currently worded, is such that the obstetri-

cian has the unenviable job of deciding whether the life of a baby at 23, 24, 25 or 26 weeks is viable. When will a baby be injected with saline to stop its heart and be delivered and when does a baby have a viable right to life on delivery? I find it extraordinary that there are no limits. In which of the crucial weeks from 22 to 26 weeks does the baby become viable? It is one matter if a baby with no chance of survival needs to be taken from a mother whose life is at risk, but it is another if the viability of the life of another baby is borderline. I really struggle with this and I would like the Minister of State to convey this message to the Minister, Deputy James Reilly. I seek clarification because the State has a record that is far from perfect in taking care of the children in question. I have not seen any clarification from the Government of what will happen to babies whose lives will not be terminated. The media have reported that such babies could end up in institutions. To my knowledge, there are no institutions in the State with the expertise and funding to look after babies with multiple disabilities, with the exception perhaps of a charity called LauraLynn House which has a few beds in the Children's Sunshine Home in Leopardstown. There was very little discussion during last week's Dáil debate of what would happen to babies who survived. The State must clarify what will happen in such cases and how we will care for these babies. I cannot find any provision in the Bill which details the services or safeguards the Government plans to put in place to protect or support babies born with foetal abnormalities in these circumstances.

I make no apologies for repeating myself on this point. I hope the Minister will indicate the Government's plans and intentions in this regard. Why did it promote the Bill without having a national paediatric budget in place to care for the babies who might be born with multiple disabilities as a consequence of its provisions? I further ask the Minister, given his medical training, to offer his opinion on the precise point during a pregnancy when a baby has a realistic chance of survival and detail the complications that might arise for the baby born as a consequence of the procedure outlined in the Bill? I am essentially seeking to find out when a baby's life becomes viable. There is a huge middle ground on this issue, one which is generally ignored in the effort to make the correct decisions. We need to have a full and frank discussion on abortion in the case of fatal foetal abnormalities, suicide, rape and incest, the supports we need to put in place for families facing these situations and whether, in fact, abortion should be a legally permissible solution.

Section 9 is really the crux of the Bill for many, dealing as it does with less clear-cut cases of a threat to the life of the mother. It is something which concerns me greatly. This provision deals with cases where a woman is suicidal and that suicidal intent is deemed to be a risk to her life. The assumption underlying the provision is that it is her pregnancy which is causing her to have suicidal thoughts. Having observed the debate closely, it is clear to me that the vast majority of legal professionals, on all sides of the debate, are in agreement that abortion is not a treatment for suicidal ideation. The statement issued recently by 113 consultant psychiatrists included the following clearly stated concern:

> As practising Psychiatrists we are deeply concerned at the Government's stated plans to legislate along the lines of the X-case, as this will mean legislating for suicidality. We believe that legislation that includes a proposal that an abortion should from part of the treatment for suicidal ideation has no basis in the medical evidence available.

I have put the question to myself of how many women I have met who are pleased with their decision to have an abortion. I have friends who were suicidal and went to Britain. We all have a problem with that situation. I personally was suicidal for a different reason. I had a baby with fatal foetal abnormalities and, when he was six months old, I was suicidal because I felt I could

not take care of him. Thankfully, I was treated by a psychiatrist and put back on an even plateau and saw that baby's life through to 18 months. They were probably the best 18 months of my life and I will treasure them forever. As I am being a little personal, I will rest my case. I look forward to the remainder of the debate.

Senator Catherine Noone: I welcome the Minister of State, Deputy Alex White, for the debate on this extremely important legislation. Like many colleagues, this is an issue I have struggled with and agonised over in recent months. I wish to make it clear that I will be voting with my conscience on this issue. Given the intense level of scrutiny to which these provisions have been subject and the huge volume of correspondence I have received on the issue, I welcome the opportunity to set out the reasons I will be voting for the Bill. In the past year I have met many women, both inside and outside Leinster House, who have sought to discuss the issue with me, including a large number from the pro-life side. I have also met many who are mystified as to why there is so much sound and fury surrounding what they see as a simple legislative effort which seeks to enshrine practices that are already being followed in many hospitals and reflective of the law as it stands.

While I was convinced initially that guidelines would be sufficient to provide clarity, as the debate has developed, I have become firmly of the view that there is a need to legislate for what is, after all, the current legal position following the X case. I do not accept that the outcome is likely to be in any way as negative as is feared by those with extreme views on the pro-life side. I certainly hope it will not. There has been an attempt in framing this legislation to ensure provision is made for the Supreme Court's verdict, nothing more. Those who are heavily on the pro-choice side see it as not going far enough, while those strongly on the pro-life side insist it goes too far. In the grey area in the middle, that moderate place where most Irish people reside, this legislation makes sense. These are the people on whose behalf we legislate - the majority, not the extremes.

In settling my position on the legislation I have struggled, in particular, with the clause on suicidal intent, which is the controversial aspect of these provisions. I have concerns about this clause, specifically the lack of checks. Although it has been much discussed and the Minister and the Ministers of State have been questioned about it at length, I ask for clarification of what will be done if - as is feared by some but probably and I hope will not materialise - a huge number of women present to the three-consultant panels in these circumstances. Those who oppose the legislation will be watching these figures and will certainly be working to flag any potential abuse of this provision. I welcome such scrutiny. Only time will tell, but I am confident that it will only ever be used in a handful of cases each year.

Certain commentators outlined their fears that the provision under section 9 would open the floodgates to abortion on demand. These fears are not helped - they are arguably encouraged - by some on the extremes. I was disappointed by the actions taken by certain individuals and groups opposing the Bill. The practice, for instance, of using images of Deputies with emotive slogans on posters is disturbing. More disturbing still were the protests that took place outside politicians' family homes. We live a democracy where public discourse on legislation is naturally both welcomed and encouraged. However, these tactics have only served to make many of my colleagues more resolute in their support of the Bill. There is a way to engage people with one's argument and persuade them as to the merit of what one is saying. Many of those agitating on this issue went about their business in precisely that way. However, the pro-life cause was often undermined by the actions of some within their number, which was very disappointing.

Colleagues will attest to the sheer volume of correspondence we have all received on this issue. I was sent an e-mail in recent days which included the following statement:

> The name given, Protection of Life During Pregnancy Bill, is repugnant. It is logically incorrect as it specifically allows for the destruction of an unborn life. It should be called the termination of a pregnancy and related life in order to preserve the so-called superior life of a mother Bill.

I find this offensive, particularly the reference to the "so-called superior" life of the mother. I wonder how much the author of that e-mail thought about what he was actually saying and how much of a clue he has about what it might be like to be in a situation where there is a conflict between two lives. While men clearly have a huge part to play in life, its creation, protection and destruction, I cannot help but wonder whether this man, if faced with a situation where his own life and that of an unborn foetus were in conflict, would refer to his own right to life as being "so-called superior".

The Bill restates the position on abortion in Ireland and states that the unborn child has equal rights to those of all citizens. Its only aim is to place this legal framework on an already existing narrow provision created by Article 40.3.3o of the Constitution, which was interpreted by the Supreme Court over 20 years ago to allow for the lawful termination of a pregnancy where it is established that there is real and substantial risk to the life of the woman and that risk can only be averted by a termination. The Bill remains within the parameters of the Constitution and serves to strengthen the current legal position, which effectively means one psychologist and an obstetrician can decide a woman is suicidal and in need of this treatment. One aspect of this which has created much debate and provoked significant analysis is the risk of loss of life from suicide. It is worth pointing out the effort that has been taken to introduce safeguards. Under the proposed legislation, three doctors will be required to take part in the assessment process, which when combined with the woman's GP means the woman will have been assessed by four doctors.

I welcome the fact the Bill contains provisions to allow for conscientious objection in the case of medical personnel. This is important as nobody should be forced to do something that is against his or her conscience. As an additional safeguard, the Bill contains provisions to ensure the law is faithfully followed and that there is scope for review. In discussing this issue, we should stay cognisant of the fact that currently approximately 30 terminations take place in Irish hospitals annually, without any coherent regulation. With this Bill, safeguards are introduced and checks will now be in place. In addition, approximately 4,000 women travel each year for an abortion. This is all too often conveniently ignored in any debate on this issue. In some cases the terminations take place in unregulated backstreet or would-be clinics and in some cases have a detrimental effect on the woman's life thereafter. These are the reasons I believe this Bill deserves support. It ensures the protection of women during pregnancy.

I am confident the Bill will give the legal clarity which has been absent to date under Irish law for women and doctors. A sad reality, one with which I have struggled but which must be faced, is that sometimes medical intervention is required to save a woman's life in pregnancy. I would not apologise for this. If a woman presents in this state, I am confident she will receive treatment and everything possible will be done to support her through her pregnancy and that abortion would be very much a last resort. I was very sad to hear Senator Mary Ann O'Brien's story in this regard.

The argument that there will be a massive increase in the number of women claiming they are suicidal is an insult to women. That argument also undermines the psychiatric profession significantly. The legislation is sufficiently restrictive, so much so that I believe that if a women is genuinely feeling suicidal and in such horrendous circumstances, she will be more likely to travel to the United Kingdom than to put herself through this extremely restrictive process.

The rarity of the situation must also be recognised. Because of the lack of statistics, there is no clear idea of the number of women who present in these circumstances. The best estimate I can come up with is based on what I know from my mother, who has been a consultant psychiatrist for almost 40 years and has had a varied and busy practice in the west of Ireland. She has never come across a situation where a pregnant woman has presented as suicidal. I have had numerous conversations with her over the past few months and have genuinely struggled in this regard, but I feel assured that I am making the right decision in supporting this legislation.

Although I have not come to the conclusion lightly, I have concluded that this restrictive legislation will protect the lives of women. Therefore, I lend it my support.

Senator Darragh O'Brien: I welcome the Minister of State, Deputy Costello, and I know the Minister of State, Deputy White, has been listening intently to this discussion and thank him for that. I also thank my constituency colleague, the Minister, Deputy Reilly. We are all agreed that nobody finds this legislation easy to grapple with, but dealing with it is our job. It is our job as legislators to deal with difficult situations and to make up our minds.

I would like to put the record straight on some issues. The narrative has been put forward that nothing has been done in this regard by successive governments over a 30-year period. As a young child of seven or eight years, I distinctly remember the campaigns of the early 1980s and how divisive and nasty the debates were on both sides. I am happy to see our country has moved on a great deal since then. I have found this debate, both in the Oireachtas and outside, to be respectful and well thought out.

For my own reasons, I have not stated a position on this issue publicly. I have not received any offensive literature or phone calls from any side, but I regret that seems to have happened in the case of others. I have received no urging or direction from any church, neither my church, the Catholic church, nor the Church of Ireland to which my wife belongs. I still want the Government to inform me on the Bill and I have specific questions in regard to section 9, but my position on the Bill will be my own position, not my position as a Catholic. I hold religious beliefs, but such beliefs should be left at the door by legislators. We are legislating for all the people. I disagree completely with Senator Noone that we legislate for the majority. It is clear that with this legislation we propose to legislate for a small minority of cases. This is our job.

I wish to reiterate and make it clear that the position I will hold is not based on my faith, but on listening, reading and consulting people. I thank the hundreds of people who have been in contact with me, both those opposed to and those for the legislation. Some feel it goes too far and others feel it does not go far enough. I will not box people into a pro-life or pro-choice box. I have listened intently to my colleagues and I know all of us respect human life. Some of us have very strong personal beliefs in this regard.

There are aspects of the Bill that I do and will support. Clarity was needed in regard to medical interventions at the risk of life from physical illness, and this is dealt with in section 7. Many people in the medical profession believe and welcome the fact this grey area will now be

dealt with clearly in law. This is crucial. The health and life of a mother is very important, but does not take primacy. Article 40.3.3o protects the equal right to life of both the mother and the child.

Section 8 of the Bill deals with the risk of loss of life from physical illness in an emergency. It is very important we have legislation to deal with this issue and this section gives the clarity required regarding how this intervention can take place. We all know, some of us from personal experience, that this kind of intervention happens every week in this country. Such intervention is necessary and if we need to legislate for it, I will support that legislation. We have had examples of such instances, for example the recent tragic case in Galway of Savita Halappanavar. I hope this legislation will assist in such cases. It is not clear from reading the coroner's report that intervention would have assisted in that instance. However, we need to provide for it in any case.

I refer to some elements of the Bill - the review aspect contained in Part 2 and the establishment of a review panel, which is not there. I believe there have been six cases in the years since the X case where the State brought young women to England for terminations but we do not know who they were or which social worker or doctor signed off on the procedure, as there is no such requirement. If there is to be a review included in provisions of the Bill we will have a schedule, which is very important.

Some 4,000 to 5,000 Irish women travel abroad for terminations every year. That is as good a figure as we can get. We have a societal issue to deal with here and I believe all of us recognise that. We need to provide proper supports for those women. Not all of those pregnancies are crisis pregnancies, though some are. Some happen as a result of rape or incest which, without question, are disgusting acts to perpetrate on women. I want women to get the supports they need. Neither this nor any previous Government has provided the resources required to support women in crisis pregnancies. I refer to the most recent budget and the moneys allocated to mental health of both adults and children, where there have been cuts to and reductions in services. Relevant to section 9, there is a lack of funding for suicide prevention which receives only a fraction of the funding the Road Safety Authority receives. They are both very serious issues but multiples of the numbers of those who die on our roads die by suicide. If we are very serious about this, as legislators, as Government and as Opposition, we must put this issue forward and make tough choices. We must say these are areas where we will not only ring-fence moneys but will ensure there is an increase in funding. I would like to see that.

I refer to section 9, the main area with which I have difficulty although I do not intend to inhibit the passage of this Bill on Second Stage. There will be opportunities on Committee Stage, even at this late stage, for the Government to provide further clarification and amendment. When my daughter was born in the Rotunda Hospital, my colleague, Senator Brian Ó Domhnaill was reading into the record Dr. Sam Coulter Smith's opinion in this area. I watched with great interest the abortion hearings that took place in this very Chamber at that time but what struck me was the lack of psychiatric evidence in this regard. Dr Coulter Smith stated:

> Our psychiatric colleagues tell us that there is currently no available evidence to show that termination of pregnancy is a treatment for suicide, suicidal ideation or intent and, as obstetricians, we are required to provide and practise evidence-based treatment. It therefore creates an ethical dilemma for any obstetrician who is requested to perform a termination of pregnancy with the treatment of somebody who has suicidal ideation or intent.

Dr. Coulter Smith welcomes many aspects of this Bill that provide clarity in the area of medical intervention on the basis of risk of loss of life from physical illness or in the case of an emergency. I agree with him and am yet to be convinced by evidence put forward by psychiatrists. Some 113 psychiatrists throughout this country share those very views. We have a duty to ensure that the laws we pass are robust and evidence-based. I am not at all convinced that in this area, specifically that covered in section 9 of the Bill, that all we are doing is ticking a box. Without being disrespectful to anybody who believes the contrary, it is my opinion that we are legislating purely to deal with that aspect of the X case. Many people have brought into question some of the evidence, as well as the decision of the Supreme Court, which I am not doing. However, I have a question that is specific to section 9. The fact that gestational limits are not included is extremely worrying to me. I am pro-life, pro-woman and pro-child. I want our women to be as safe as they can possibly be and for that reason I support large sections of this Bill. We will deal with section 9 in more detail on Committee Stage but I would like the Minister for Health or the Minister of State in his Department to give me an example of any state which, in good faith, has introduced a restrictive abortion regime, as the Government has stated this to be, which has not, over time, led to a more liberal abortion regime. I will ask about this in more detail when we come to it. I thank the Minister of State for his attention.

Senator Jimmy Harte: I welcome the Minister of State, Deputy Costello, to the House.

This is a difficult subject for all Members to address but I have that duty, as a legislator, as a citizen and, most of all, as a father, a son and a brother. There are those who say the only people with a conscience are those who will vote "No". After 21 years, people are only coming this week to the realisation they have a conscience. They have missed the plot and have been at a different game than I have. This has been an issue for 30 or 40 years but it has been one for legislators to decide on for 21 years. I will put the lives and the health of my two daughters first. My older daughter does not have children and my younger daughter is only nine years of age. I sincerely hope that by supporting this legislation I will make their future safer because if this Bill does not pass I do not want to be standing in a hospital ward in ten years time wondering about it, telling my daughter that had it only been passed things might have been different.

There has been a great deal of scaremongering about the issue of suicide. Senator Noone spoke about her mother who is a consultant psychiatrist. I have spoken to some psychiatrists from my area who report that nobody has ever presented to them in a suicidal state, demanding an abortion. The psychiatrists are right - abortion is not a cure for suicide. If anybody or any psychiatrist could come into this Chamber and say, "I have a cure for suicide", he or she would win the Nobel Peace Prize. Those people are reflecting on a situation where there is no cure for suicidal intent other than treatment. Suicidal intent is not like a broken arm or leg, where plaster of paris is put on and one is given a tablet. It is a very complicated issue and every community in this country has been affected by it. To use the issue of suicide and claim that women will demand an abortion at eight or nine months is a terrible criticism of the women in this country. My wife is highly offended by it. She has said, "How dare someone say that a woman would demand to have an abortion at eight months when at that stage she is so delighted the baby is due, and so are the father and the family". It has never been shown that a woman has gone to a psychiatrist saying she wants an abortion because she is eight and a half months pregnant. The people who use that argument are not pro-life. I detest those who say they are "pro-life" and try to claim this term for themeselves. Everybody in this country is pro-life. I have not yet met a person who says, "I want to get rid of life, I want to kill someone". There is something particularly objectionable in organisations which claim to be pro-life deploying some of the tactics

that have been used against me and every other Member of this House and the Lower House and claiming, in so doing, that they are seeking to protect the lives of babies and their mothers.

By supporting this Bill, I know that the future health of my daughters is more secure. If people do not trust the medical profession, including psychiatrists and other doctors, they should ask themselves whether, in a situation where a child of theirs is sick at 3 a.m., they would call the taxi man or the doctor. People are saying they do not trust doctors on this issue, but they will happily trust them to deal with appendicitis or a heart operation. The so-called pro-life organisations and the church have maintained a stand-off position on this issue because it is their last lap of honour. If they cannot win this, they are going down a different road to the rest of us. The Ireland I belong to is an Ireland for everybody, not an Ireland for the Catholic Church. I go to mass regularly, as do my wife and children, but the church cannot make me think as it wants me to think. It cannot tell me that what I am doing is against the will of God because it is against the will of the church.

This Bill is designed to protect the lives of women in this country. The church has not respected women over generations - in fact, over thousands of years. As another speaker observed, it is not long since discrimination against women was openly practised. I remember as a young altar boy seeing women being brought into the church a month or so after they had given birth to be "churched" or "cleansed" at the altar by the priest. These women had apparently done something wrong or impure. Meanwhile, their husbands were in the pub drinking, with no apparent need for "cleansing". The church is trying to blackmail people into opposing efforts by the State to legislate for everybody in this country, for an issue that has been hanging around for 21 years. The failure heretofore to bring forward legislation in this area is a disgraceful failure on the part of successive Governments.

Before the last election the Labour Party undertook to legislate for the X case. I got terrible abuse from certain people in Donegal for that position. I was insulted on doorsteps and called everything under the sun. I stood firm, however. The people who matter to me are my family, and it is my family members whom I consult on this and other issues. My mother gave birth to nine children and also suffered several miscarriages. She had no hesitation in giving me her view that these provisions represent progress. She can talk from experience, as can my wife. The 50% of the population who are male should not really be talking about this issue. We do not have the experience to do so. I was in the ward when my wife gave birth to each of our four children. It was an easy number for me, involving no pain. Only women can know the pain of childbirth. The crucial aspect of this legislation is its objective to safeguard the future health of pregnant women in this country by ensuring they will be properly looked after by the medical professional. That is what is being enshrined in the Bill.

What solution would those who are blocking the legislation offer? Their talk is all of suicidality and suicidal ideation, but I have not heard them offer a better solution than what is proposed in the legislation. The Supreme Court has spoken on this issue and the people of the country have given their view in two referenda. If we do not agree with the will of the people, then we are not a Parliament but merely a town council. I say that with respect to town councils. Members of Parliament are elected to legislate, and there was overwhelming support for the Bill in the Lower House last week. The people who voted against the proposals were a mixture of Fianna Fáil Members, on the one hand, and, on the other, United Left Alliance Members who rejected it because it does not go far enough. The people who are against it for the reasons that have been spouted here today make up a very small minority of Members in the Lower House. The Deputies who supported it were acting in accordance with the express wishes of the people

who elected them.

In supporting this Bill I can say that my conscience did not kick in last week or the week before. I have had a conscience on this issue for many years. I very much congratulate the Taoiseach, Tánaiste and both parties in government on moving this issue forward. Successive Fianna Fáil Governments dodged the issue because they were always looking down the road to see what the church would say. Members of that party have dodged the issue once again. Credit where it is due, however, Deputy Billy Kelleher, Fianna Fáil's health spokesman, made one of the best speeches on the legislation in the Lower House. He was not browbeaten into it, and I commend him, Deputy Micheál Martin and other members of that party who supported the Bill. It is very easy to jump on the church bandwagon when the priest is telling people on a Sunday morning how the country should be run.

Senator Rónán Mullen: That is an awful slur on those of us who object to this legislation in principle. It is mindless.

Senator Brian Ó Domhnaill: It is an outrageous statement. We are entitled to our conscience and we will not be dictated to by Eamon Gilmore.

An Cathaoirleach: Senator Harte, without interruption.

Senator Rónán Mullen: Senator Harte is not the only one who can think for himself.

Senator Jimmy Harte: I am talking for myself, not for anybody else.

Senator Rónán Mullen: He is not showing any respect for other people's minds.

An Cathaoirleach: Senator Harte should be allowed to conclude.

Senator Jimmy Harte: This legislation seeks to safeguard the future safety and health of my daughters and everybody else's daughters. I commend it to the House.

Senator Paschal Mooney: I am somewhat disappointed by the inference made by Senator Jimmy Harte in his contribution. I have shown respect for the views that have been expressed on all sides of this argument. It is clear, during the debate in both Houses, that many people have been conscience-stricken in this regard. When one gives respect to those who have arrived at a decision to support the Bill, it is difficult to accept the inference that there is a political motivation behind the decision taken by other Members and that the church has somehow ring-fenced our views.

I thought long and hard about my position on this legislation. Ultimately, for all of us, it comes down to a question of conscience. I cannot see any other way out of it. I am aware that there are many women throughout this country who deeply resent somebody like me, or any man, engaging in this debate at all. I find that difficult to accept. Senator Catherine Noone referred to the role men play in the creation of life. Why then should our views be completely ignored in respect of what subsequently becomes of that life? The main question that arises in this discussion is about the choice of a woman to do what she wishes with her own body. However, that question leads inevitably to another question about what is inside her body and the choice available to that unborn life. The particular question that comes to my mind when I hear the arguments about pro-choice and a woman's right to decide what she can do with her own body is who is speaking for the unborn. That question assumes that one accepts that what is in a woman's stomach is actually life. I have come to the conclusion, from all I have read and

all I have listened to, that there is life there. In fact, there is a foetal heartbeat at just 30 days gestation and brain waves at 40 days. The foetus - the unborn - feels, thinks, acts and reacts. Therefore, how can I in conscience accept any law which would result in the deliberate destruction of that life? I emphasise the word "deliberate".

I always remember that in the course of the debate in the United States surrounding the Supreme Court judgement in Roe *v*. Wade, an observation was made that once the discussion moved from the physical evidence to the psychological evidence, the argument was lost for those who were opposed to direct abortion.

3 o'clock

It is rather simple to understand why they came to that conclusion because references were made by many speakers to physical evidence. They talked about trusting the medical profession when one might need to have one's body fixed, but that is all physical evidence. Once it moves into the mind, it becomes a minefield. With all due respect, psychiatrists themselves would be the first to admit that when it comes to prescriptive medicine, they do not even know how it works. They do not know why or even if it works and they will freely admit that. They will say it helps some people and that it might help others, but that they are not sure. Now they will be asked to judge on somebody presenting with a pregnancy, who is clearly distressed and where there are all sorts of activities going on in the mind and body.

A psychiatrist from TCD said on television last week that if a woman presents and says she is suicidal, she would believe her. That then opens up the vista of what happens next. It means the psychiatrist and the obstetrician will sign off and a life will be deliberately taken. The argument is that it is saving one life but it goes back to the fundamental question on the whole area of the mind and the psychiatric conclusions arrived at. Without boring the House because it has been repeated so often, all of the psychiatrists are in agreement that abortion is not a treatment for suicide. I do not believe any of them has said that but I stand corrected if someone has. What I heard is that following an abortion, there is a very real risk of suicide - of the woman taking her own life.

We are being asked to pass legislation which says these will be very rare occasions, or so rare and with such restrictions, they will not happen. I understand that 90% plus of those who present for abortion in the United Kingdom do so on mental health grounds and I have absolutely no doubt whatsoever that once the structures are put in place in this country following the inevitable passage of this Bill, irrespective of the restrictions about which we hear, women will present. It is rather interesting that the suggestion has been made - I am being careful not to stray into a minefield here - that when a woman presents, she should be believed. Rather interestingly, Eilis O'Hanlon writing in the *Sunday Independent* some months ago, actually raised this issue. I am only paraphrasing what she concluded but she said women would probably present but the question could be asked whether they were presenting in a legitimate fashion. That was her view and I will not go down that road because I cannot, nor will I attempt to, get into the mind of a woman in distress with a crisis pregnancy.

I support 90% of this legislation which brings legal clarity. Sections 7 and 8, as Senator Darragh O'Brien pointed out, bring clarity. Cases arise in Irish hospitals where the life of the mother is under threat and where a decision must be taken as to how to proceed medically. Ultimately, what happens is that the life of the unborn is lost in order to save the life of the mother. I have absolutely no difficulty with that because I keep thinking about my wife. I heard Senator

Trevor Ó Clochartaigh talk about being present at the birth of his children; I was present at the birth of my children. I also heard him talk about his wife suffering a miscarriage; my wife suffered a miscarriage. Like him, I feel I bring a small element of experience to this in understanding what it is like for a woman to go through these difficulties but, ultimately, it comes back to section 9 which is the Rubicon I cannot cross.

I cannot, in conscience, vote for legislation which will ultimately result in deliberate termination, the deliberate killing of the unborn. I know the argument is put forward that it will be treated in the same way as sections 7 and 8 - in other words, I have no problem where medical procedures are involved and where medical intervention required to save the life of the mother so, therefore, I should not have any problem with section 9. I have outlined why I have a problem with section 9. It is a minefield and the emotions of women in those circumstances change. There is no template or benchmark laid down where it can be decided. There is no physical evidence and all the psychiatric evidence is that a termination, or an abortion, is not a suitable treatment in those circumstances.

I also have a difficulty about the conscientious objection. I find it extraordinary that this Government has gone further than the UK legislation in this regard. A conscientious objector is acknowledged as having that right but this goes one stage further in that it requires legally that the conscientious objector should seek out somebody else who will carry out the termination. That is an affront; it is dreadful.

In regard to the time period, I have heard it said and the argument has been made to me by people in my party who support the legislation that it will not happen because of Article 40.3.3o that once a baby is viable after 22 to 23 weeks, there will be a termination but that it will result in the baby being born alive. Why is it that if a woman presents as suicidal at 15 weeks, is signed off at 15 weeks under the regulations and there is a termination which results in the death of the unborn, seven or eight weeks later there is a termination which ensures the baby survives? Surely the reason the woman is presenting as suicidal is because of what is inside her - that she does not want it and wants to reject it. What happens when the birth takes place? Who can say with his or her hand on his or her heart that woman will not then proceed to commit suicide because the baby has been born? They are the questions which should be asked about this time period.

Senator Pat O'Neill: I welcome the Minister of State, Deputy Kathleen Lynch, and I thank the Cathaoirleach for allowing me time to speak on this extremely important and sensitive Bill, which I welcome. Before I detail my reasons for supporting this Bill, I would like to point out that I am, first and foremost, pro-life. I do not want to see a regime develop in Ireland whereby abortion can be sought on demand as a sort of frivolous contraceptive. I welcome, therefore, the restrictive nature of the Bill in so far as the scenarios whereby abortion is permissible are concerned.

Senator Paschal Mooney and others said they were disappointed by what has been said in the House by those in favour of the Bill but I was alarmed by some of the scaremongering from the other side. I will not mention the Senator's name but he said that babies of 28 or 30 weeks would be left on a table to die. That is the kind of scaremongering which has no part in this debate. That is not what will happen. When this Senator spoke about these babies, he never once mentioned the life of the mother or that the life of the mother had to be saved.

Senator Mooney said he could not support the Bill because it will result in the deliberate

destruction of the unborn. This Bill is being brought in to save the life of the mother and the child but in certain circumstances, which will be dealt with by sections 7 to 9, inclusive, for medical, psychological and even accidental reasons, there may have to be a termination and that is why I support the Bill.

I would like to fill in some of the background facts to this Bill. On 7 September 1983, the people ratified the eighth amendment of the Constitution and the insertion of what is now Article 40.3.3o, which reads: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right." Nine years later in 1992, the Supreme Court - the font of all legal authority and interpretation in Ireland - ruled on the infamous case of a pregnant, suicidal, 14 year-old rape victim, being prevented by the State from aborting her pregnancy. It ruled in the X case that the girl, under Article 40.3.3°, had a right to protect her life, even against the threat of suicide, by means of an abortion. Later that year, the people refused to ban abortion in cases of suicidal intent, re-affirmed the right to information regarding abortion, as well as the right to travel abroad for one, and re-affirmed the right to free speech on the subject. In 2002, the twenty-fifth amendment to the Constitution tried to overrule the 1992 Supreme Court ruling to remove the threat of suicide for a termination of a pregnancy. This was the most recent abortion referendum held and was defeated with the people voting to continue to allow abortion in cases of suicidal intent. Finally, in late 2010, the European Court of Human Rights instructed Ireland to clarify its laws regarding abortion and to ensure women finally knew their rights.

Now, 30 years after the article was inserted into the Constitution, 21 years after that clause's landmark interpretation by the Supreme Court, 30 years of dillydallying over referenda results and five previous Governments, this is the reason we need the Bill which will legalise the Supreme Court ruling of 1992. This Government has the resolve and courage to act on the people's clearly expressed wishes.

Fundamentally, this Bill acts on the people's wishes and clarifies the law on crisis pregnancies. As a man, I will never comprehend how a woman may feel during pregnancy. While I can be sympathetic, I will never know what changes she may go through, be they physical, emotional or hormonal. I do, however, know that we as legislators have got to act in accordance with the will of the people and stop ignoring the 1992 X case judgment. For 21 years, a Supreme Court ruling - which is supreme for a reason - has been passed from Billy to Jack. It is a law left in limbo, trapping those in the medical profession with it. This Bill puts an end to that by setting out clear guidelines for doctors and other medical professionals to follow and, where absolutely necessary, act on. It clarifies when a doctor can or cannot intervene in what might be termed a "crisis pregnancy". It also clarifies what exactly a crisis pregnancy is.

Under sections 7 and 8, if a woman presents with a physical or life-threatening illness, her pregnancy can be terminated. Under section 9, if a woman presents as suicidal due to her pregnancy, and following assessment by not one but three different medical professionals, her pregnancy can be terminated. These are measures that repeated referenda and the Supreme Court have deemed legal under the Constitution. This is what the Government has finally chosen to act upon. Moreover, it has chosen to act in support of the wishes of the people.

Section 2 states, "reasonable opinion if the unborn can be saved." Will the Minister clarify exactly what measures and procedures will be taken, once foetus viability outside the womb has been reached, to preserve and continue the life of the unborn?

We have an Irish solution to an Irish problem. The 4,500 women who travel every year to the UK have been ignored for years. Whatever their reasons, abortion should not be used as a form of contraception. Instead, we need to invest in providing supports for these women. We must also address the issue of our consciences in this regard. Everybody is entitled to their own council on this emotive issue and, indeed, on all issues. Our conscience and values help us choose what is right for us; that is our personal choice. Personal choice is exactly that - personal. That is why we will always have debates and never fully agree.

However, agreement is not the important aspect regarding this Bill. The protection of the life, health and well-being of all Irish women and their unborn children - our mothers, sisters, wives and daughters - is what is at the centre of this Bill. We must remember we are elected by the people as representatives to act on their wishes in government. A direct democracy would simply be too inefficient to deal with all matters in a State this large. Accordingly, we, as their elected representatives, must act. However, we must continue to remember we are elected with the moral obligation to represent our constituents, no matter what we might ourselves believe. In doing so, we ensure our vote represents them. In some instances, we must vote against our feelings or personal beliefs in favour of reforms that must be enacted for the good of the people and the State.

We have done this before. We enacted tough reforms to undertake social welfare cuts because readjustment was required due to our economic circumstances. We have made tough choices to reduce the safety net in the State for the good of the entire nation. Many felt those actions were against their conscience but we enacted those changes for the good of the people in this State, the people we were elected to represent. We cannot, after all, ignore the wishes of our constituents while claiming to be a democratic institution. We cannot forget about the needs of the people. We must vote in their best interests and in line with their wishes.

I firmly support this Bill. I believe it sufficiently codifies the Supreme Court's judgment in the X case, making it harder for someone to have a termination under this Bill while giving clarity to the medical profession. It clarifies Ireland's abortion laws as per the European Court of Human Rights judgment from three years ago. I believe it will save the lives of women while also maintaining Ireland's stellar reputation for its maternal care. Ireland will be the better for it.

I commend the Bill to the House.

Senator Denis O'Donovan: I rise to make a brief contribution on this important Bill. I would assert that I am pro-life for my own reasons and I do not want to ram my views down anyone's throat. As a former member of the all-party committee on the Constitution in the late 1990s, chaired by the late Brian Lenihan, and a precursor to the one chaired by Deputy Jerry Buttimer recently, I was present for all hearings regarding abortion. Subsequently a referendum was held on the matter in 2002. I also studied what doctors, experts and politicians had to say at the recent hearings, chaired very professionally and excellently by Deputy Jerry Buttimer. The 2002 referendum was narrowly defeated because, totally unplanned, two extremes - those on the extreme right, promulgated by Dana Rosemary Scallon, and those on the pro-choice side - joined together to defeat the middle ground which was supported by Professor William Binchy, the Roman Catholic Church and others.

There are some aspects of the Bill which underpin the ethical responsibilities of obstetricians and those doctors at the coalface. It is welcome that these are now put into a legislative

framework rather than just being left as ethical guidelines. Over the past 12 months, I have canvassed the views of mothers, grandmothers and young people particularly. An event of 4 December last year made me make up my mind on this Bill, however. My daughter-in-law was in the Rotunda Hospital for a minor procedure but, unfortunately, matters went radically wrong. She was in a life or death situation. Under the supervision of the Master of the Rotunda, Dr. Coulter Smith, her life was saved. However, her twin girls, Aoife and Róisín, although born alive at 20 weeks did not survive. This was an emotional time for the parents but also for me and my extended family. I want to put on record my extreme gratitude to Dr. Coulter Smith for intervening. My daughter-in-law, according to the subsequent medical report, had no pulse for 25 minutes. The fact she survived herself is a miracle. Looking back we were delighted he saved the mother's life. Technically, what he did was an abortion because he had to intervene as a matter of urgency to save the life of the mother and, to use the medical term, empty the uterus, remove the twins who had no hope of surviving outside the womb. That was a traumatic occasion for me. Subsequent to that, I wrote to ask to meet Dr. Coulter Smith, the master of the Rotunda. He graciously acknowledged my letter and agreed to meet me. In the course of that conversation, if I had any fears or doubts, he expressed to me, as he did here in the hearings of the Joint Committee on Health and Children, his view that in a situation where somebody is suicidal or has suicidal ideation there is no medical evidence to support the notion of having an abortion. I suppose that was one of the reasons that made up my mind to go in this direction.

In saying that, I cannot support section 9 of the Bill because I have also listened to other experts. There were 113 psychiatrists who stated that they were not confident on this but when one hears persons such as Dr. Coulter Smith and other senior obstetricians expressing grave concern at this particular development, then one must find it hard to ignore that type of advice, particularly in the situation in which I and my family found ourselves. In that regard, I hold his professional view in high esteem. I respect the views of others. I will not impose my own views on anyone else but I am entitled to speak and express my opinion.

There has been no debate on the wider circumstance where over 4,000 women each year go abroad, primarily to Britain, to have an abortion. That is a sad affair in society. Senator Bacik the other day called for this area to be looked at widely to see where we can offer better support for those in crisis pregnancies rather than go down the road of an inevitable difficult decision for any woman to make which is not made lightly. We are remiss as a country and as a society in not doing that.

I understand from reliable evidence that currently all of the maternity units and hospitals in Ireland, whether Cork University Maternity Hospital, CUMH, the Rotunda, the Coombe or Holles Street, are overstretched. In the past couple of years there has been a significant increase in births in Ireland and when I hear that ordinary genealogical procedures are being put off, sometimes for months, because of the pressure under which senior obstetricians find themselves, I wonder what would be the realistic outcome if this law was passed and if it was to occur that there were even, say, 20 instances of abortions arising out of suicidal ideation in the country in an already overstretched and understaffed hospital system. The facts are, whether we like it or not, in any of the maternity hospitals, despite the extra work they are endeavouring to do and the brilliant work they do in difficult situations, there is an embargo on staff recruitment, and that also has a knock-on effect. The Minister, whether in response to this debate or at a later stage, should indicate the extra resources the Minister and the HSE are putting in place to buttress the weakened and pressured system in the hospitals. That is something that should be looked at as well.

If we want to look at it from a legal point of view, a point I would make purely as devil's advocate is that a pro-choice person - I am not on that side but respect those of that view - would see this Bill as being totally inadequate. He or she would see it as a pure fudge in an area where it is being spun-out that this is a step to protect the life of the mother and the child. I have listened to the pro-choice arguments over the past two decades where they promulgate that in instances such as rape, incest or fatal foetal abnormality women should have the choice to have an abortion, and that it should be had in this country. This does little, if anything, for those who hold that view. I would understand if many Labour Party Senators and some other Senators were to decide to vote against this Bill from a point of view contrary to mine because it certainly will not satisfy their demands, beliefs and views.

An Cathaoirleach: The Senator has one minute.

Senator Denis O'Donovan: I have kept out of the public spotlight by and large since this matter has arisen but I honestly believe that if we must resolve this problem that has plagued society and several Governments for the past 30 years, there is a need for another referendum. If we are being totally honest, the only way to resolve this matter is to put it to the people again. Many do not want to. Some of the pro-life advocates are afraid they might be beaten, some of the pro-choice advocates are afraid the might not get the results they want but if we are being honest on this important constitutional issue, there should be another referendum.

Because of my adverse views, deeply held for reasons I tried to relate here, on section 9, that part of the Bill which provides for an abortion where somebody is suicidal or has suicidal ideation, I cannot support it. Consequently, because that is the nub of this legislation, I will not be able to support the Bill in its final Stages.

An Cathaoirleach: Has Senator Landy indicated?

Senator Denis Landy: No.

An Cathaoirleach: The Leader wishes to make an intervention.

Senator Maurice Cummins: I propose an amendment to the Order of Business, that we will conclude Second Stage at 5 p.m., if it is not previously concluded.

An Cathaoirleach: Is that agreed? Agreed.

Senator Eamonn Coghlan: I welcome the Minister of State, Deputy Kathleen Lynch.

I was somewhat reluctant to get involved in this debate. Having listened to both sides of the argument, I felt that I was damned if I did and damned if I did not, and I decided only within the past hour or so that perhaps I should make some kind of a contribution on the Bill.

What I want to say is, I am pro-life. As a matter of fact, I love life. As an athlete, I learned the importance of positive mental attitude, PMA. I love getting up in the mornings and I love looking forward to fulfilling a positive day. I always look forward to going out of my way to identify who and how I can help. As a father of four children and grandfather of two healthy grandchildren, nothing has been as important to me and my wife as our family and our happiness. Happiness is something, I truly believe, that people forget to work on. It is a very important ingredient in their daily lives and it is something that people should work on every day.

These past few weeks have been most difficult in my new role as a Senator for the past two

years, a role much more difficult than that of a sportsman and person in the business community. It has been most disturbing to have been threatened walking in and out of Leinster House. I have received abusive telephone calls to my home and to my office. I have been bombarded with mind-twisting e-mails and literature. It has not been fun and I have done nothing whatsoever personally to any of these persons to warrant this kind of behaviour. We have not yet even voted on this Bill in the House.

I am pro-choice. I believe in this modern world it is every woman's choice to make that difficult personal decision about her own health and welfare and that of the unborn child. However, I believe the Bill does not go far enough because there are situations where the mother is told that the baby will not survive beyond the womb. There are situations every day where pregnancy may result from rape or incest. All of these arguments have been stated already in both Houses, not only in the past number of weeks but for many years. No matter the result of this debate on the legislation, we cannot deny the fact that abortion happens. One only has to consider the thousands of women who travel to the UK or elsewhere in Europe for abortions. Do we carry on pretending that this is not happening in Ireland? This legislation will not open the floodgates to make abortion readily available. I am not in favour of abortion on demand. However, the legislation is necessary to protect women and to give clarity to the medical profession in crisis cases where fast action is needed. Laws opposing abortion do not stop abortion; they just make it less safe and more life threatening. This Bill is about the protection of life and I will support it.

Senator John Crown: Oncology was the area of medicine which in many ways was one of the pioneering disciplines for evidence-based medicine. It was a relatively new field and only came to existence in a meaningful way in the 1960s and 1970s in an era when doctors engaged in other specialties had certain proprietorial rights over the treatment of cancer and, as a result, it had an interesting and somewhat controversial internecine baptism of fire but there is now a great established record of all the different disciplines co-operating together in cancer care. It gave us a major focus on evidence because we often had to persuade our colleagues that things they had been doing for 40 or 50 years did not have a sound scientific basis and when we had new ideas, we had to persuade them that they needed to change their ideas in light of evolving data.

Our own ideas have changed and there are things I do now that I would not have done one year ago. There are things I do not do now that I would have done two years ago. Evidence-based medicine is an extraordinarily complex field. It involves careful synthesis of raw data and primary data sources, examining meta analysis where different trials are lumped together as if they are one big trial and listening in some areas to the opinions of experts who have studied the field in great detail and have come to a consensus. In some cases, it goes as far as resting with properly constituted independent committees of doctors run by professional societies, medical schools or various consortia to examine the data and come to the conclusion of what is evidence-based medicine.

One group that does not define evidence-based medicine is politicians. The Oireachtas does not define it. The role of the Oireachtas in evidence-based medicine is to make sure there is appropriate policing, oversight and regulation of the profession and to make sure statutory procedures are in place whereby if the evidence as determined by the experts is not being followed and is being sufficiently departed from that it represents a threat to the health or life of patients, appropriate measures and sanctions will be taken. That is the role of a parliament in evidence-based medicine.

The notion that we are debating a treatment for a particular clinical scenario is not relevant and it is hubris in the face of medicine, biology and the laws of nature to think we have all the answers now about what might be the right way to treat something not only in five years time but in five weeks time because every decision we make now can be made obsolete by the next prospective randomised trial. That is why the apparently interminable arguments put up by Members in both Houses about what constitutes evidence-based medicine are irrelevant. I have been careful not to say too much about the tragedy of Savita Halappanavar and her family. There were complex reasons and it was not as simple as saying a different law would have saved her life and so on. Parenthetically, the fact that she was going through pregnancy complications in the jurisdiction in the western world that has the lowest percentage of consultant obstetricians per head of population was not coincidental given the degree of senior, top level care available to her throughout her entire illness. We need to take that away from the case.

There was *prima facie* evidence that the care for this lady departed from an evidence basis because of concerns about an ambiguous legal situation. Every senior obstetrician to whom I have spoken said it was likely that they would have seriously considered terminating the pregnancy on the Monday before this poor lady's death once she had an inevitable miscarriage. She had a pregnancy that could not survive. Her waters had broken and her cervix had dilated. Sadly, this pregnancy and the precious baby this young couple were so looking forward to was lost but, because of ambiguity about the law, evidence-based medicine was not practised or considered. Instead, there was an undue concern about the possibility that the practise of evidence-based medicine might be in direct conflict with the legal position in the State. Colleagues can be anti-abortion and anti-the suicide clause if they wish. They can provide a definition of equality of person and of when life begins and they may believe it begins at the moment of conception. That is fine and it is a valid position for them to have but they should please not preach to doctors about evidence-based medicine because they are without competence.

Maternal mortality is an extremely rare event. In all my years of practice, I have never been involved a case of maternal mortality. I am not directly involved in obstetrics but I have worked in the hospital environment and milieu. Any maternal death is a tragedy. If this House could today pass a law that would prevent one maternal death occurring in 13 years time, we would do it. Can anybody say on the basis of the way the evidence base changes week to week, month to month and year to year that we will not be in a position in a few years where a woman may be suicidal and given whichever psychiatric illness she suffers from, she has a particular fervent psychosis driven desire to end her life because she is pregnant? We have heard individual stories of what psychotic behaviour can make people believe is growing inside them and how they should handle that. I have heard stories of people attempting self-mutilation in an attempt to end a pregnancy that they felt was an alien presence within them.

We will not set a new standard in evidence-based medicine and we will not mandate abortion for women who say they are pregnant and suicidal. The legislation addresses the rare case where that might arise. This is not a willy nilly procedure that will happen in a fly-by-night back street abortion clinic where three doctors are flown in to give an appropriately convenient interpretation of the legal position. We are talking about a scenario that will occur in mainstream hospitals with senior registered consultants making a calm, light of day decision.

One of the most upsetting aspects of the debate is to listen to non-doctor after non-doctor saying psychiatrists cannot assess whether somebody is suicidal. On a monthly basis, I send one of my cancer patients to a psychiatrist because they say something casually such as "Sometimes I wonder if it is worth going on". When they say that, I think that I am not good at de-

ciding whether they are a suicide risk but there are people who are better at that than me and, therefore, I refer them. That is what happens and it is nonsense for any Member to say psychiatrists are not competent to assess suicide risk. They cannot assess it 100% accurately any more than I can assess a cancer diagnosis 100% accurately or a cardiologist can assess a heart attack 100% accurately. Medicine is not like that. We are not a system of perfect tubes and squares; we are full of all kinds of strange curly bits and unexpected results and consequences occur with our actions.

While I have been critical of those from the legal, educational and real estate professions who have become expert in medicine, I must assume the same crime and become temporarily expert in law because it annoys me intensely. I am well used to hearing people criticise *à la carte* Catholics but we have an entire Chamber full of *à la carte* constitutionalists. With regard to Article 34.4.6°, Members say the decision of the Supreme Court was flawed in the X case and, therefore, they will not be led by it. Article 34.4.6° states: "The decision of the Supreme Court shall in all cases be final and conclusive." It does not include the phrase, "except if you think it is flawed". What is in the Constitution is simple and the Supreme Court has decided on this. To make it even easier, the people have spoken twice.

In a colossal departure from the evidence base of the history of the constitutional argument, former Taoisigh, former Directors of Public Prosecutions, constitutional lawyers, former Ministers go on and on about the deficiencies of the X case, but never once mention the 12th amendment of the Constitution. This is extraordinary. This was the least close referendum in the history of referenda, with a 65% to 35% vote in which people said suicide should not be excluded. What could be clearer? There was no other question put in the referendum. It was not lumped together, like the 25th amendment, with all kinds of questions about incubators and zygotes and fertility clinics. It was simple and the people said "No".

I am tabling a series of amendments to deal with aspects of this legislation which I believe are brutal, such as the 14-year sentence which could be applied to a young girl who had an abortion or to her sister if she wrote away to get abortion pills online or which might stop the young girl from getting medical attention or which might incentivise her doctor to break the bounds of doctor-patient confidentiality in prosecutorial zeal against an illegal abortionist. I support the Bill and will table amendments. I thank the Minister for his time and am glad a female Senator has finally joined us in the House, as it was singularly inappropriate that over the past hour of the debate we had 11 male Senators in the House and no female present.

Senator Ivana Bacik: I have been here for most of the debate.

An Cathaoirleach: I remind the Senator that we do not refer to people who are absent from the House.

Senator Michael Mullins: I welcome the Minister of State to this debate. The Bill deals with a sensitive and controversial issue and I am very conscious the country is watching as we discuss the most sensitive piece of legislation to come before the House for many years.

As a strong pro-life supporter, I want to believe the Taoiseach when he says this Bill will not lead to abortion, but will clarify the very rare circumstances in which doctors can intervene where there is a real risk of a woman losing her life during pregnancy. We are all here today because a referendum held in 1983 resulted in the adoption of a provision which subsequently became Article 40.3.3° of the Constitution - the eighth amendment - which states:

> The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate that right.

The interpretation of the eighth amendment was considered in Attorney General *v.* X and Others in 1992. The Supreme Court held that if it were established as a matter of probability that there was a real and substantial risk to the life, as distinct from the health, of the mother and that this real and substantial risk could only be averted by the termination of her pregnancy, such a termination was lawful. A termination of pregnancy arising from a risk to life from suicide was deemed lawful under this judgment.

This issue was revisited in the judgment of the European Court of Human Rights in the A, B and C *v.* Ireland case, which placed Ireland under obligation to put in place and implement a legislative or regulatory regime providing effective and accessible procedures whereby a pregnant woman can establish whether a termination may be carried out in accordance with Article 40.3.3° of the Constitution as interpreted by the Supreme Court in the X case. Last December, the Government approved the implementation of the judgment of the European Court of Human Rights in the A, B and C *v.* Ireland case, by way of legislation and regulations within the parameters of Article 40.3.3o of the Constitution as interpreted by the Supreme Court in the X case.

This Bill aims to give effect to the Government's decision to legislate in this area. I admit I urged the Taoiseach to delay the legislation, because I knew it would be divisive and would present me and many others with having to make a decision that could have far-reaching implications for women and the unborn. I also asked the Taoiseach to allow Fine Gael Members of the Oireachtas to have a free vote on the issue. I am disappointed he did not accede to this. I regret the fact that five members of our parliamentary party are currently outside the party because of their conscientious objection. That said, I accept the Taoiseach has a responsibility to uphold the Constitution and the Bill is framed within the parameters of Article 40.3.3o of the Constitution.

All sides in this debate support most of the provisions of the Bill, with the exception of section 9, which deals with the issue of suicidal ideation. I would have hoped this section could have been removed, but I understand the decision in the X case prevents this. The recent Oireachtas hearings were helpful in giving all of us information and advice. This was, at times, very confusing, particularly when we saw eminent medical and legal experts differ widely on some aspects of the legislation, particularly with regard to suicide.

Yesterday, I was moved by an issue raised by Senator O'Donnell when she asked if we thought any of the 100,000 people who travelled to England over the past 30 years for an abortion would have committed suicide if they were able to obtain a termination in Ireland. We will never know the answer to that question, but I wonder whether any of those terminations could have been prevented if this Bill was in place and the medical people acted appropriately. We will never know.

I am taking a huge leap of faith in deciding to support the legislation. I am doing so because I trust women and the medical profession. I trust women and that they will not attempt to circumvent the legislation to secure a termination except where there is a substantial risk to their lives and I trust the medical profession to provide the appropriate medical treatment for anyone presenting with suicidal tendencies. I trust that a termination would only be consid-

ered as a last resort to save the life of the mother. I also trust the medical profession's ability to identify persons attempting to circumvent the legislation. Every day, we place our health in the hands of the medical profession and trust it with our lives. Why should it be any different in this situation? We must trust the medical profession will act ethically. I doubt any medical person would want to put his or her professional reputation on the line by breaching this tight and restrictive legislation.

I am supporting this legislation on the basis that I believe it will not open the door for abortion, but that it clarifies the current constitutional position for the medical profession and for women. I believe the safeguards in the Bill will ensure this will be the case at all times. I support the Bill because the equal right to life of the unborn will be upheld and the obligation on the medical profession to save both lives, where possible, will be affirmed conclusively. I accept in good faith the assurances from the Taoiseach and the Minister for Health that the safeguards in the Bill are watertight and that the Attorney General has ensured this. I will hold them to account in this regard and I welcome any tightening of section 9 that may be possible in the course of our deliberations over the next number of days.

I sincerely thank the sincere and committed people I have met and with whom I have had discussions over the past number of months. I know some people talked about a difficult time, but I have had nothing but courtesy and respect from everyone to whom I have spoken in east Galway, mainly people from the pro-life movement. My contact with the clergy has been extremely balanced, considerate and understanding. Everybody who has asked me to oppose the legislation has been sincere, committed and dedicated and I acknowledge that on the record here today. I am very conscious that regardless of whatever decision is made in regard to the legislation, nothing is black and white. Women will make their own decisions. None of us here knows what decision any of us would make in a crisis situation.

There has been little discussion regarding the 4,000 women or more per annum who travel to the United Kingdom for an abortion. I hope, like others, when this debate is over that we will concentrate on putting in place sufficient resources to ensure that women in crisis pregnancy have all possible options available to them in order that we can significantly reduce the number who find it necessary to take a flight to England. That is the major challenge for the future as well as ensuring that the legislation proposed is policed and lives up to its commitments.

I was very concerned some weeks ago when I heard Senator Ivana Bacik indicating on the Order of Business that she would attempt, once the legislation was passed, to have a more liberal regime introduced. I wish to put her and the Labour Party on notice that I will be campaigning to ensure that a liberal abortion regime is never put in place in this country.

I and every member of the House want to protect the life of the mother and the unborn child. I hope the legislation that is about to be passed will ensure this happens. I know many people will be disappointed by the decision I have taken in respect of the legislation but I genuinely feel there is a real commitment by the Minister for Health to keep it within the terms of the Constitution and that it will ensure that the medical profession, the doctors and the women in crisis pregnancy situations know exactly where they stand. As legislators we have a duty to ensure that this is the case. We also have a duty and a responsibility to ensure the legislation is not breached, that what we are accepting today is the end of it and that there will be no further amendments that would make it more liberal.

Senator Mark Daly: The issue at hand is two-fold - the medical profession and women

need certainty on the issues around a crisis pregnancy or a pregnancy where there is a medical crisis. On those grounds we welcome many of the provisions in the Bill. Obviously, like many of my colleagues, section 9, which deals with the risk of loss of life from suicide, is the big issue. In a country which has one of the highest rates of suicide in Europe, after the Ukraine, Lithuania and Finland, that this issue is to the fore when it comes to abortion is tragic and sad in many ways. For many weeks and months we have sat here and listened to evidence for and against on suicide and abortion.

Few studies have been done in the area. However, one of the few I have come across was in Finland which, like Ireland, has a high rate of suicide. This study for the period 1987-2000 on injuries, death, suicide and homicides associated with pregnancy concluded that the low rates of death from external causes suggested protective effects of child birth but the elevated risks after a terminated pregnancy need to be recognised in the provision of health care and social services. What that meant in Finland was that the annual suicide rate per 100,000 was 11.3. When associated with a live birth, the annual suicide rate per 100,000 was 5.9 but when associated with an induced abortion the suicide rate per 100,000 was 34.7 - six to seven times the rate for women who had gone through with the birth. This is a limited study but it shows the link between a higher rate of suicide after abortions is there.

We do not have enough evidence on the other issue. Colleagues have quoted experts who have come before us who said that of 100 patients who say they are pregnant and suicidal, three will commit suicide. Given that we do not have wide-ranging studies it is difficult to have the figures verified. However, what we do know is what has happened in other jurisdictions. I listened to colleagues who say they hope this is the end of it and that this will be the some total of abortion legislation being brought into Ireland. We all know in our heart of hearts that once a door is opened it is very hard to get it closed.

We are aware that abortion was introduced in England in 1967 for the hard cases and that there are no easy answers and no answer is 100% correct. Those of us here are faced with making difficult choices. In 1968, there were 22,332 abortions in England and Wales; by 1972 the number was 108,000; and in 2011 in England, Scotland and Wales there was 200,000 abortions. One in five pregnancies in England end in abortion.

I have heard colleagues say this will not be a mechanism to open the door. The evidence is clear. As we have seen in England, when it was introduced for hard cases, it was turned into a mechanism by those who are in favour of pro-choice. Those who are pro-choice and honest have said they will move the boundary forward and keep opening the door. If that is their belief that is what they wish to do. *Aborting America* by Dr. Bernard Nathanson is relevant when it comes to this particular case. It has been quoted by others but I will quote it again. In his book, Dr. Bernard Nathanson mentioned how he went after the issue of abortion and tried to liberalise the laws on abortion in America. He said:

> The attack had to be made in the weakest area, the psychiatric indication, which was inexact, unmeasurable, yet sufficiently threatening. Once a breach was made in that area, once a few precedent-setting cases got by, then we could pour them through in unlimited number. The supposed threat of suicide was the logical battering ram. It was just a question of finding a squad of complaisant psychiatrists.

How was the structure set up?

The typical hospital abortion committee required that all appeals be submitted in duplicate, accompanied by two letters from consultants who agreed with the obstetrician-advocate. Thus in the case of psychiatric indication, two psychiatrists on the staff of that hospital must write letters on behalf of the patient. In a typical instance, the committee would meet one morning each week in the office of the director of obstetrics and gynaecology. The obstetrician would have to appear in person, armed with the documents and prepared to defend his application. Fair and workable, in theory, though the "old boy" network among doctors sometimes produced a special advantage.

He further states:

The committees were approving virtually all applications, rejecting only those in which the paperwork was inadequate or incorrect, or in which the obstetrician failed to show up altogether.

4 o'clock

This was after a number of years. The Attorney General has said it will be watertight, but over time in America the system fell apart. Having allowed the first few abortions on psychiatric grounds, they could hardly reject the next 100 when the letters came from the same staff psychiatrists, couched in the same ominous, though opaque, psycho-jargon. That is what happened in America and, unfortunately, there is the threat that the same will happen here. Others have said we will continue to export to England what some describe as a problem but which I would describe as a human tragedy. Those who live in the hope that this will close the door are probably badly mistaken; this will be the opening of the door.

Senator Martin Conway: I welcome the Minister of State at the Department of Health, Deputy Kathleen Lynch.

I have listened very carefully to much deliberation and discussion on this very sensitive issue for several months. I attended a significant portion of the meetings of the Oireachtas Joint Committee on Health and Children and listened to many of the experts. I have listened to many constituents both for and against this legislation. I have also listened to families of people who, unfortunately, have recently taken their own lives and have reflected on the very important decisions we must make here. This issue has been bubbling throughout my lifetime. The Minister of State knows better than most that this has been ongoing for 30 years. It was extremely divisive back in the 1980s and continues to be very divisive. People have very strongly held feelings on both sides of the issue. There are 5,000 of our citizens who have had to go abroad. I believe that is a conservative number. It is a significant number of people over a ten or 15 year period who considered that they had no choice but to go abroad. It is not acceptable that they feel the State has let them down to such a degree that they must travel in order to get some comfort in their lives. It has shamed us as a nation that we have not dealt with this issue. We have not treated or respected the 5,000 citizens who must go abroad. They are citizens, too. They hold Irish passports, vote in elections and the *modus operandi* of the State do not care about them, which is totally unacceptable.

It is absolutely appalling to see how women have been treated in this society, going back generations. Look at how they have been treated in respect of work opportunities, discrimination in the workplace, the political system and in general. Until recently there were places such as golf clubs which had all-male memberships. Women were treated appallingly. It is interest-

ing to note that the 5,000 people who have to go abroad are women, which says a lot and smacks of hypocrisy. I would be totally uncomfortable with having abortion on demand, but we have to be realistic as a country and realise that we are exporting a problem. We are relying on another jurisdiction to solve our problems. That is not good enough and we must mature as a nation.

This legislation provides some certainty for the medical profession. We saw what happened in Galway in the Savita Halappanavar case. I am not saying this legislation would have saved her life, but it would have given her a far better chance. If it were in place, there would at least be legal certainty for doctors. I have a great deal of faith in the medical professionals who do a wonderful job. It is appalling to think the Legislature did not provide them with the certainty that they required. We have seen thousands of people die as a result of suicide in the past decade. Are we saying to their families that we do not take the threat of suicide seriously for a woman just because she is pregnant and, for whatever reason, has suicidal intent? Are we saying to the thousands of families who have lost loved ones to suicide that we are not dealing with this issue? Suicide is a serious problem. The Minister of State, because of her portfolio, is probably more aware than most parliamentarians of the devastating effect of suicide. I have thought long and hard about this and do not accept that section 9 of the Bill should not be included. I have not spoken very much on this issue. I have kept my own counsel, but I believe the provisions are in place to ensure that if somebody has a termination because she is suicidal, it will be for that reason. I have faith in the medical experts and that the proper structure will be put in place.

I deeply respect the views of those who differ from me. This is an issue of conscience. Perhaps it is time we examined the Whip system, that we embraced a new form of politics, not necessarily on this issue. Why should it happen on this issue?

Senator Jim Walsh: These are conscience issues.

Senator Martin Conway: I have a great deal of respect for the Senator and others, but we need to examine the Whip system in general and certainly where there are issues of conscience. I had serious conscience issues in voting on the cuts to the respite care grant because of my background. I wrestled with my conscience on that issue, but I am part of a political party that is trying to deal with the problems facing the country and voted as such, difficult though it was. Similarly, there are other cuts to disability services that I find unpalatable, but because they are necessary to protect the overall good, I have had to vote for them. We need to rethink the Whip system fundamentally, but that is for another day. However, I look forward to that debate.

I am also looking forward to this issue being dealt and coming off the political agenda. While it is an extremely important and serious one, there are other extremely important issues such as getting people back to work and creating jobs that give people equality. I would like to see the Government focus its energies on that issue. When this legislation is done and dusted, the Minister of State will be able to focus her attention on ensuring items such as the UN Convention on the Rights of Persons with Disabilities are ratified, as well as on the capacity legislation, on which she is working hard. She will be able to redouble her efforts to ensure we get these important measures over the line. These issues affect the lives of people and will help save lives. It has been a difficult couple of weeks. Some of my best friends cannot support the Bill and I feel for them and the struggle they have had in dealing with this. Having said that, I want to see more support structures for our 5,000 citizens who feel they must go abroad. That is not good enough. The ideal situation is that the 5,000 people are persuaded to keep their babies but that is not always possible. We need to realise this is an issue that cannot continue to be

ignored. By ignoring it, we are ignoring our citizens.

Senator Jim Walsh: When first elected to this House in 1997, I expected to be involved in debates on socio-economic issues along the lines outlined by Senator Conway, who I respect. In all my expectation, I never thought I would be debating the most fundamental right, the right to life. With more sadness than anything else, I rise to make this contribution. My guiding principle throughout my life, in politics and outside it, has been that human life is inviolate from conception to natural death. Interrupt it anywhere along the continuum and the rest of that life is obliterated.

A mother's life must be protected in all medical circumstances, including medical complications during pregnancy. Clear evidence from the Joint Committee on Health and Children hearings was that current medical practice is such that there are no inhibitions on the obstetrician or gynaecologist treating a woman. All of them stated clearly that they never experienced, personally or in the experience of colleagues, a situation where they were inhibited from doing so by the law.

My concern surrounds the inclusion of section 9, which deals with suicidal intent. Undoubtedly, suicide is a major problem in our society. The number of pregnant women, based on medical evidence, is one in 500,000 but some 350 in every 1 million young males commit suicide. It is a huge problem but we must practice evidence-based medicine. No textbooks or medical journals advocate abortion as a treatment for suicidality. It was said by some of the members of the Oireachtas Joint Committee on Health and Children and by some of the pro-choice psychiatrists that it is a treatment for an unwanted pregnancy and therein lies the problem. I subscribe fully to the two-patient model of looking after mother and child, which has served us so well in the past.

Let us consider protecting the mother. I oppose the legislation because it is anti-women. It disempowers women and the experience everywhere is that women in the poorer socio-economic groups are disempowered and suffer most from this. It is also about men failing to take responsibility. In a booklet written by Dr. Pravin Thevathasan, post-abortion trauma is described as the psychological consequence of repressed grief following abortion. He attributes it to low self-esteem and it may be either a symptom of post-abortion trauma or the root cause. He states:

> Guilt may be a healthy sign that a person is gaining insight into the significance of abortion. It will be accompanied by anger when the woman feels that the decision to abort was left to, that is, made by, other people. Guilt may be the beginning of healing, so those who campaign for guilt-free abortion are attempting to rob human beings of their very humanity. [...] Suicidal thoughts are not uncommon and may be seen as an unhealthy attempt to atone for the destructive act of abortion. Broken relationships are common following abortion. This is because the father and/or mother may be silently grieving for the aborted child and because either parent may feel let down, manipulated, ignored, spurned - even disgusted - by the other. [...] Anger is often directed at the father of the aborted child, at friends or other relatives who suggested the abortion [...] Flashbacks may occur [...] Some women have flashbacks when they pass any hospital or clinic where abortions are done [and some when they give birth to another child]. Anniversaries – of the conception, the abortion and the projected date of birth – can produce sudden low moods. [...] Alcohol abuse as a means of coping with the emotional pain of abortion is common, as are drug abuse, sexual promiscuity and other forms of addiction.

All this was clearly illustrated by any who took the time and trouble to attend the various meetings at which Women Hurt attended. In the 21st century, is this medieval barbaric procedure the best we can offer a woman who has an unwanted pregnancy and who can, no doubt, be in serious distress? The doctor to whom I referred gave case studies from his experience. He talked about a 20-year-old student presenting with severe depression, who had two abortions in four years. A 35-year-old woman had been cutting her wrists and the reason given was that, at the age of 18, she was coerced into an abortion by her boyfriend. Cutting herself was a symbolic gesture of atonement for the destructive act of abortion. A 16-year-old girl, seen after her tenth overdose, was feeling angry and depressed over following an abortion. A 50-year-old woman was admitted with severe depression because of talking about the abortion she had 30 years previously. A 25-year-old man started using hallucinogenic drugs in order, he said, to get in touch with his lost child.

Some years ago, the actress Shelley Winters talked about her two abortions. She said she would give up everything, including her money and academy awards, if only she could have those children now. Gloria Swanson begins and ends her autobiography with lamentations over her aborted child. Recently, other celebrities including Sharon Osbourne and Nicole Appleton spoke of their heartbreak following abortion. Dr. Pravin Thevathasan states:

> As a nation, we were profoundly moved when a young artist killed herself after aborting her twin babies. She wrote of how much she longed to be with them.

So much for claiming the legislation is about protecting women. When we move on to the unborn, obviously they have no chance whatsoever. Sometimes, when we talk about abortion, people are prone to using sanitised language. I refer Members to Dr. Anthony Levatino, a US obstetrician who performed as many as 1,200 abortions. After his daughter died in a tragic automobile accident, he re-evaluated his position on abortion and stopped performing them. He told members of a Congressional committee they should support a Bill going through and described in detail what abortion is. He stated:

> Your patient has been feeling her baby kick for the last 2 months or more but now she is asleep on an operating room table and you are there to help her with her problem pregnancy. The first task is remove the laminaria that had earlier been placed in the cervix to dilate it sufficiently to allow the procedure you are about to perform. [...] The first instrument you reach for is a 14-French suction catheter. [...] Picture yourself introducing this catheter through the cervix and instructing the circulating nurse to turn on the suction machine. [...] What you will see is a pale yellow fluid that looks a lot like urine coming through the catheter into a glass bottle on the suction machine. This is the amniotic fluid that surrounded the baby to protect her. With suction complete, look for your Sopher clamp. [...] This instrument is for grasping and crushing tissue. When it gets hold of something, it does not let go.

It continues:

> A second trimester D&E abortion is a blind procedure. The baby can be seen in any orientation or position inside the uterus. Picture yourself reaching with the Sopher clamp and grasping anything you can. [...] Once you have grasped something inside, squeeze on the clamp to set the jaws and pull hard - really hard. You feel something let go and out pops a fully formed leg about six inches long. Reach in again. [...] Set the jaw and pull really hard once again and out pops an arm about the same length. Reach in again and again with that clamp and tear out the spine, intestines, heart and lungs.

> The toughest part of a D&E abortion is extracting the baby's head. [...] You can be pretty sure you have hold of it if the Sopher clamp is spread about as far as your fingers will allow. You will know you have it right when you crush down on the clamp and see white gelatinous material coming through the cervix. That was the baby's brains. You can then extract the skull pieces. Many times a little face will come out and stare back at you. Congratulations! [....] You just affirmed her right to choose. If you refuse to believe that this procedure inflicts severe pain on that unborn child, please think again.

Colleagues, that is abortion. That is what we are being asked to vote for by the Government. Good people in both Houses are being coerced to abrogate their conscience. I urge Members to follow their conscience for their own peace of mind and not to abrogate it to anybody.

I shall finish by quoting a short poem written in 1969 by the late John Francis Collins and published by his brother. He wrote the poem following a newspaper report printed on 22 May 1969 about an aborted baby crying out while on its way to the incinerator - a thought that is hard and abhorrent to contemplate. The poem is called The Cry of An Aborted Child and is as follows:

> Hear me O God. Hear.
>
> From the depths of my condemned cell I cry.
>
> None will hear me but You because You see, I have no vote.
>
> I did not murder nor did I steal or wound.
>
> Yet I am held here helpless before the sterile steel
>
> Or the poisoned needle.
>
> A death too brutal for murderers is a death reserved for me.
>
> No comforting breast nor loving Mother's arms await me.
>
> My body will be given to be burned.
>
> What have I done?
>
> I have not earned this sordid unlamented end.
>
> In sin was I conceived.
>
> Unwanted, I die before I shall be born.
>
> O when the metal enters my brain, when I shall kick my last convulsive agony,
>
> take me, take me to Your arms.

I ask Members, who may not have given it full consideration, to reflect on what they will do later today when making a choice. We have a choice. We vote for our values. We vote for life rather than the coercion of the Whip.

Senator Terry Brennan: I welcome the Minister of State to the House. I am one of the people who attended the six days of hearings. I listened to all sides of the argument and did not

ask one question. I, too, congratulate the Chairman, Deputy Jerry Buttimer, on his performance for the entire hearing.

The Protection of Life During Pregnancy Bill has received enormous discussion and coverage over the past couple of months and we all agree that it is a sensitive issue. The Bill does not change the law or rights but delivers clarity and certainty for the constitutional rights conferred by the people on the women of this country, the right to a termination of pregnancy in very specific circumstances where there is a real and substantial threat to a woman's life. The Bill identifies a duty and a constitutional responsibility on medical personnel of their obligations to everything possible and practicable to save the lives of the unborn. We must have total trust in our medical professionals.

The Bill brings the clarity and certainty that is needs. It still means that Ireland is one of the safest countries in the world for childbirth with one of the most restrictive regimes now clarified by the new Bill. I have been convinced that the legislation will not lead to the introduction of abortion on demand in this country. It will, however, clarify the very rare circumstances in which doctors can intervene where there is a real risk of a woman losing her life during pregnancy. If I felt for one moment that the Bill would lead to abortion on demand then I would not hesitate to vote "No". I sincerely hope that I am taking the right decision.

In late 2010 the European Court of Human Rights in its judgment in the A, B and C *v*. Ireland case which has been referred to by other colleagues. It required Ireland to provide legal clarity to women on the circumstances in which they were entitled to a medical termination of pregnancy where there is a real and substantial risk to her life that can only be averted by the termination of her pregnancy.

The entitlement was determined by the Supreme Court in 1992 in its judgment on the X case. I reiterate that it is a constitutional right which has existed since then. The Bill provides legal clarity by way of legislation and regulations of the circumstances where a medical termination is permissible where there is a real and substantial risk to the life, as opposed to the health, of a woman. The legislation is also strictly within the parameters of the Constitution and Supreme Court judgment in the X case. It will cover existing constitutional rights only and will not create any new rights. In my humble opinion, this point must be emphasised.

The Bill states that the equal right to life of the unborn will be upheld and the obligation on the medical profession is to save both lives, where possible. The medical termination of pregnancy can only be legally permitted in the situation where all of the doctors involved in the assessment process have jointly and unanimously certified that it is the only treatment that will save the woman's life by averting the real and substantial risk to her life.

The general prohibition on abortion in Ireland is restated and severe penalties will apply to any person or body that is responsible for an unlawful termination of unborn life. Processes are set out to establish the circumstances in which there is a real and substantial risk to the life as distinct from the health of a woman and where the only treatment that will avert that risk is the termination of her pregnancy.

In the case of a medical emergency, where the risk of a woman's life is immediate, one doctor may take the decision. In such an emergency the doctor involved will be required to certify the reasons for his or her actions within 72 hours. In the case of a real and substantial risk to a woman's life, arising from a physical health condition, the assessment process will require that

an obstetrician-gynaecologist and a second relevant specialist must jointly agree and certify that the termination of pregnancy is the only treatment that will save the mother's life. The woman's general practitioner will be consulted when and where possible. In the case of a real and substantial risk to a woman's life arising from self-destruction, additional safeguards will be put in place, the assessment process will involve three specialists, one obstetrician-gynaecologist and two psychiatrists, must jointly and unanimously agree and certify that the termination of pregnancy is the only treatment that will save the mother's life.

In conclusion, I have been blessed with three wonderful children and 11 grandchildren. As a grandparent and parent, I believe and have always believed that human life is a sacred gift. As I have already stated, I am totally opposed to abortion. In my short political career three individual young girls came to me for help. One of them approached me on Christmas Day which I shall never forget. She told me that her parents had put her in a caravan parked in their back garden. I spoke to her for an hour and a half and succeeded in asking her to change her mind and give it 24 hours. I got a GP to speak with her. I asked her to give that young boy or girl a chance to live. One of the greatest honours ever bestowed on me was to be invited to that young child's first communion a year and a half ago. It was a wonderful achievement. Another mother came to me to tell me her young daughter was pregnant and suicidal. I told her I had no experience and approached a colleague who was a general practitioner and we had a chat with the mother and the daughter. It was not the case that she was suicidal but her mother did not want her to have her baby. She has since married the man and they have three children. She was not suicidal. Only three weeks ago, I was coming out of church on a Sunday morning. I got a tap on the shoulder from a lady who spoke with an English accent. She said she knew I was as an Oireachtas Member as her sister had recognised me from 40 years previously and that I was going to be supporting abortion in Ireland. I was surprised that I had not changed in 40 years. She told me her story. She had an abortion in England 21 years ago and later married the man whose child she aborted. They were not blessed with any children and she still regrets having had that abortion.

I am totally opposed to abortion. I encourage anyone who is pregnant, whether she is single or otherwise, to ensure that young boy or girl gets the opportunity to live. I am not codding when I say that the two children to whom I have referred give me such great honour. They do not know nor does anyone else. I have not disclosed who they were even to my own wife and children. I am honoured to be able to say it in the House.

Senator Diarmuid Wilson: I welcome the Minister for Health, Deputy James Reilly, back to the House. I welcome the opportunity to speak on an important debate.

There are very few issues which have come before the House to which I have given more consideration. Like colleagues across the House, I have had several lengthy and impassioned discussions with people from all sides. I have followed public debates closely over the past weeks and months, listened to the many sincere and genuinely-argued contributions from all sides in the Chamber yesterday and today, in the Dáil over the last couple of weeks and in the media. I paid particular attention to the proceedings of the Joint Committee on Health and Children, which provided a calm and reasoned forum for experts from a range of medical and legal disciplines to present evidence, offer opinions and engage with Members with a view to helping to inform the preparation and drafting of the Bill before us. While the discussions undoubtedly helped many Members to develop a better understanding and appreciation of the issues, perhaps providing them with an improved insight into contrary arguments, the proceedings did not significantly change anyone's mind. Certainly, they did not change the minds of

the Taoiseach or the Minister.

Assuming the Taoiseach and the Minister watched the debates, it is difficult to see how they missed the clear evidence of the various psychiatrists who appeared and stated again and again to the committee that abortion is not an appropriate course of action in the treatment of suicidal ideation. The testimony of psychiatrists before the committee was absolutely clear that there is no basis in medical evidence for section 9 of the Bill. As Members of the Minister's party said during the debate in the Dáil, it is clear that the Government has ignored everything the experts had to say and come up with a Bill which owes more to political expediency and power-broking than medical evidence. I am sorry to have to say that. The absolute refusal of the Government to yield to the evidence of these experts and change section 9 of the Bill makes it impossible for me to vote for it here today.

There is much in the Bill which many, including me, on both sides could support. I welcome the clarity the Bill offers to medical professionals and the reassurance it offers women that every necessary treatment can be provided to protect them where there is a real and substantial risk to their lives. Regrettably, the Government, in particular its Fine Gael element, has reneged on pledges contained in the infamous letter Deputy Phil Hogan gave to Fine Gael candidates to show voters across the country before the last election. I am sorry to have to record that Fine Gael has turned its back on everything it promised before the last election regarding abortion. While the Government's legislation is deeply flawed, several Fine Gael Deputies have discovered that it has no intention of offering any leeway or possibility for reconsideration. In passing a Bill that retains section 9 as drafted, we are writing into our Statute Book a law that makes the destruction and killing of one human life legal where it is done in response to the suicidality of another. Generations to come will wonder how we allowed ourselves to pass this law. Contrary to the genuine belief of some that this is an overdue measure needed to bring finality to some aspects of the X case, I have no doubt that a future Dáil and, hopefully, Seanad will have to revisit the issue and unpick the legislative and administrative mess we are about to make.

The Government says it is simply legislating for the X case as it is obliged to do. Nevertheless, a great deal of legal opinion is to the contrary, including the opinions of former Supreme Court judge, Hugh O'Flaherty, and Dr. Maria Cahill, lecturer in constitutional law in University College Cork, who was invited to give evidence to the joint committee on the heads of the Bill. She said in an article published at the end of June:

> The legal reality is that there is no obligation on the Government deriving from the Constitution or from the European Court of Human Rights or from the Supreme Court to propose legislation for a suicide-based exemption from the right to life.

That is the opinion of a legal expert who is one of many who are of the same opinion.

More important, are we to ignore and disregard the development of medical practice and experience in the period since the X case and the 2002 referendum? Members in the Dáil pointed out that the Royal College of Psychiatrists in the UK has amended its guidelines over recent years to take account of the growing body of evidence regarding the increased risks of mental disorders following abortion. Likewise, we must pay careful attention to what the former Director of Public Prosecutions, Mr. Eamonn Barnes, has said about the Bill. He believes it is unconstitutional because "the foetus gets no chance to have its right to survival advocated". Article 40.3.3o of the Constitution provides:

> The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

Under this legislation, who will vindicate the life of the unborn, the right of the father and the right of the mother?

Several Members on the Government side are deeply concerned by the legislation but find themselves compelled to support it against their better judgement. In that regard, I welcome Deputy Peter Mathews to the Visitors Gallery and commend him and his four colleagues on standing by their convictions. That is not to condemn anyone who voted differently in the Dáil. I am grateful for an e-mail I received from Seamus Ó Concubhair in respect of Article 15.10 of the Constitution. The e-mail states:

> Article 15.10 of the Constitution states the following:
>
> > Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.
>
> Legislators are elected and deputed by the people to enact legislation in accordance with their understanding of the common good. If a member was found, for example, to have voted on a particular measure in return for a payment of money, that would be clearly corrupt. Why should it be considered less corrupt if, instead of money, the coercion is in the form of a naked threat of professional and political injury?

That is unfortunately what has happened to many members of the Fine Gael Party in these Houses. In my opinion, the Fine Gael Parliamentary Party could be in breach of Article 15.10 of our Constitution.

I regret that the Taoiseach has denied his colleagues the option of a free vote. I welcome the fact that my party has agreed to allow its members a free vote. I advocated that, as did many other colleagues. I am conscious that members of my party in this House will be voting for this legislation, and I respect that. However, I will exercise my free vote and will oppose this Bill on Second Stage and remaining Stages when the Government offers us the opportunity to vote, not only because I believe in the protection of the mother as well as the protection of the unborn child, but because I believe the central premise of section 9 is flawed and wrong.

Minister for Health (Deputy James Reilly): I thank the Senators for their contributions, and I know there is broad support for the Bill overall. As has been indicated since the intention to legislate in this area was first agreed, the sole purpose of this Bill is to make provision for procedural rights for a pregnant woman who believes she has a life-threatening condition so that she can have certainty as to whether she requires this treatment. The purpose of the Bill is not to confer new rights to termination of pregnancy, but to clarify existing rights - that is, within the constitutional provisions and the Supreme Court judgment in the X case - and in order to implement the judgment of the European Court of Human Rights in the A, B and C *v.* Ireland case. In the judgment of the ECHR delivered on 16 December 2010, the Grand Chamber determined that there had been no violation of the European Convention on Human Rights in relation to the first and second applicants, Ms A and Ms B, but that there had been a violation

of Article 8 of the European Convention on Human Rights in respect of the third applicant, Ms C. The court found that Ireland had failed to respect Ms C's right to private life, contrary to Article 8 of the convention, as there was no accessible and effective procedure to enable her to establish whether she qualified for a lawful termination of pregnancy in accordance with Irish law. The aim of the Bill is to provide such a procedure. A pregnant woman whose life is at risk has a right to be able to access appropriate medical treatment, including lawful termination of pregnancy, when she fulfils the necessary medical and legal criteria.

This Bill represents the culmination of a process that was set in train in the programme for Government. This programme committed the Government to establishing an expert group to examine these issues and to advise on how this matter should be properly addressed. The expert group report was published at the end of last year and provided a clear road map for action. While the report examined a number of options for implementation of the judgment in the A, B and C *v.* Ireland case, it was my reading of the report that legislation with regulations was the preferable route to satisfy the requirements of the implementation process of the judgment of the European Court of Human Rights. That was also the view of the Government.

Legislating for the X case is a serious and legally complex issue, but I believe that this Bill strikes a balance between providing an accessible procedure for establishing whether a pregnant woman might undergo a medical procedure which will end the life of the unborn, and ensuring that safeguards are put in place for the protection of the unborn where possible. It is critically important to emphasise that following the Supreme Court decision in the X case, termination of pregnancy is legal in this country as we speak. That is the reality. I do not know how many such terminations have taken place. I do not know where they may have taken place, or by whom or on what grounds. This Bill sets out to regulate that situation and to confer protection on the mother and the unborn child.

I would now like to turn to the issues raised by Senators during the debate. I am aware that one of the most common reasons for opposing this Bill is the fact that it includes suicide as grounds in some rare cases for permitting the termination of a pregnancy. The reality is that these grounds are already included in Irish law on this area. During the X case in 1992, a majority of members of the Supreme Court of Ireland specifically recognised suicide as a legitimate basis for permitting the termination of pregnancy if it were established, as a matter of probability, that there was a real and substantial risk to the life, as distinct from the health, of the mother that could only be averted by the termination of her pregnancy. This principle was upheld in two subsequent referendums on the issue. Suicide in pregnancy is real. It is rare but it does happen, and when it happens it is always a tragedy.

Many have argued against including suicide in this Bill on the basis that termination of pregnancy is not a treatment for suicide. However, we heard from eminent psychiatrists during the hearings at the Joint Committee on Health and Children who informed us that there is no definitive treatment for suicide. All psychiatrists can do is to try to prevent it, and this entails looking at the causes of suicide and what can be done to address those causes. For the avoidance of doubt, I will quote Dr. Anthony McCarthy, who is the president of the College of Psychiatrists in Ireland:

> Suicide in pregnancy is real; it is a real risk and it does happen. This is always a tragedy as at least two lives are lost and many others are affected significantly. We must do everything we can to prevent such deaths. Much has been made and will be made about the so-called lack of evidence with regard to abortion and whether it will ever prevent a sui-

cide. I believe there will never be statistical evidence to prove this point one way or other because trying to prove anything statistically for such a rare event is extremely difficult, if not impossible. Only a study involving thousands of women who were expressing suicidal ideation in pregnancy and wanted an abortion, and where half of them had that abortion and the other half did not, for example, if they were prevented from travelling to the UK, could answer this question about statistical evidence. This study will almost certainly never be done, I hope.

He goes on to state the following:

I will specifically discuss a phrase that is being quoted frequently at the moment that "abortion is never a treatment for suicide". This is true, and abortion is never a treatment for suicide, but neither is counselling, psychotherapy, antidepressants or anything else. There is no treatment for suicide. What society needs to address in general, and what we as psychiatrists have to do specifically, is try to prevent suicide, and this requires looking at the causes of suicide and what can be done to address those causes. The question is not whether abortion treats suicide but is there ever a case where a woman will kill herself because of an unwanted pregnancy, and if so, what can we do to save her life, and would that ever be a termination of pregnancy? This Bill is about legislating for that very small but real possibility.

Senator Rónán Mullen: On a point of order, the Minister keeps referring to treatment for suicide. Does he mean suicidal ideation? I think his words are causing a lot confusion.

An Cathaoirleach: That is not a point of order.

Deputy James Reilly: Quite the converse. I just told the House that there is no definitive treatment for suicide. It should also be clarified that while in some circumstances a woman has a right to have the pregnancy brought to an end, doctors, in their reasonable opinion, must have regard to the need to protect the right to life of the unborn and preserve unborn human life, where practicable. The emphasis on preserving unborn human life means that a doctor will be obliged, as far as practicable, to end the pregnancy in such a way as to preserve the life of the unborn. The Bill does prohibit the killing of a viable foetus. To be clear, no woman, doctor, citizen or non-citizen in this country has a right to end the life of a viable foetus. A woman is entitled to terminate the pregnancy only.

It has been suggested the legislation should include a clear provision with an explicit reference to viability. In this regard, it is important to note that the precise point of viability may change, depending on how many factors relating to the development of the foetus come into play. Gestational age is just one. When I started practice, 28 weeks was regarded as the limit of viability. It is now 24 weeks, heading for 23. It is preferable that no artificial, fixed definition of viability be introduced in order that the circumstances of each woman can be assessed to determine whether viability has been reached as part of the overall decision-making in the management of her case. It should be noted, however, that the decision to be reached is not so much a balancing of the competing rights but a clinical assessment of whether the mother's life, as opposed to her health, is threatened by a real and substantial risk that can be averted only by a termination of pregnancy. Therefore, it is clear that all other treatments must have been considered and some tried, subject to sound clinical judgment.

Several Senators would have liked to have seen other grounds included in the legislation, particularly in respect of heartbreaking cases where there is a diagnosis of a fatal foetal abnor-

mality, or where the pregnancy is as a result of rape or incest. While I can understand the Senators' concerns in this regard, these provisions cannot be included because the purpose of the Bill is not to confer new rights regarding the termination of pregnancy but to clarify existing rights.

Some Senators have expressed their concerns about the potential criminalisation of pregnant women and the penalty to be imposed for the offence of intentional destruction of unborn human life. While it is recognised that the potential criminalisation of a pregnant woman is a very difficult and sensitive matter, this provision reflects the State's constitutional obligation arising from Article 40.3.3°. It would also be inequitable to have, as a matter of course, a significant penalty for the person performing an unlawful medical procedure but none at all for the woman who is willingly undergoing such a procedure. A woman can currently be prosecuted for a non-lawful abortion under the Offences against the Person Act 1861. It is stated she shall be liable "to be kept in penal servitude for life".

Let me address some of the contributions made. I regret, in a way, the political nature of the letter issued by Fine Gael before the last general election, but it did state there would be an all-party committee on the case of A, B and C. It stated abortion would not be legalised. This Bill does not do that; rather it clarifies the position. It is, however, already legal. I am very sorry for those who wish to believe otherwise. The Supreme Court and the Constitution speak louder than any of us here will ever do.

The third issue concerned the provision of services for women when they needed them. That is what the Bill is about also.

We have already covered the issue of the programme for Government which concluded that there should be an expert group. That has led us to where we are today.

Notwithstanding some of the comments made, I have listened intently, as have my colleagues, the Ministers of State, Deputies Alex White and Kathleen Lynch. Amendments have been made to the Bill as it has proceeded. I sometimes regret that I feel there are some who listen only to one side of the argument without considering the other in the context of the legal opinions quoted.

Senator Jim Walsh: We will be the judge of that.

Deputy James Reilly: I can understand that, but it does not change the circumstances from my perspective. I must take the legal advice given by the highest officer in the land, the Attorney General, whose advice is the legal advice to the Government.

The proposed legislation does not create a new offence for pregnant women but brings the penalty for the offence into line with current parameters. From a review of the main categories of criminal offences on the Statute Book, the term of 14 years was considered appropriate. The term is "not to exceed 14 years". I do not believe the Director of Public Prosecutions, in his or her wisdom, and the courts, in theirs, and in showing compassion, would allow circumstances in which a young girl could find herself in jail in the circumstances in question. The sentence to be applied in any case is a matter for the court involved.

The main purpose of the Protection of Life During Pregnancy Bill is to restate the general prohibition on abortion in Ireland by regulating access to a lawful termination of pregnancy in accordance with the X case judgment and the judgment of the European Court of Human Rights in the A, B and C *v.* Ireland case. As others have stated, we should trust doctors and we must

trust mothers to be. It is not unreasonable to suggest that if this law had been passed in 1992, lives could have been saved. The Bill is about saving lives - the life of the mother and the life of her unborn child. It is about giving clarity to women on what they are entitled to and how to gain access to entitlements. It is about giving clarity to doctors and nurses on what they are permitted and legally obliged to provide. I commend the Bill to the House.

5 o'clock

Question put: "That the words proposed to be deleted stand part of the main question."

The Seanad divided by electronic means.

Senator Fidelma Healy Eames: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Question put: "That the words proposed to be deleted stand part of the main question."

The Seanad divided: Tá, 41; Níl, 15.	
Tá	Níl
Bacik, Ivana.	Bradford, Paul.
Barrett, Sean D.	Byrne, Thomas.
Brennan, Terry.	Daly, Mark.
Burke, Colm.	Healy Eames, Fidelma.
Clune, Deirdre.	Leyden, Terry.
Coghlan, Eamonn.	MacSharry, Marc.
Coghlan, Paul.	Mooney, Paschal.
Comiskey, Michael.	Mullen, Rónán.
Conway, Martin.	O'Brien, Mary Ann.
Crown, John.	O'Donovan, Denis.
Cullinane, David.	Ó Domhnaill, Brian.
Cummins, Maurice.	Ó Murchú, Labhrás.
D'Arcy, Jim.	Quinn, Feargal.
D'Arcy, Michael.	Walsh, Jim.
Gilroy, John.	Wilson, Diarmuid.
Harte, Jimmy.	
Hayden, Aideen.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Mac Conghail, Fiach.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullins, Michael.	

Noone, Catherine.	
O'Brien, Darragh.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
O'Sullivan, Ned.	
Ó Clochartaigh, Trevor.	
Power, Averil.	
Reilly, Kathryn.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	
White, Mary M.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Fidelma Healy Eames and Feargal Quinn.

Question declared carried.

Amendment declared lost.

An Cathaoirleach: Under Standing Order 199 the Bill is deemed to have been read a Second Time. When is it proposed to take Committee Stage?

Senator Maurice Cummins: Tomorrow.

Question put: "That Committee Stage be taken tomorrow."

The Seanad divided: Tá, 42; Níl, 14.	
Tá	Níl
Bacik, Ivana.	Byrne, Thomas.
Barrett, Sean D.	Daly, Mark.
Bradford, Paul.	Healy Eames, Fidelma.
Brennan, Terry.	Leyden, Terry.
Burke, Colm.	MacSharry, Marc.
Clune, Deirdre.	Mooney, Paschal.
Coghlan, Eamonn.	Mullen, Rónán.
Coghlan, Paul.	O'Brien, Mary Ann.
Comiskey, Michael.	O'Donovan, Denis.
Conway, Martin.	Ó Domhnaill, Brian.

Crown, John.	Ó Murchú, Labhrás.
Cullinane, David.	Quinn, Feargal.
Cummins, Maurice.	Walsh, Jim.
D'Arcy, Jim.	Wilson, Diarmuid.
D'Arcy, Michael.	
Gilroy, John.	
Harte, Jimmy.	
Hayden, Aideen.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Mac Conghail, Fiach.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullins, Michael.	
Noone, Catherine.	
O'Brien, Darragh.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
O'Sullivan, Ned.	
Ó Clochartaigh, Trevor.	
Power, Averil.	
Reilly, Kathryn.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	
White, Mary M.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Feargal Quinn and Diarmuid Wilson.

Question declared carried.

Sitting suspended at 5.30 p.m. and resumed at 5.50 p.m.

Land and Conveyancing Law Reform Bill 2013: Report Stage

Acting Chairman (Senator Diarmuid Wilson): Before we begin, I would like to remind Senators that a Senator may speak only once on Report Stage, except the proposer of an amendment, who may reply to discussion on the amendment. Each amendment must be seconded on Report Stage. I welcome the Minister for Justice and Equality to the House.

Senator Thomas Byrne: I move amendment No. 1:

In page 6, between lines 7 and 8, to insert the following:

"Power of Court to determine the rejection of a proposal for a Personal Insolvency Arrangement as unreasonable

4. (1) Where in an application by a mortgagee for repossession of a property to which *section 2(1)* applies, a proposal for a Personal Insolvency Arrangement made pursuant to section 98(1)(c) of the Act of 2012 which included the debt of the property had been rejected by reason, in whole or in part, of a vote by the mortgagee at a creditors meeting held pursuant to section 109 of the Act of 2012, the Court shall, with the consent of the mortgagor, direct the Personal Insolvency Practitioner concerned to provide to it a report in writing which shall include the content of the proposal, and any amendments made thereto, for a Personal Insolvency Arrangement.

(2) The Personal Insolvency Practitioner shall cooperate in providing the written report to the Court within a period prescribed by the Court to be not more than 2 months. In making the report to the Court under this section the Personal Insolvency Practitioner shall provide an opinion as to whether the rejection by the mortgagee of the proposal for a Personal Insolvency Arrangement was reasonable.

(3) In providing an opinion pursuant to *subsection (2)* the Personal Insolvency Practitioner shall have regard to whether the proposal of a Personal Insolvency Arrangement constituted an offer to repay an amount, whether on a restructured basis or not, equal to the current value of the property and any other matter considered relevant by the Personal Insolvency Practitioner having regard to his or her experience in the proposing of Personal Insolvency Arrangements.

(4) The Court on receipt of the written report from the Personal Insolvency Practitioner shall cause to be made available to the mortgagor and to the mortgagee a copy of the report and shall provide a reasonable period of time for any response in writing to be provided by either party such period not to exceed one month.

(5) On receipt of any response provided by the parties the Court shall proceed to fix a date of a hearing for the purposes of determination by the Court of the reasonableness or unreasonableness of the rejection by the mortgagee of the mortgagor's proposal for a Personal Insolvency Arrangement.

(6) Any creditor being the subject of the proposal for the Personal Insolvency Arrangement shall be notified in advance of the hearing and shall, on request, be provided with a

copy of the report of the Personal Insolvency Practitioner and any responses provided by the mortgagee or mortgagor and shall be entitled to make submissions at the hearing under this section.

(7) In determining whether or not the rejection of the proposal for a Personal Insolvency Arrangement was reasonable or unreasonable the Court may have regard to the following matters:

(a) the report of the Personal Insolvency Practitioner and any responses received by the mortgagee or mortgagor;

(b) the submissions of any creditor;

(c) whether the proposal of the Personal Insolvency Arrangement constituted an offer to repay an amount, whether on a restructured basis or not, equal to the current

value of the mortgaged property;

(d) the housing needs of the mortgagor and his or her dependants;

(e) the conduct of both parties including the conduct of the mortgagee in underwriting the loan/s secured by the mortgage;

(f) any other circumstances or matters that the Court considers relevant.

(8) If the Court determines that the mortgagee's rejection of the proposal for a Personal Insolvency Arrangement was unreasonable the Court may do any one or more of the

following:

(a) adjourn the application for repossession for such time as is necessary to enable the mortgagor make another proposal for a Personal Insolvency Arrangement and

for a vote on such proposal to be taken pursuant to section 109 of the Act of 2012;

(b) stay the coming into effect of the Order of repossession for a period not exceeding 24 months;

(c) without prejudice to the Courts discretion as to any order for costs it might make order that the mortgagee pay the costs or part costs of and incidental to the following, such costs to include the reasonable costs of the Personal Insolvency Practitioner:

(i) the making of the proposal for a Personal Insolvency Arrangement;

(ii) the application for the Order of repossession;

(iii) the hearing under this section.

(9) A copy of the Personal Insolvency Practitioner's report together with any responses received and any Order made under this section shall be provided to the Insolvency

Service of Ireland.".

It is shameful that we are here, giving the banks this power. The officials can have any

opinion they want; their houses will not be repossessed. Thousands of people are in a position where the bank cannot effectively repossess their property today, but can do so tomorrow. The door is literally opening and this is completely unfair.

The amendment we are proposing tries to go some way towards remedying a defect in the law that existed before the Dunne judgment, which was well recognised in conveyancing textbooks but which has been ignored by the Government. It will provide some element of discretion to the court in respect of a repossession order. The reality is that when an application for repossession comes before the court, then before the Dunne judgment the court had no option but to grant the repossession. It had no discretion whatsoever and this was recognised as a major problem with the law. This Bill does not provide any discretion to the court, other than to look for a personal insolvency arrangement.

The purpose of our amendment is to enhance the discretion of the court and to give more of the benefit of the doubt to the homeowner and more delay for the homeowner. Delaying repossessions is a very important part of the strategy while hundreds of thousands of people remain out of work. When there is full employment and people are able to pay their mortgages, we can have a repossession situation, but until then we have to stop the banks from doing this. We are giving this Bill to the banks and there is absolutely nothing in return. If there was something in return, perhaps we could support it.

Billions have been given over to the banks by both Governments on behalf of the Irish people. Repossessions were halted following the Dunne judgment and through the code of conduct on mortgage arrears during the lifetime of the last Government. What has this Government done for mortgage holders? It has created the personal insolvency legislation in so far as it goes, but it has cut back on the code of conduct put in by the last Government and it has published this Bill. It is an absolute outrage, and this limited amendment is essential to give some discretion to the court and to give some relief to the homeowner to take away some of the power from the banks that the Government seems determined to give them.

Senator Darragh O'Brien: I second the amendment. It is safe to say that the Government is going to give away its biggest stick with which to beat the banks, which would make them do what we all apparently believe they should do. Senator Byrne mentioned the revised code of conduct on mortgage arrears. I have tried every day over the past two weeks to get a response from the Minister for Finance as to why the Government approved the new code of conduct on mortgage arrears, which removes any protection that mortgage holders have. It effectively means that the banks will be able to move on individuals and remove the protection on contacts and various other issues. Only yesterday I got a response from the Leader of the House, which effectively stated that the Central Bank is independent from Government. Did the Cabinet approve the new code of conduct on mortgage arrears? What input did the Department and the Minister for Finance have into the new code of conduct? We were told previously that this was waiting for the approval of the Minister for Finance. I am aware that Deputy Shatter is not the Minister for Finance, but he is a senior member of the Government and both Ministries are related. This Bill, proposed by the Minister for Justice and Equality, will close the loophole which inhibited the banks from moving on repossessions.

I have read several cases into the record of individuals whose applications have been refused by the banks' own appeals committee. These are principal private residences. These are people who have families. These are not investors. These are not developers. These are normal Irish citizens who are paying every month to ensure that we have a banking system and who

expected more back from that system. We have no insolvency set-up. There is no way to track the conversion rates in respect of the banks' own solutions, and the Government has decided not to put in any definition of a sustainable mortgage. It has not set any limits for 35-40% of net take-home pay, which would be the mortgage payment, and it has failed miserably in respect of the one solution which I think will work, namely, split mortgages. Our banks have approved 144 split mortgages out of over 142,000 mortgages in arrears.

Our amendment simply requests that should a decision be made through a personal insolvency arrangement, the court can determine that to be unreasonable. The amendment will give power to the court to state that.

6 o'clock

This is in the absence of the Minister and the Government not agreeing to the establishment of an independent debt settlement office. What they are still doing today is closing the loophole but giving all the power to the banks.

I have heard the Minister on the record, including in this House, and I know he personally put a lot of work into the Personal Insolvency Bill, as did his officials. However, what he should have done was to allow this to happen and then see how the banks would manage it. The Minister said that if the banks did not manage it, he would come back with further legislation. I put it to him that the best thing to do with the banks was to use the Dunne judgment as the stick, and to say he would not bring in the Land and Conveyancing Law Reform Bill 2013 until he actually saw the colour of their money, saw they had done 14,000 or 15,000 split mortgages and saw they were actually playing ball with citizens. He should have held back on this. Instead, what has he done? He has introduced a new code of conduct on mortgage arrears that is open season on mortgage holders and he is closing the last protection by way of a legal loophole for mortgage holders.

I would love to know what advice the Minister and his Department have been given in this regard, and what protection he believes will be in place for distressed mortgage holders should this Bill be passed. We are talking about people's homes. I do not see where this will get us. Only 78 personal insolvency practitioners were registered as of last week, all private individuals and some of them with the "Big Five". How in God's name will we even be able to process this with just 78 practitioners? If one considers the cost of a personal insolvency practitioner presenting a plan to the court, who is going to do that without being assured he or she will be paid? What mechanism will the Minister put in place to ensure they are paid? Will there be a promise to pay? I believe the banks should underwrite the Bill. Has the Minister dealt with the VAT issue in this regard?

I believe this amendment is worthy of being accepted because, at least, it provides a safety net. It does not give the banks the full power in this regard and gives power back to the courts. What the Minister is outlining here is a definitive and clear timeline for banks to repossess properties after 60 days. That is what the legislation means. After 60 days, they can move straight ahead to a repossession order. I cannot fathom why the Minister is doing this. If he is going to hide behind the personal insolvency legislation and say that is going to be the panacea for all our ills, I put to him that it is not.

With regard to the Bill before us, I wonder what contact the Minister's Department has had with the banks and lenders, and what submissions they made on this legislation. As the Minis-

ter personally responsible for this legislation, is he confident we will not see a wholesale issuing of repossession orders under this Bill, when enacted? I put to him that we will. I suggest that by the end of this year, should this be signed into law, we will see some lenders move immediately because the Minister has given no protection to people. Furthermore, this removes any incentive from those lenders which no longer operate here as a lending institution, for example, some of the sub-prime lenders and those who have bought loan books at a discount. They will move immediately to repossess because it is cheaper for them to repossess than to go with any other apparent solution that has been put forward. What incentive will be for those like Start Mortgages, Pepper and others, which are not lending into the economy and not active in the mortgage market, to come up with real solutions? There is no incentive. When the Minister passes this Bill, the easiest thing for any company that bought a loan book at a discount is to move ahead and to repossess the property. That is clearly what will be done.

I ask the Minister to look in detail at the amendments which we have tabled in good faith. These would mean that determinations made in a personal insolvency arrangement can be effectively overturned or stayed by the court. I do not see why the Minister would not do that. We would rather that he introduced a debt settlement office and not take up the time of the courts with these issues, but the Government has refused that at every hand's turn. Furthermore, I would ask whether the Minister's Department and the Department of Finance get regular updates from the pillar banks in particular, and specifically AIB, which has set targets to talk and engage with 4,000 of its customers a month. How do the Departments track what a resolution is? If the banks claim they have dealt with 4,000 people in the last two months, does this mean a resolution is a request for a voluntary sale? Yes, it is. Is a resolution a request to hand over the keys? Yes, it is. They are resolutions, or at least they are what the banks will see as resolutions.

While I do not think the Minister will do it, it is not too late for him to withdraw this legislation. He is giving away the biggest stick he has to hold over the banks in terms of saying that, unless they play ball, we will not enact this legislation. The Minister should hold off on this and give them a year to report back as to how many split mortgages and other arrangements they have put in place. Then, if they are moving along, it is fine. However, I wonder how cumbersome it will be for the Minister to do what he said he would do if the banks do not act under the Personal Insolvency Act, as he believes they will but as I believe they will not. How cumbersome will it be for the Minister to come back and afford the protection to mortgage holders that he is removing here today?

I say to my colleagues on the Government side that this is exactly what they are doing this evening by voting for this Bill. They are removing the protection to householders and closing the loophole. They are doing that in the context of this House not having been allowed to even discuss the new code of conduct on mortgage arrears and to get responses from the Minister for Finance, Deputy Noonan, as to why the new code of conduct is preferable. I will tell the House why it is preferable, namely, because the banks looked for it. At this stage, both the Department of Justice and Equality and the Department of Finance are complicit in ensuring that our banks become profitable again at any price.

I hope I am wrong. I will tell the Minister to his face I am wrong if, in 12 months' time, we have not seen a massive increase in repossession orders being granted. I will say it to the Minister straight. Unfortunately, the Minister, by producing and trying to pass this Bill, is now complicit in opening up the opportunity for the banks to repossess family homes. I honestly cannot understand it. I would love to hear the Minister's response to this, and his response as to why he is not going to accept this amendment, which at least affords some protection and some

independent oversight of this process.

Let us remember that under the Minister's Personal Insolvency Act, the banks have a full veto in that 70% have to agree, whereas, for most people, 70% of their debt would be their mortgage. Therefore, if the lender does not agree to the personal insolvency arrangement put forward, it does not happen. The Minister said that the banks will know a person can opt for bankruptcy under the new three-year rule. Does anyone know what bankruptcy really means to individuals? It is the nuclear button. It is not a solution for people to give up everything they have. Where is the solution? This beggars belief.

As I said, the Minister is giving away his last bargaining chip. He is going against everything in the programme for Government and everything that was said prior to the general election. What this is about is simply making the banks profitable and selling them on at the expense of the Irish people and homeowners. With regard to lenders which have loan books in this market but which have exited the market and are only managing the loan books, what incentive is there for them to operate with any of the initiatives the Minister has brought forward? There is none. What this Bill does is to make sure they will move on repossessions.

I want the Minister to give a commitment today, 16 July 2013, that on 16 July next year he will come into this House and provide an update on the level of repossessions on all homes, including principal private residences, buy-to-lets and all other homes.

Will the Minister give a commitment to return in 12 months? I will apologise to him then if I am wrong, but I very much doubt I will be. We are going to see a massive increase in attempts by lending institutions to take properties from homeowners because in proposing this legislation the Minister is giving them the easiest option. I see no reason for it.

Senator Trevor Ó Clochartaigh: Although I commend the logic of the Fianna Fáil amendment, I liken it to putting an Elastoplast on the hull of the Titanic as it went down. The mortgage crisis is much bigger than this Government admits. Listening to the debates on this Bill I get a sense that the Government is totally out of touch with the mortgage crisis, the 190,000 households that are in mortgage distress, the one in four residential mortgage-holders who are unable to meet their repayments. This will certainly not help that scenario. We see this Government following the flawed policy of the previous one, backing up the banks and giving them all the powers to which Senator O'Brien alluded. It is hard, therefore, to take the crocodile tears of Fianna Fáil on this issue when it created the bubble and the crisis and is now making atonement by proposing an amendment to this Bill. Our stance, as it has been at every Stage of the Bill, will be to oppose it. It is plainly an eviction charter with one simple purpose, namely, to empower the banks to take over people's family homes. Sinn Féin will not stand over that. We will not support this Bill, and although we appreciate the logic behind the amendment, I do not believe it will help at all.

Senator Aideen Hayden: I welcome the people in the Gallery, particularly the members of Threshold national housing organisation, who have a particular interest in this Bill.

In my Second Stage speech I suggested that the provisions of this Bill which allow the Minister to delay its implementation should be exercised by him in view of a number of matters. I refer in particular to the revised mortgage arrears resolution process, or MARP, with which I have severe difficulty, as members of both Government and Opposition know, given the powers it gives to the financial institutions. The personal insolvency legislation and its allied service

are only getting off the ground and there is a significant issue among members of the general public as to how they see that evolving. There is, therefore, a need for a period of six to 12 months in which a certain amount of washing out could take place in that regard. As to the MARP solutions that have been bought into by the Government along with the Central Bank, it is very important that members of the public see how these targets will affect them. I agree with my colleague on the Opposition side that there is an enormous level of uncertainty among the general public as to how this particular legislation will be interpreted.

As I said to the Minister on a previous occasion, I am also very conscious of the fact there is a pick-up in the housing market. There is a serious view, held among both commentators and the general public, that there is a malevolence within banking institutions. They are looking at borrowers who have equity in their homes and waiting for the market to rise so that they can seize houses whose mortgage situations they have been sitting on for the past three or four years and bring them to some kind of conclusion. I have serious reservations about the mortgage resolution process. The idea that in the absence of any independent veto the lender is the one that determines whether a mortgage is affordable for a borrower is unacceptable. The fact that a borrower can access the insolvency process by demonstrating that he or she has engaged with the MARP is something that could lead to severe abuse within the banking system.

The fact is that the people of Ireland do not trust our banks. We can try to gloss over this and walk away from it. As a member of a Government party, I admit this is something the Government must recognise. We have lost faith and confidence in our banking system. When I was 14 years of age my parents brought me into the National Bank premises in Terenure and I opened a bank account with Bank of Ireland, where I have banked ever since. There are many people in this country who have done exactly the same. They believed in and trusted in the banking system and had huge confidence that banks and their bank managers would advise them what was the best thing to do and whether they should do this or that. When somebody sold them a product, told them they could have a mortgage or that such and such was the right thing to do, they believed it. Unfortunately, as with Aladdin and his magic carpet, that has been completely removed. The people no longer trust the banking system in this country.

I know why this legislation is being introduced but I ask the Minister to hold off because I do not believe the people trust the banking system. Until they do, and until they trust us as a Government to do what is right for them, I do not believe the legislation should be introduced. I have been told there is one lending institution that has 4,600 orders for possession ready to rock and roll - I do not know how true that is. I fully understand it may not be the case, but that is the perception among the public. We have to understand that public perception is important, for example, in the housing and mortgage markets. Crucially, it is important for the perception of people in the country who are in enormous distress about what we as a Government are prepared to do.

Yesterday I was told by a person who was bidding for a property, albeit in south County Dublin, that the price quoted was €100,000 more than the property two doors up had sold for less than 12 months ago. We have to accept that the mortgage and housing markets have changed dramatically. Twelve, 24 or 36 months ago, lending institutions in this country would not engage with borrowers. Today I reviewed the file of a woman who is in a life-threatening situation after 96 doses of chemotherapy. Everybody in this House will have had similar experiences. This woman is dealing with a major lending institution and I reviewed her file today, not one, three or six months ago. It was not a pretty sight. She has had a number of letters from one financial institution which has failed entirely to engage with her on numerous occasions. I

point out to the Minister that as a qualified solicitor I am capable of reading a file. I know when something is dressed up for public consumption. The way that lending institution has behaved is an utter disgrace. That is the best way I can describe it.

I am very well aware of the can't-pay-won't-pay scenario and the fact that we are paying for those people who walk off into the sunset, are having foreign holidays, are living here and there and will not pay their debts. However, in my experience the vast majority of people in this country do their absolute best. Irish people value the family home. Going back to the land wars and all the way through Irish history, the home is so important to Irish people. John B. Keane wrote *The Field* and it is a bit of a cliché but the truth is that it matters to Irish people. They do not default easily.

I will not support the Fianna Fáil amendment, although that does not mean I do not have sympathy with it, as I do. The Minister has the option of delaying the implementation of this legislation and I want to see how the personal insolvency legislation is playing out. I want the Irish people to have confidence in the matter. I have praised the Minister on many occasions for the introduction of the legislation, which is groundbreaking. To be fair to our colleagues on the other side, they did not propose an equivalent.

Senator Thomas Byrne: We did. We proposed our own Bill before this one from the Government.

Senator Aideen Hayden: I do not want to get into it.

Senator Thomas Byrne: It had an independent debt settlement body.

Senator Aideen Hayden: I started the speech by saying I would not get into the blame game.

Senator Thomas Byrne: I know but the Senator made an assertion.

Senator Aideen Hayden: I will deal with the here and now.

Senator Thomas Byrne: I respectfully corrected that assertion. I respect everything the Senator has said.

Senator Aideen Hayden: The Senator's party had many opportunities while in Government but it did not get to it.

Acting Chairman (Senator Diarmuid Wilson): Unfortunately, Senator Hayden used the word "speech" but this is Report Stage.

Senator Aideen Hayden: I understand that. I have one opportunity to speak and I will take it. We must all agree and move on in this regard. As I have already said, I am a solicitor and I understand the need for a functioning mortgage and banking market but there must also be confidence in the system, which there is not at this time. There is no confidence in the banking system or insolvency regime because it has not yet had a chance to play out. There is no confidence in the mortgage arrears resolution process. The Minister, of all people, is open-minded.

The Free Legal Advice Centres, FLAC, have made a number of submissions outlining reservations about the new mortgage arrears resolution process. I sat in the House the day before yesterday when we were told this is a matter for the Central Bank and not the Minister for

Finance but I understood there is a high-level Government group engaged with this process. I cannot understand why the Minister for Finance is fobbing this off on the Central Bank. Of course the mortgage arrears resolution process is a matter for the Central Bank but where is the high-level group that is supposed to be engaging with this and in which we are meant to put our trust? I want to see something more coming from the Government with the issue.

A comment was made by colleagues in government about independent advice. To my mind one of the biggest problems we are dealing with in the system and a reason for the lack of confidence in what is proposed is the lack of any real, sustainable and expert advice available to somebody in mortgage arrears. For this reason there must be a veto option. The Money Advice and Budgeting Service, MABS, is a wonderful organisation but it is national and its product is variable, as resources are not sufficient for a distressed borrower who must approach a lender offering a debt solution or even before that point. Such a lender does not have anybody to bat for them who has legal advice and accountancy expertise. Where is the person to put the lender in the same ring with the lender?

When I studied law I was taught about a *contra proferentum* rule, meaning the rules should be interpreted against the person making the rules. I do not see that in what is being proposed here, and where is the facility to put the distressed borrower on an equal footing with the person offering the solution? The lender cannot refuse the solution and when a lender appeals against a solution, it is done within the process offered by the bank that is giving the solution. There is a real issue in terms of a veto.

I appreciate that the Minister has in good faith indicated that if we find the legislation is not working, he will go back to the drawing board. Nevertheless, I am very much aware that I am dealing with a number of people who are receiving letters from a bank telling them they are not engaging and repossession proceedings will commence but at the same time the people in question have a stack of correspondence from the bank indicating they are trying to achieve an outcome. We are not putting the people in mortgage arrears on the same playing field as they ought to be with a lending institution.

In the legislation there is mention of the principal private residence, with judges having the opportunity to agree that a personal insolvency practitioner should be brought in to examine the issue. There is a fundamental flaw in that as if the lender is unwilling to engage, how will there be any significant difference? Ultimately, this goes back to a bank veto. I appreciate that the Minister has left an open door and indicated a willingness to re-engage on the matter. There is a problem nonetheless and we must accept that ultimately this is about confidence. I would personally like to see a debt settlement office and an independent person that disgruntled borrowers or lender can see in that regard, with all of what was proposed being discussed. There could be a judgment from the office.

I do not agree with the opinion from the Opposition that the courts should decide this. I made the point with regard to Senator MacSharry's Bill that we do not want more judicial engagement and we want fewer court settlements. I agree that the personal insolvency legislation goes down that track. There should be somebody to indicate whether a personal insolvency practitioner formulates a very good solution and this should be put to somebody who can give a judgment that is not from the court. There is an idea that a lending institution - which might hold all the debt for an individual - does not have to deal with the matter.

Acting Chairman (Senator Diarmuid Wilson): I remind Senators that this is Report Stage

and we have already had Second Stage speeches.

Senator Martin Conway: I intend to be brief as the Minister is a busy man. I have much sympathy with the proposed amendment but I appeal to people to work with the Minister in this regard. He would not be bringing in this legislation at this time unless he felt it necessary. There is a massive legislative programme but this legislation is a priority. The Government is effectively trying to micro-manage banks as much as possible, and although I am not saying it is a carrot and stick approach, in order for the economy to work we must have a working banking system. Nevertheless, we cannot let banks get away with doing whatever they wish. Unfortunately, we find ourselves in this position because of the recklessness of banks over the years, and although it is regrettable, we are not unique in that sense, and the issue has manifested in other parts of the world as well.

The Minister has made it clear that if this piece of legislation does not work he will return to replace or amend it. The best counsel at this stage is to go with the Minister's legislation and enact it, thereby enabling us to at least take another baby step in the reconstruction of banking and our economy.

Deputy Alan Shatter: I thank the Senators for their contributions. We all agree that the repossession of any home should be a last resort. We have enacted the insolvency legislation which provides various mechanisms to assist people in financial difficulty, including the personal insolvency arrangement designed to resolve the debts of individuals or families with their creditors. These arrangements may involve debt forbearance or forgiveness.

I have to take the mock outrage of Fianna Fáil Senators with a grain of salt. In the 14 years Fianna Fáil was in government, it did not reform the insolvency legislation or make a suggestion for alternative debt resolution processes.

Senator Thomas Byrne: We actually brought forward a Bill.

Deputy Alan Shatter: It has no concern about how light touch regulation helped to seduce tens of thousands of young couples into borrowing way beyond their means and the banks facilitated such borrowings. There was a complete and utter failure to maintain regulatory oversight of the banks. Then, when confronted with a banking disaster, it was paralysed and failed to address any of the issues the Government has been dealing with for the past two and a half years. Will its Senators, please, save their mock outrage because not too many people outside this House believe it?

Senator Darragh O'Brien: That is outrageous.

Senator Thomas Byrne: It is outrageous because the Government has done nothing for people but hand more power to the banks.

Deputy Alan Shatter: The word "outrage" is becoming a seriously devalued currency in the hands of Fianna Fáil whose Members seem to be permanently outraged on a broad range of issues.

Senator Darragh O'Brien: On a point of order, the Minister claims our outrage is mock and that we do not care, even though we have brought forward Bills to resolve the mortgage crisis.

Acting Chairman (Senator Diarmuid Wilson): That is not a point of order.

Senator Darragh O'Brien: That is an outrageous statement for the Minister to make and I ask him to withdraw it.

Acting Chairman (Senator Diarmuid Wilson): The Senator has had his opportunity.

Senator Darragh O'Brien: I have heard the Minister at it before.

Acting Chairman (Senator Diarmuid Wilson): Please, Senator.

Senator Darragh O'Brien: Those comments do nothing to help the people who are about to have their homes repossessed. The Bill will do that very thing.

Acting Chairman (Senator Diarmuid Wilson): The Minister to continue, without interruption.

Senator Darragh O'Brien: I will not have a charge like that made against my colleagues. It is an outrageous charge. The Minister has been a Member for a long time and should know better.

Deputy Alan Shatter: I did not interrupt either Senator. Instead, I listened quietly to their contributions.

Senator Darragh O'Brien: We stuck to the Bill.

Deputy Alan Shatter: Senator Thomas Byrne said that before the Dunne judgment, the courts had no discretion not to order repossessions. That judgment was made in 2011. In 2009, when Fianna Fáil was in government, the Land and Conveyancing Law Reform Act was passed, but it contained no provision to prevent repossessions. The Senator has accepted that when Fianna Fáil introduced the legislation, it was its intention that the courts, when faced with an application for repossession of a family home, would grant orders. There was no provision contained in that legislation-----

Senator Thomas Byrne: We drafted a Bill to deal with that issue when we went into opposition.

An Cathaoirleach: The Minister to continue, without interruption.

Deputy Alan Shatter: There was no provision such as is contained in this Bill that would allow the courts to adjourn proceedings where an application for repossession was made and to afford a period to an indebted individual at risk of losing his or her home to engage with a personal insolvency practitioner with the possibility of concluding a personal insolvency arrangement. Neither had Fianna Fáil enacted personal insolvency legislation.

We must not lose sight of reality. The law, as it had applied for centuries, was that if a person failed to pay his or her mortgage, the financial institution could seek an order for repossession. When the Land and Conveyancing Law Reform Act was introduced, it was the then Fianna Fáil Government's intention that it would preserve this as the law. The Dunne judgment raised issues about certain mortgages and the type of procedures that could be used to repossess. There have been subsequent judgments which have watered down the impact of the Dunne judgment which is also on appeal to the Supreme Court. It is quite possible that if we did not enact this legislation a Supreme Court appeal could take a different view from the Dunne judgment, resulting in no protection for homeowners and with no possibility of adjourning proceedings to

consider a personal insolvency arrangement. In short, the law would revert to what it had been for the previous two centuries.

This legislation is ensuring normal relationships between customers and banks. If one does not make repayments on a loan for the purchase of property from a financial institution, that institution can bring proceedings to seek repossession. The personal insolvency legislation which we introduced will be in operation before this Bill comes into force. The benefit of this is that in a repossession application, if the judge believes a personal insolvency arrangement can be entered into, there will not be an automatic order for repossession.

Several Members raised the issue of financial institutions not co-operating in such arrangements. The new code of conduct, with independent oversight by the Central Bank, requires banks to finally address the plight of the tens of thousands who are in serious mortgage difficulties. In the past two years there have been minimal repossessions. Over 70,000 individuals have made temporary, short-term forbearance arrangements with their bank. It is not that any of us wants to see repossessions, but there have been extraordinarily few repossessions in the State, considering the overall background circumstances. Why is that? The previous code of conduct effectively put a block on banks rushing to the courts to look for repossessions and required them to engage. The engagement we have had substantially to date has been by way of debt forbearance and there has been very little by way of debt forgiveness in circumstances where it may be the only feasible option. We need to have a coherent set of laws. We cannot have individuals with mortgages from before 2009 simply deciding they will not repay them when they can do so and the banks being blocked from bringing repossession proceedings against them. We must ensure the financial institutions behave reasonably. There is Central Bank oversight of the new code of conduct.

Senator Darragh O'Brien challenged me to come back next year to inform the House of the position on repossessions. I am surprised that he has not noticed that under the new Central Bank code of conduct, there will be quarterly publications on repossessions and the progress the banks are making in debt resolution. The arrangements put in place by the Central Bank are designed to require banks to enter into medium to long-term arrangements to facilitate individuals in addressing their debt issues, where possible, not just short-term arrangements which involve kicking the can up the road. In that context, there will be transparency, which is important.

I have constantly referred to a particular provision in the legislation about seeking adjournments. Under section 2(3)(*d*), one of the issues to which a court must have regard in deciding whether to adjourn an application for repossession is "the conduct of the parties to the mortgage in any attempt to find a resolution to the issue of dealing with arrears of payments due on foot of the mortgage;". Quite clearly, if someone in mortgage debt and financial difficulties is able to tell a court, where a repossession order is sought, that he or she is in a position to make a repayment that a court may regard as reasonable but the financial institution has refused to engage, the judge will adjourn the proceedings to enable a personal insolvency practitioner to try to effect that engagement. The personal insolvency practitioner can assess the practicality of a personal insolvency arrangement being entered into and even before engaging with the financial institution, an application can be made for a further adjournment under section 2(4) which states "...the court may grant a further adjournment of the proceedings concerned where it considers that significant progress has been made in the preparation of a proposal for a Personal Insolvency Arrangement".

When the Bill is enacted, there will be a court architecture that was never in place for repos-

session proceedings built in to our law to provide protection for those who over a period of time have some prospect of resolving their financial difficulties. No economy or banking system can survive in circumstances where large sums of money are owed to a financial institution, individuals are making no payments of any description, there is no prospect of their ever making any payment, and the banking institution cannot take security for their payments. No economy can survive in that way. Do the Fianna Fáil Senators want to create a situation where taxpayers must put even more money into the banking system?

Senator Darragh O'Brien: No. The Minister should define "sustainable".

Deputy Alan Shatter: This is not an issue that can be dealt with in isolation. It impacts on all taxpayers.

Senator Darragh O'Brien: The Minister is being disingenuous.

Deputy Alan Shatter: It impacts on all individuals in financial difficulties and the functioning of the banking and financial system. Ultimately, these are issues that must be addressed in a comprehensive and coherent way, not simply by looking in isolation at one aspect of the problem which some speakers have sought to do.

Like everyone else, I want to see as few people as possible confronted by repossession. As I quote the statistic from the Courts Service Board's annual report for 2012 from memory, I may be slightly out, but I think there were between 430 and 440 repossession orders made in 2012, which is fewer than the number made in 2011, which in the circumstances is quite extraordinary. It is right to acknowledge that in the absence of legislation and with the old Land and Conveyancing Act where banks have failed to engage properly, the Judiciary has adjourned proceedings. It is not in a position to adjourn for the purposes of a personal insolvency arrangement, but there have been cases where proceedings have been adjourned and judges have exercised their discretion, either to refuse or delay the making of repossession orders. Now we will have an important new legislative structure which will be to the benefit of those who have some prospect of working their way through their financial circumstances.

I am conscious that much of the debate we have had is not so much about the issue of this Bill but comes back to the insolvency legislation that we have already enacted. The amendment refers to something I have consistently opposed since it was first tabled in the other House. It was first tabled as amendment No.9 in the other House where I said: "I cannot accept amendment No. 9 for a number of reasons. The amendment seeks to rewrite provisions of the Personal Insolvency Act, which is not the purpose of this Bill. Overall, the amendment is poorly drafted, confused or somewhat disingenuous as to its intentions and is not acceptable." That is the main fundamental flaw in the amendment; it does not seek to improve on the provisions contained in the Bill but rather seeks to rewrite the Personal Insolvency Act.

I shall summarise the difficulties with the amendment once again. First, the protection for a mortgagor provided for in section 2 of the Bill is to require that the court allow for a personal insolvency arrangement to be considered where, for example, none previously had been attempted, as with the requirement now in the case of bankruptcy petitions. The proposed amendment would, in effect, go beyond that protection and essentially provide that the court should direct a first or a new personal insolvency arrangement and effectively determine its outcome. The amendment would not simply be providing protection but effectively asking the court to direct that a personal insolvency arrangement be concluded. This is a basic misreading of the

personal insolvency legislation. Senators should remember that, once a personal insolvency arrangement proposal has been rejected by the creditors' meeting and no subsequent proposal is made during the protective certificate period, the personal insolvency practitioner's role ends as a mediator or negotiator for the debtor. Where a proposal is rejected at a creditors' meeting and where the protective certificate period still applies, there is a possibility of a personal insolvency practitioner making a further or different proposal that creditors might accept if they did not accept the first one. Therefore, once a proposal has been rejected and where there is no other proposal that can properly be made within the timeframe, the personal insolvency practitioner has no standing whatsoever in the repossession process and the law does not provide for the court to appoint him or her as an officer essentially to force a settlement on creditors as such a practitioner cannot do this.

Second, the amendment ignores the fact that the personal insolvency legislation is designed to allow agreed settlements to be reached as an alternative to court-ordered settlements. I am conscious of the comment that we do not want courts unnecessarily involved, but we would like some other person to deliver a judgment which will be referred to as a settlement. It is either a judgment or a settlement. One cannot have both. Under the Constitution, the only body that can deliver judgments in areas such as this is a court. To appoint any single other individual, no matter what one calls him or her, effectively to adjudicate on whether a home should be repossessed would be to supplant the role of the courts in a fundamentally important matter and the Attorney General would certainly not stand over this, based on the advice we have received. In the context of the amendment, it is my view that it would overturn this carefully calibrated approach contained in the Personal Insolvency Act. The proposed provision that a personal insolvency arrangement proposal should only offer to repay the current value of a property would represent a huge interference in contractual and property rights and would be likely to be subject to swift challenge in the courts.

Third, the amendment makes no reference to the repayment capacity of the debtor, which it seems would essentially be determined by the current value of the property. This would have obvious negative consequences for banks, other financial institutions and, ultimately, the taxpayer.

Fourth, the amendment could encourage delinquent behaviour on the part of all debtors, nearly 90% of whom are repaying their mortgages, in order to have their mortgages reduced to the current value of the property. This would seriously risk a complete collapse of the property market and threaten the solvency of financial institutions and the economy. This issue cannot be addressed in isolation. There is a connection between a whole range of areas of substantial importance and it is far too simplistic to make the case that one can deal with the matter in isolation.

I consider that the amendment would run the risk of turning every proposal for a personal insolvency arrangement into a costly preliminary to repossession. That is neither the intent nor the purpose of the legislation.

I appreciate the concerns Senators are expressing. We are all on one page on one issue. I do not want to see any individual or family evicted from his or her or their home. I do not want to see any repossession order made in any circumstance where, with a reasonable engagement, having regard to the overall financial background over time an individual could be facilitated to work his or her way through his or her debt difficulties and get his or her feet back on the ground and move on with his or her life. We cannot have in place a law that creates an absolute

obstacle to banks properly relying on the security they obtained when loans were offered. We can ensure we have a legal architecture that allows every possible avenue to be explored such as possible alternatives through a personal insolvency arrangement to facilitate individuals or an individual and his family to remain in the family home and to avoid a repossession order even up to the time when the court may be asked to consider repossession.

Senator Thomas Byrne: I imagine colleagues are disappointed that the Minister seems to have completely ignored the good points put forward by Senator Hayden, who does not agree with us on this amendment. Senator Hayden has considerable experience in this field and has been helpful to us when we tabled the Family Home Bill 2011, almost two years ago to the day. It is disappointing that this issue has not been addressed. Senator Hayden made a valid point that if the Government wants to plough ahead with this legislation, it should at least wait and see how the architecture of the personal insolvency legislation works before the banks will have the powers under this Bill conferred on them. The court will have minimal discretion. Once the bank makes the application, there is a particular destination that the train is going to.

Colleagues have spoken at length on the various issues and have made helpful contributions to the debate. In fairness, the Minister has not contradicted their arguments very effectively. The Minister in mentioning the code of conduct for mortgage arrears acknowledged the code came into effect under the previous Government and has helped in conjunction with the Dunne judgment to slow down the train of repossessions. I would make the assertion that we have serious problems with the personal insolvency legislation and acknowledge that it is good in so far as it goes and it goes some way. Nothing was put forward by the Government in terms of helping those in mortgage arrears. The expert group on mortgage arrears met in 2010 and I met them in September 2010, from which came the code of conduct for mortgage arrears, which has served us well. As the Minister rightly says it provides forbearance and gives people a break until the economy turns. We are pleading for a break for people in trouble. The Minister is not doing enough to dispel their significant fears.

One of the difficulties with the Bill is that it is a gift to all of the banks. Every single bank who is owed money on foot of a mortgage will benefit from it but not every single bank which is owed money on foot of a mortgage is subject to the code of conduct on mortgage arrears or subject to Central Bank supervision. That is a real imbalance that has not been properly addressed by anybody. A person with a mortgage from Irish Nationwide, Bank of Scotland or Ulster Bank, which is present but has the option to move to the United Kingdom, is not covered by the protections under the code of conduct of mortgage arrears in so far as they go and which have been reduced by the Government, yet all of the banks, without exception, have the power to repossess. That is typical of the imbalance in the Government's approach towards the banks and the borrowers.

I reiterate the point made by Senator Hayden who said the Minister for Finance has washed his hands of the code of conduct and of bank supervision. The reality is the code of conduct is drawn up by the Central Bank in consultation with the Minister for Finance and there is a statutory obligation on the bank under the Central Bank Act to consult with the Minister for Fiance. It would be interesting to see what the Minister for Finance said to the Central Bank when they reduced the protections to people. Was the Minister happy to agree with the Central Bank which is also bringing in repossessions? We do not know and the Minister has refused to answer the question on it, even though he was centrally involved in the process under the statute.

The issue of strategic default was mentioned, but I have yet to see evidence from anybody

as to the level of it. It might be 2% somebody else could say it is 20%. We will not know until we have evidence of the level of strategic default in the country. I do not think we should be discussed it. During the Second Stage debate, it was alleged that I was trying to protect a person who was not paying his mortgage and was living in a mansions worth €3 million from being repossessed - a red herring, but the people who are worried about this Bill are not living in such mansions but in ordinary family homes. They are not in a position, through no fault of theirs, to pay a mortgage on their home which they could pay at some point.

The social consequence of repossession has never been discussed. What will happen to housing estates, in which the majority who live in it are in difficulties? We see the consequences of repossessions in certain parts of the United States, but I am not suggesting that it will be as widespread as that, but the power of the bank is without restrictions.

The Minister has said that repossessions should be a last resort. I have no difficulty in the repossession of a commercial property that is lying idle and does not involve a family business from being sold on. That is normal market economics. I have seen the benefit of derelict properties, which the owners had not been interested in them, being sold by the banks at auction and somebody else taking over. The market economy does not apply to the family home. It is not an economic decision to buy a home, it is a personal family decision to give the family security forever. The Irish have so jealously guarded their patch of land over time and when they did not own it themselves they still took action to protect it and keep it working for themselves. I know there are people in the Visitors Gallery - tribute has already been paid to those from Threshold - who work very hard on the issue of mortgages. People who obstructed the Allsops auction are also present. If I become aware of the repossession of a home of a family I knew I would certainly join those who obstruct such sales on the stage of Allsops. I am not predicting it in any way, but it would be unjust if it were to happen. The Minister states the repossession of the family home should be the last resort but there is nothing in the Bill to say that repossession will be the last resort.

The Minister criticised the 2009 Act. Mr. Lyle discusses the gap in discretion in his textbook. The Minister goes someway to give discretion but nowhere near far enough and he is sending it back into the personal insolvency process, back to the banks, back to the bank veto. Senator MacSharry and I put forward the Family Home Bill in conjunction with Mr. David Hall, who is sitting in the Gallery today and with some other voluntary groups in that sector to deal with that gap in the law. We have done our bit. The Bill was opposed by the Government, but some helpful suggestions were made at that time by Senator Hayden, who has a very genuine interest in the matter. The reality of that debate two years ago was that the Minister of State, Deputy Hayes said he would return by the autumn with the answer to all the problems. It has not happened.

The previous Government had the expert group in September 2010 and that is effective the action that was taken. The action was stayed up until the Personal Insolvency Act. The Keane report, which was a panic response to newspaper headlines, more or less recommended the same thing although there were a couple of changes. Nobody has grappled with the issue of the power being given to all the banks whereas protection is offered only by banks which are regulated by the Central Bank.

This is such an important issue that we must resist this. The Minister refers to trying to restore normal relations between banks and customers. There are no normal relations between banks and customers at present. The banks have benefitted from the investment of billions

of euro in taxpayers' money. Other bank have benefited from British and European taxpayer money as well. That is not normal banking relations. We are not in a normal time. We are in an era of high unemployment. Nobody is blaming the Minister personally for this even though he keeps referring to Fianna Fáil. We have taken the hit but we see our job to be as constructive as possible. For that reason I have put forward a number of Bills, such as the Family Home Bill to deal with that criticism. We put forward a personal insolvency proposals, incorporating a debt settlement office.

7 o'clock

It is not and cannot be the answer to give banks the power, but it would be of some benefit to the consumer and provide some protection for families and some hope for those who are in trouble. I will, therefore, certainly press the amendment. Although it has received criticism from Senator Trevor Ó Clochartaigh - one could call it a sticking plaster, as that is, effectively, what it would be - with the repossession gap opening, an Opposition party is trying to provide for a rebalancing between banks and homeowners in trouble.

Amendment put:

The Seanad divided: Tá, 17; Níl, 27.	
Tá	Níl
Barrett, Sean D.	Bacik, Ivana.
Byrne, Thomas.	Bradford, Paul.
Cullinane, David.	Brennan, Terry.
Daly, Mark.	Burke, Colm.
Leyden, Terry.	Clune, Deirdre.
MacSharry, Marc.	Coghlan, Eamonn.
Mooney, Paschal.	Coghlan, Paul.
Ó Clochartaigh, Trevor.	Conway, Martin.
Ó Domhnaill, Brian.	Cummins, Maurice.
O'Brien, Darragh.	Gilroy, John.
O'Donovan, Denis.	Harte, Jimmy.
O'Sullivan, Ned.	Hayden, Aideen.
Power, Averil.	Healy Eames, Fidelma.
Reilly, Kathryn.	Henry, Imelda.
van Turnhout, Jillian.	Higgins, Lorraine.
Walsh, Jim.	Keane, Cáit.
Wilson, Diarmuid.	Kelly, John.
	Landy, Denis.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Noone, Catherine.
	O'Keeffe, Susan.
	O'Neill, Pat.

	Sheahan, Tom.
	Whelan, John.

Tellers: Tá, Senators Ned O'Sullivan and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aideen Hayden..

Amendment declared lost.

Senator Sean D. Barrett: I move amendment No. 2:

In page 6, between lines 7 and 8, to insert the following:

"4. Where the property which is being repossessed is the subject of a residential tenancy, the protections afforded to tenants under the Residential Tenancies Act 2004 shall be complied with by the financial receiver who shall comply with all obligations of landlords under that Act.".

Cuirim fáilte roimh an Aire ar ais go dtí an Teach. I welcome the Minister back to the House.

The purpose of the amendment that is proposed as section 4 is twofold. One is to protect a principal private residence where it is held as a tenancy and the other is to impose duties and obligations on financial receivers in common with other landlords.

I was worried that in the briefing document there was reference to the 0.3% repossession rate and to the need for a more efficient repossession regime, and talk of 3% and 5%. Like the Minister, I would look askance at such developments.

As the Minister will be aware, the rented sector has grown rapidly. I understand it is approximately one fifth of the market nationally, one quarter in Dublin and one third in Galway. In the last big boom year of 2007, apparently 78% of the 98,000 homes built were multiple units. They are rented, including quite a number in the south Dublin area.

The concern is that receivers are seeking vacant possession, in other words, the tenant bears the burden of having a bankrupt landlord. I seek that protection where this is a principal private residence, of which there were not so many in the past but of which there will be now. This was referred to on the last occasion and this would be normal in countries such as Switzerland and Germany where tenants do not face evictions simply because their landlord has gone broke and one simply pays the cheque to a different person. It is probably not a major issue in Ireland when there is such a traditional emphasis on owner-occupancy, but that is changing rapidly.

We want to protect those tenants and to impose the duty and obligation of being a landlord on the financial receiver. The reports that come back from agencies, such as Free Legal Aid Centres, FLAC, and New Beginning, are that financial receivers are seeking vacant possession and seeking to get rid of tenants.

Those are the two issues that I want to raise with the Minister in the context of a changing

housing market where there is so much pressure on banks to realise these assets regardless of the sitting tenants for whom it is their principal private residence and the unwillingness of these financial receivers to accept the duties and obligations of maintaining a property which previous landlords had. That is all I have to say on it. That consideration can be taken into account unless the pressure is to make banks solvent again at the expense of sitting tenants, conduct which was not acceptable from previous landlords and complaints about those financial receivers. In general, I fear we will probably have to recapitalise the banks through the Department of Finance route in any case. On the evictions rate being increased, as the Minister stated, from 0.3% to 0.5%, like him, I am against evictions from homes. Some repossession architecture should apply to these tenants for whom it is their principal private residence.

Senator Kathryn Reilly: I second this amendment.

Senator Barrett put it well. For so long, there was an overemphasis on property ownership and owning one's own house. Those who are renting their principal private residence should not be penalised. They need to be secure in their homes. That is why my party supports this amendment. I hope the Minister can take it on board and can do something about it in this legislation.

Senator Aideen Hayden: I thank Senator Sean Barrett for tabling this amendment which raises a very important issue in the context of the Irish housing market. Those of us of a certain generation have grown up with this view that if one did not own a property in Ireland, or if one was not trying to buy one, one was nobody. The thinking was that rent was dead money and that anybody with half a brain would not rent, in spite of the fact that in far flung places, such as Germany and France, people rented for their entire lives.

A very influential report entitled Private Rented - The Forgotten Sector very much illustrated the fact that renting in Ireland from the beginning of the 20th century onwards was very much in decline and was regarded with almost malevolence and that the only people who rented were those who could not get into home ownership or social housing and that they were invariably single, people without children and men. That entire profile has completely changed in the past decade.

As Senator Barrett said, one in five families in Ireland rent today. In Dublin, one in three families rent which is also true of Galway and of all of our major urban centres. We are living in a new age - a different era - when renting is a long-term housing solution for many people and to treat them as if they were second class citizens is unacceptable.

I was very struck by the statement of Professor Patrick Honohan, Governor of the Central Bank of Ireland, that he would focus his entire attention on the buy-to-let mortgage market which will mean an end to those mortgages, that they will have to be repossessed and that he hoped there will be very few repossessions of owner-occupied family homes as if all of those people living in the buy-to-let property market were not families and that they did not live in family homes. A very significant number of Irish families live in rented properties. Their children go to local schools, they participate in the local GAA clubs and they are involved in local activities. These are their family homes and it is time to move on from pretending that we are living in the Ireland of the 1920s, 1930s and 1940s.

If the Minister cannot accept this amendment in its entirety, will he accept the spirit of it because, as I understand it from Senator Barrett, it is trying to put a family living in rented ac-

commodation into a position of security? Under the Residential Tenancies Act 2004 which introduced security of tenure for tenants in the rented sector, albeit limited, anybody who steps into the role of a receiver or a mortgagee in possession should have to abide by the criteria of that Act and should have to step into the shoes of the landlord. It is only fair that someone who pays rent should be entitled to the services and so forth under the 2004 Act.

We have codes of conduct for people in arrears in regard to their principal private residences and how they should be treated. We also have codes of conduct on how banks are supposed to deal with repossessions and so forth but we have no codes of conduct on how banks and lenders are supposed to deal with tenants. It is almost as if we are dealing with - dare I say it as I do not want to go beyond the Pale here - *Strumpet City* in that these people do not matter as far as our lending institutions are concerned.

It is important to recognise the idea of home. It does not matter whether one lives in a principal private residence, social housing or rented housing. A home is a home and the way people are treated should reflect that. Will the Minister respect the spirit of Senator Barrett's amendment which is very well-intentioned? He raises what I see as an incredibly important issue in the Ireland of today. Believe it or not, Ireland is not the country with the highest home ownership rate in Europe; it has fallen below the European norm in terms of home ownership. Ireland has changed and our laws must reflect that.

Senator Jim Walsh: I support Senator Barrett's amendment. I am sure Members will agree that he is a tremendous addition to this House given his financial expertise. I also have the highest regard for Senator Aideen Hayden and always listen with interest to her contributions but I cannot fathom how accepting the spirit of this amendment will do anything for these hard-pressed tenants who could well be evicted from their houses or for the people who own those houses and who are having difficulty repaying the mortgages. As I read the Bill - the Minister can correct me if I am wrong - the powers will be with the banks to decide what they want to do.

Unfortunately, we will see a situation where the banks will repossess houses from people who cannot afford to pay the high mortgages because of the excessive prices they paid for the houses in the first instance. Presumably, the banks will sell on those houses at much lower prices to recover as much of the loans as possible. It would make more sense if there was some obligation on the banks to cut a deal with the owners of those houses and to readjust the mortgages. If somebody is renting a house, that rent-roll is an income stream for the bank. If the banks move against the owners to acquire the houses, presumably they are looking for them with vacant possession in order to maximise the potential return from the properties. The Minister may refer to taking on board the spirit of the amendment rather than accepting it, but I cannot see how that will, in any way, ameliorate the difficulties for those tenants.

There has been much talk over the past two days in this House about suicidal intent and suicidal ideation. There is no doubt in my mind, given what we have experienced over the past five years, that many people have committed suicide because of their financial difficulties and their indebtedness. I have no doubt that repossessions will aggravate the very distressed mental positions people are in. What will we do for such people in this Bill?

Senator Martin Conway: As usual the well thought-out amendments tabled by Senator Barrett, very much enrich the discourse and debate in this House. Most of the time, Ministers take on board the spirit of what Senator Barrett proposes and the contributions of other Members, in particular Senator Hayden, who let us not forget was chairperson of Threshold for nine

years and served as a board members on the Private Residential Tenancies Board. When she speaks about tenants' rights and the importance of same, she speaks with authority. I have no doubt the Minister will respond positively in trying to accommodate the spirit of what Senator Barrett, Senator Hayden and others propose. Will he respond positively to accommodate the spirit of what Senators Sean D. Barrett, Aideen Hayden and others propose?

Deputy Alan Shatter: I thank Senator Sean D. Barrett for raising an important issue. However, it is not one I can deal with in the Bill which deals with the issue of repossession and the protections which might be put in place to prevent it.

There are certain circumstances in which the Residential Tenancies Act 2004 protects tenants where the ownership of a property changes. I want to reflect in this debate on the context and circumstances to which Senators Sean D. Barrett, Aideen Hayden and others have made reference. If there is a particular problem in the area, I will be very happy to come and address it on another occasion. However, I cannot do so in the context of the Bill. What has been proposed, while useful to our discussion, would not, in legal terms, address the issue in the manner Senator Sean D. Barrett intends. There is further work to be done in the context of what he has said. The actual provisions for protection in the Residential Tenancies Act are something on which I am happy to engage with the Minister for the Environment, Community and Local Government, Deputy Phil Hogan. The residential tenancies legislation falls within his remit. I hope Senator Sean D. Barrett will not be disappointed if I do not accept his amendment. We will follow up the matter and I will discuss it with the Minister, Deputy Phil Hogan. My officials will discuss matters with his officials and we will revert to the Senator in writing to indicate to him the conclusions of these discussions. I am also happy to inform Members of the Seanad generally who have an interest.

Senator Aideen Hayden has raised the interesting idea of a protocol to deal with the circumstances of tenants where a home has been repossessed from a landlord who is in mortgage arrears. These are all important issues which cannot be dealt with under the terms of the Bill. It was nevertheless a valuable discussion for which I thank Senators. I cannot support the particular proposal, but we will give the issues involved some consideration. Senators have discovered that when I say we will consider something, it is considered. If there is something that needs to be remedied, whether by my ministerial colleague, Deputy Phil Hogan, or me, it will be remedied. If we discover, having looked comprehensively at the law in this area, that there is no need to do anything, we will equally say so. I am very happy to reflect on the debate and thank Senator Sean D. Barrett for raising the issue.

Senator Sean D. Barrett: I am grateful that the Minister is happy to reflect on the matter and address it. That is always valuable. I recall that on the Personal Insolvency Act we had a tutorial by all parties which helped the Minister. Certainly, the number of amendments he proposed or accepted from other Members was remarkable. I look forward to seeing it in operation.

The problem is that of the 150,000 properties, 130,000 could create difficulties. Contemplating that level of evictions is appalling, as indicated by the Minister and Senators Aideen Hayden, Martin Conway and Jim Walsh. I hope the discussion we have had will send a message to the financial receivers and buyers of the properties that the House is not at all enthusiastic about the possibility of repossessions and evictions and that these matters will be addressed by Deputies Alan Shatter and Phil Hogan in their ministerial capacities. That signal from the Oireachtas is most valuable lest there is anybody outside who thinks he or she can repossess

a property and seek vacant possession and put people out. It is one of the great parliamentary functions to say that is not the way its Members are thinking and that the Minister is giving it further thought. I thank him profusely and wish him good luck. We will be in communication to see what we can do to get around the problem. The House should be grateful to the Minister for his positive response, which I welcome.

Amendment, by leave, withdrawn.

Question put: "That the Bill be received for final consideration."

The Seanad divided: Tá, 29; Níl, 15.	
Tá	Níl
Bacik, Ivana.	Byrne, Thomas.
Barrett, Sean D.	Cullinane, David.
Bradford, Paul.	Daly, Mark.
Brennan, Terry.	Leyden, Terry.
Burke, Colm.	MacSharry, Marc.
Clune, Deirdre.	Mooney, Paschal.
Coghlan, Eamonn.	Ó Clochartaigh, Trevor.
Coghlan, Paul.	Ó Domhnaill, Brian.
Conway, Martin.	O'Brien, Darragh.
Gilroy, John.	O'Donovan, Denis.
Harte, Jimmy.	O'Sullivan, Ned.
Hayden, Aideen.	Power, Averil.
Healy Eames, Fidelma.	Reilly, Kathryn.
Henry, Imelda.	Walsh, Jim.
Higgins, Lorraine.	Wilson, Diarmuid.
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullen, Rónán.	
Mullins, Michael.	
Noone, Catherine.	
O'Keeffe, Susan.	
O'Neill, Pat.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Ned O'Sullivan and Diarmuid Wilson.

Question declared carried.

An Cathaoirleach: When is it proposed to take next Stage?

Senator Maurice Cummins: Now.

Land and Conveyencing Law Reform Bill 2013: Fifth Stage

An Cathaoirleach: The question is, "That the Bill do now pass."

Senator Thomas Byrne: I wish to speak on Fifth Stage. One can speak on Fifth Stage and we have tabled amendments on that Stage.

An Cathaoirleach: The Senator can speak after the Bill is passed.

An Cathaoirleach: I wish to speak on Fifth Stage and table a verbal amendment as is permitted under Standing Orders. The amendment proposes "on line 11, page 3, to delete "2009" and substitute "1009". I am tabling this amendment to negate the section. The effect will be that the section will not be enforced. I do not know where the Minister is. We are still discussing the Bill. This outrageous repossession Bill which the Minister is putting forward is giving the banks an open door policy.

An Cathaoirleach: The amendment is a direct negative and is ruled out of order.

Senator Thomas Byrne: The Minister of Justice and Equality did not even stay for Fifth Stage.

Question put: "That the Bill do now pass."

The Seanad divided by electronic means.

Senator Diarmuid Wilson: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Question put: "That the Bill do now pass."

The Seanad divided: Tá, 29; Níl, 15.	
Tá	Níl
Bacik, Ivana.	Byrne, Thomas.
Barrett, Sean D.	Cullinane, David.
Bradford, Paul.	Daly, Mark.
Brennan, Terry.	Leyden, Terry.
Burke, Colm.	MacSharry, Marc.
Clune, Deirdre.	Mooney, Paschal.

Coghlan, Eamonn.	O'Brien, Darragh.
Coghlan, Paul.	O'Donovan, Denis.
Conway, Martin.	O'Sullivan, Ned.
Gilroy, John.	Ó Clochartaigh, Trevor.
Harte, Jimmy.	Ó Domhnaill, Brian.
Hayden, Aideen.	Power, Averil.
Healy Eames, Fidelma.	Reilly, Kathryn.
Henry, Imelda.	Walsh, Jim.
Higgins, Lorraine.	Wilson, Diarmuid.
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullen, Rónán.	
Mullins, Michael.	
Noone, Catherine.	
O'Keeffe, Susan.	
O'Neill, Pat.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Ned O'Sullivan and Diarmuid Wilson.

Question declared carried.

8 o'clock

Prison Development (Confirmation of Resolutions) Bill 2013: Second Stage

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

Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch): On behalf of the Minister for Justice and Equality, who cannot be here today, I am pleased to

present the Prison Development (Confirmation of Resolutions) Bill 2013 to this House. The Minister is taking Private Members' business in the other Chamber.

The existing prison in Cork, whose main cell block dates from the early 19th century, is no longer fit for purpose. The prison does not have in-cell sanitation and lacks the basic infrastructure required of a modern prison. The poor conditions have been strongly criticised by the Inspector of Prisons and the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Inspector of Prisons is of the view that the maximum capacity of the prison should be 146 prisoners. However, the prison regularly accommodates more than 200 prisoners and has at times accommodated more than 270 prisoners.

The main purpose of the proposed new prison development in Cork is to replace the substandard prison accommodation in the existing prison and provide a modern prison facility designed on the principle of rehabilitation and resettlement. The new prison will be situated adjacent to the existing prison on Rathmore Road. The investment being made in the development of a modern prison facility in Cork is a significant commitment by the Government given the current economic pressures. The new prison, including cells with full in-cell sanitation and showering facilities, will end the practice of slopping out and also provide a vastly better infrastructure necessary for the education and rehabilitation of prisoners, thus enhancing public safety.

Building on the site adjacent to the existing prison will also ensure value for money for the taxpayer. The new prison in Cork will have 170 cells which will house 275 prisoners and have a maximum capacity of 310 prisoners. All cells in the new facility will be approximately 12 sq. m in size with full in-cell sanitation and showering facilities and will be fully compliant with the standards for double occupancy set down by the Inspector of Prisons and Places of Detention. Of the 170 cells in the new development, it is intended that approximately 30 will be designated exclusively for single occupancy. The planned capacity of 275 prisoners will be adequate for the needs of the prison's catchment area. The Cork Prison development will radically improve conditions for prisoners in the State's most overcrowded prison, where, on occasion, three prisoners have been required to share a cell which is 8 sq. m in size, with two prisoners in bunk beds and one on a mattress on the floor.

Development consent for the proposed new prison development in Cork is being sought under Part 4 of the Prisons Act 2007. Part 4 sets out a special procedure that may be applied for the purpose of determining whether consent should be granted to larger prison developments. The purpose of the 2007 Act was to provide a more open and transparent mechanism for major prison developments under which an environmental impact assessment meeting EU standards must be prepared and the Houses of the Oireachtas make the decision about whether to grant development consent. This is done in the form of a resolution approved by both Houses, which must be then confirmed by an Act.

In June 2012, the Minister for Justice and Equality issued a direction under section 18 of the Prisons Act 2007 that Part 4 of the Act is to apply to the proposed construction of a prison on a portion of the site used as Cork Prison. In November 2012, public notice was given of the proposed prison development and observations and submissions were invited. A rapporteur, Mr James Farrelly, was appointed to prepare a report identifying the main issues raised and summarising the submissions and observations received. Twelve submissions, including a detailed submission from Cork City Council, and several petitions were received. There is no provision under the legislation for the rapporteur to comment on the validity, or otherwise, of submissions

made, nor is there any provision for him to make recommendations.

The documents required by the legislation have been laid before the Houses. These include the environmental impact assessment, visual representations of the exterior of the development and the rapporteur's report. In addition, a document was laid before the Houses setting out the observations of the Minister for Justice and Equality on the environmental impact assessment and the rapporteur's report. The resolution approved by the Dáil and Seanad on Tuesday, 18 June is the consent required for the Cork Prison development to proceed. It is, in layperson's terms, the planning permission for the prison. It follows the format prescribed by section 26 of the Prisons Act 2007 and lists the main measures taken to avoid, reduce or offset any possible significant adverse effects of the development on the environment, as well as setting out the conditions to be complied with in the construction of the prison. It also details an alteration to the original proposals that has been made in response to concerns expressed during the public consultation process.

A fundamental principle of the design and location of the prison has been to minimise the impact of the development on the environment and the local community. The public consultation process and the rapporteur's report identified specific concerns on the part of local residents. In so far as is practicable, further measures are being taken to address these concerns.

The Irish Prison Service will draw up a good neighbour policy which will provide a framework under which the concerns of local residents during the construction phase can be fully dealt with. The Irish Prison Service project manager will act as liaison officer and will set up a local consultation group to address any issues that arise during the construction period. The Irish Prison Service and the principal contractor will liaise closely with an Garda Síochána, Cork City Council and other interested parties in preparing a traffic management plan to minimise the impact of construction traffic on local residents and businesses.

As regards security issues, the existing prison is the only closed prison in the State that does not have a prison-standard perimeter security wall. As the new prison will have such a wall and an outer *cordon sanitaire* secured by a 2.5 m fence, security risks will be significantly reduced. The need to prevent drugs or contraband being thrown into the prison from outside has been carefully considered in the prison design. To reduce the visual impact of the perimeter wall, concrete with a light-coloured finish will be used on the sections of the wall most visible to the public. To address a specific concern about the impact on residential property adjacent to the site, the height of the wall around the horticultural area at the northern end of the site will be reduced to approximately 5.2 m.

As regards privacy issues, the CCTV system will be restricted to prevent viewing into neighbouring residential property and obscured glazing will be used in all windows overlooking such property. To mitigate noise pollution and dust during the construction of the prison, the perimeter wall will be constructed before construction of the prison buildings begins.

This short Bill, to confirm the resolutions passed by the Dáil and Seanad on 18 June, is a requirement of section 26 of the Prisons Act 2007. Before the Cork Prison development can proceed, an Act of the Oireachtas confirming those resolutions is required. This Bill is the final stage in the development approval process. The Bill contains only two sections. Section 1 confirms the resolutions under section 26 of the Prisons Act 2007 that were passed by the Dáil and Seanad on 18 June. Section 2 provides the Short Title.

Returning to the issue of the capacity of the new prison, I am aware of the concerns of the Irish Penal Reform Trust and Fr. Peter McVerry regarding the intention to provide for double occupancy of cells in the new prison. This issue was also raised by Deputies during the debates in the other House on the resolution and this Bill. Given the current number of prisoners in custody - approximately 4,200 on any given day - the Irish Prison Service is not in a position to provide single-cell accommodation to all prisoners. Single-cell occupancy across the system would result in a bed capacity of approximately 3,000 and would not be possible to achieve without releasing sizeable numbers of prisoners considered to represent a threat to public safety or, alternatively, by constructing another 1,000 cells and all of the ancillary support infrastructure that they would require. In the current economic environment, such an ambitious building programme is not a realistic option.

In addition, it should be borne in mind that in some cases prisoners are housed together for reasons other than lack of capacity. Family members, friends and co-accused prisoners often request to be assigned a shared cell. Shared-cell accommodation can be very beneficial from a management point of view, particularly for those who are vulnerable and at risk of self-harm. There will always be a need for certain prisoners to be accommodated together. As outlined in the Irish Prison Service three-year strategic plan, it is intended to align the capacity of our prisons with the guidelines laid down by the Inspector of Prisons and Places of Detention by 2014, in so far as this is compatible with public safety and the integrity of the criminal justice system.

In 2012 and in the first quarter of this year, priority has been given to reducing the chronic overcrowding in Mountjoy, Cork and Limerick Prisons and the Dóchas Centre. Senators will be aware that the Minister for Justice and Equality has announced a number of initiatives to alleviate overcrowding in the prison system. The community return programme is an incentivised scheme for earned temporary release under which offenders who pose no threat to the community are offered early temporary release in return for supervised community service. This programme has been a positive development and, as well as allowing prisoners to complete their sentences by way of performing service to the community, it has helped these prisoners to successfully resettle in their communities.

As regards the situation in Cork, the unlocking community alternatives scheme, UCAS, initiative was set up with the aims of reducing overcrowding problems in Cork Prison and addressing recidivism levels. The primary aim of the scheme is to reduce the current recidivism rates by arranging additional support structures for prisoners, helping with issues such as housing, medical care, substance abuse and training needs and providing a more structured form of temporary release. It is hoped that increasing support for prisoners prior to their release from prison, on their release and then for a period after their release will help to break the cycle of reoffending. This is a pilot scheme which will be reviewed in 12 months to assess its impact on reoffending rates.

I am aware that another important matter of concern is the provision of family-friendly visiting facilities in the new Cork Prison. The Irish Prison Service recognises the importance for those in prison of maintaining and developing their relationships with their children and families. It is committed to assisting in any way it can with achieving these objectives. Seeking to accomplish this raises a wide range of sensitivities and challenges which require an appropriate balance between security requirements and conditions appropriate for family visits. The proposed new prison in Cork will have a modern visiting facility centred on the need to provide an environment for visits that is welcoming and comfortable, in so far as that is possible in a prison setting.

Construction of the new Cork Prison is expected to commence later this year and be completed in early 2016. As action is urgently required to address the chronic overcrowding and inadequate conditions in Cork Prison, the Minister and I hope this Bill will be passed by this House before the summer recess in order that tendering for the construction of the new prison can proceed.

On behalf of the Minister, I commend the Bill to the House.

Senator Denis O'Donovan: I welcome the Minister of State. Whereas I have some reservations about this project, I broadly welcome it. I would be disappointed, however, if there were to be an attempt to deal with all Stages tonight.

I would like the Minister for Justice and Equality to outline to the House, on Committee or Report Stage, the position on the long-awaited report on the death of Gary Douch who was murdered in a cell in Mountjoy Prison in 2006. The reason I raise this issue is that an inquiry was set up and a senior counsel, a barrister, appointed to produce a report on the atrocious murder. Mr. Douch was, apparently, in a cell with a mentally unstable cellmate who killed him. It is worrying that after seven years the report has not been published. If this is an example of how we deal with deaths in prison and overcrowding, it is a sad reflection on us.

I received an email from Mr. Eoin Carroll of the Jesuit Centre, which has deep concerns. The Minister of State has addressed some of them. Paragraph 2 of the centre's release states:

> Responding to a speech yesterday by the Minister for Justice, Alan Shatter TD, when he addressed the Joint Oireachtas Committee on Justice, Defence and Equality, the Jesuit Centre challenges the Minister's claim that the new prison would provide 'adequate and suitable accommodation for all prisoners'. The Centre points out that a failure to provide single cell accommodation in the new prison will be in direct breach of Article 18.5 of the European Prison Rules, drawn up by the Council of Europe of which Ireland is a founder member State.

I understand the Inspector of Prisons has deep reservations because it is not on, when planning a new prison, that we do not try to achieve the ultimate goal of having single cells, single sanitary accommodation and showers, etc.

The release continues:

> Eoin Carroll, Advocacy Officer in the Jesuit Centre, said: "A plan for a new prison which has double occupancy as the norm cannot possibly be considered to be in accordance with international best practice. Article 18.5 of the European Prison Rules is explicit: 'Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation'."
>
> Carroll went on to say: "The Minister, rightly, highlights the fact that the provision of a new building will result in the elimination of slopping-out in Cork Prison [which I welcome]. The Centre welcomes the fact that the new prison will have in-cell sanitation and shower facilities. However, unless these facilities are fully walled off from the living area of the cell - and this is *not* the case in some of the other prisons in Ireland where there is in-cell sanitation - double occupancy of cells will mean that people detained in the new prison in Cork will still not have the basic right of privacy in using toilet and washing facilities."

I share this concern. The Minister of State kindly referred to the concerns of Fr. Peter McVerry, SJ, of the Jesuit Centre. He stated:

> Cell sharing should not be the norm in prison. In many cases, it results in increased intimidation and violence, and leads to non-drug users being introduced to drug use. But even without such extreme consequences, enforced sharing can represent a very cramped and oppressive living environment, especially in light of the fact that in Ireland out-of-cell time is, at best, only six or seven hours a day.

The release also states:

> Fr McVerry, who regularly visits prisons in the Dublin area, went on to say: "A central feature of the current renovation programme in Mountjoy Prison is the provision of single occupancy cells. In the sections of Mountjoy where refurbishment has now been completed, there has been a huge improvement in the environment, with dramatic reductions in the levels of intimidation and violence. [I laud this very welcome development.] I believe this is in no small part due to implementation of a policy of single occupancy."
>
> Fr McVerry added: "It is difficult to understand how the Minister and the Irish Prison Service can ensure that the Mountjoy Prison redevelopment project adheres to the principle of one person, one cell, yet at the same time fail to abide by this key principle in the planning of a brand new prison in Cork."

This is a source of great concern. Eoin Carroll stated:

> The Jesuit Centre for Faith and Justice urges members of the Dáil and Seanad not to acquiesce to the Minister's clear desire to rush through the Houses a forthcoming resolution which would, in effect, give the go-ahead for the project but instead to demand time for a full debate on the resolution.

I will be demanding a full debate tonight. It is critical that we have one. As stated correctly by the Minister of State, Cork Prison dates from the 19th century. It is antiquated and one that, unfortunately, I had to visit on a number of occasions as a legal practitioner. I am glad that we are moving in the right direction. In building the new prison, which I broadly welcome, we should go the extra mile to ensure all prisoners, particularly those serving terms of five years or more, are treated appropriately. I am a strong supporter of the view that any prison sentence should be a matter of last resort in so far as that is possible. The courts and justice system are trying to ensure offenders, particularly young offenders, are dealt with, first, by a yellow card or slap on the wrist. Sending young people to prison has a knock-on effect in that there is a tendency to reoffend.

The justice system has an obligation to cater for rehabilitation, retraining and work programmes in prison. Although this is achieved to some extent, it is not achieved as fully as it could be. There are considerable possibilities. I raised in this and the other House my deep concern about this matter. Perhaps it has been addressed slightly. Many years ago I spoke to the only counsellor attached to Cork Prison. I believe he was a psychotherapist. He did wonderful work, but he was but one man visiting the prison perhaps one day per week to try to clear guys heads, including those suffering from depression and a mental illness. Not enough of this work is being done.

I am not sure whether the Minister, Deputy Alan Shatter, has rowed back on his thinking on

getting rid of the religious advisers or chaplains in prisons. They have done wonderful work. I am not talking about whether they should be Catholic, Church of Ireland or any other religion. Any person, be they a psychotherapist, counsellor or chaplain, who gives advice to people in prison and tries to ease their minds, listen to their stories, calm them and counsel them should be welcomed. In this regard, I hope the Minister and the Acting Leader will consent to our not proceeding beyond Second Stage tonight. We are to sit next week. While I do not intend to call a vote on Second Stage, I might table amendments to clarify certain views that I hold.

Senator Colm Burke: I welcome the Minister of State, Deputy Kathleen Lynch, to the House. The redevelopment of Cork Prison is a very important and welcome initiative, not least because it will end the practice of slopping out which has heretofore been in operation at the facility. As the Minister of State observed, the existing prison was built to accommodate just under 150 prisoners but has consistently had to house in excess of that number. During my time on Cork City Council - I am going back seven or eight years here - there were many nights when the number reached 170 or even 180. I have been to Cork Prison on several occasions, both in a legal capacity and in my capacity as lord mayor of Cork. In fact, it is one of the functions of the lord mayor to have breakfast in the prison on Christmas morning. It brings one down to earth very fast to see there are people for whom Christmas is not at all a joyful occasion.

The condition of the existing facility could not be tolerated much longer. I thank the Minister for Justice and Equality, Deputy Alan Shatter, for his efforts in advancing these proposals, and the Minister of State, Deputy Lynch, who represents the constituency in which the prison will be built. It is the right move in terms of accommodating the prisoner population in Cork and the larger south Munster region. I hope we can deal with all Stages of the Bill tonight in order to avoid any unnecessary delay in the construction process. The site has been identified, there has been consultation with local residents and some of their concerns have been taken on board. That consultation process was most welcome. I also welcome the clearly set out building programme, which specifies that the perimeter wall will be erected before proceeding with construction of the facility itself. That will help to reduce noise levels once the main construction work begins.

The Minister of State referred to the importance of providing supports for people. I have been involved in issues relating to Cork Prison since as far back as 1996, when Colm O'Herlihy, head of education at the facility, introduced an educational training scheme which involved 20 prisoners and their partners participating at the same time. Of the 20 prisoners who took part, 12 returned to full-time education after their release. Improving conditions in prisons is one issue, but it is also important to consider what happens when people leave prison. During my time as lord mayor I often had complaints from prison officers in Cork Prison that the overcrowding problem was leading to a situation where prisoners were being released in a chaotic and disorganised way. The officers were often required to bring back a contingent of prisoners from District Court sittings a long distance from Cork. The prison van might not leave the court until the last case was dealt with, which often meant in rural areas and even in Waterford, for example, that it might not depart until 6 p.m and would only arrive at Cork Prison at 8 p.m. or so. With the arrival of the new prisoners, inmates who were next on the list to be released would have to be let go at that late time in the evening, without any prior notice or any provision for their accommodation. That is unacceptable. We must ensure there is a process in place to ease prisoners back into normal life. It is not easy for anybody to return to the outside world, even if they have only been in prison for six months. There is a significant adjustment period, especially for long-term prisoners. We have a great deal of work to do in this area.

It is important these proposals are implemented without delay. The debate has gone on long enough. We have been talking about it in Cork for at least 18 years. We must do our part to ensure the Bill progresses through the Houses, so that the Minister and the Prison Service can proceed with the tender and construction processes. The target completion date is early 2016 and I hope it is met. At a time when the construction industry is in difficulty, this project presents an opportunity for significant job creation. The sooner it is up and running, the better. I realise that several processes must be gone through before building work can commence, but we should aim to have it begin by the end of this year and to achieve the target completion date of January 2016. I thank the Minister of State for bringing the Bill to the House and the Minister, Deputy Shatter, for progressing it through his Department. I also appreciate the input from the Prison Service. I fully support the Bill.

Senator Rónán Mullen: I welcome the Minister of State, Deputy Kathleen Lynch. The State is facing a significant problem of overcrowding in prisons, an issue which the Bill seeks partly to address by way of provision for the construction of another prison. It should be noted, however, that this is not the route being pursued by other countries. It is disappointing, moreover, that because of financial constraints, many prisoners will have to share cells in the new facility. That cannot be in any way dressed up as a positive development. Prisons and hospitals are the two places where people should not have to share with others. That is so for two very different reasons, but both have to do with respecting the dignity of the person and, in the context of prisons, respecting the safety of the person.

The Oireachtas Sub-Committee on Penal Reform, of which Senator Ivana Bacik is a member, made the straightforward recommendation that all prison sentences for non-violent offences of less than six months should be commuted to community service orders. It also recommended that the Government adopt a decarceration strategy to reduce the prison population by one third over a ten-year period. I certainly support that recommendation and urge action to achieve it. In May of this year the Council of Europe published a very interesting report which found that high prison populations are a consequence of government policy rather than an increase in the incidence of crime. In other words, prison overcrowding and increasing prison populations in European Union countries are a function more of the length of sentences imposed than the number of people actually being incarcerated. In fact, experts agree that where politicians constantly raise the issue of crime as being a massive problem in society, those politicians then feel obliged to provide for lengthier sentences, which results in more people in prison. This is a temptation in particular for the main Government party, which has always maintained that it stands for law and order and advocates tough sentences for criminals. It says as much on the Fine Gael website.

The question of prison populations being inextricably linked to politics and the policies of political parties is an important one because it shows that it is not necessarily about an increase in the incidence of crime. The governor of Norway's Bastoy prison, Mr. Arne Nilsen, made an interesting point. He said that the big difference is that in Norway there is no unnecessary political interference in the country's prison system and processes and no pressure from a cynical media. Norway's re-offending rate is the lowest in Europe, at 16%. Mr. Nilsen said:

> The Norwegian people do not like crime or criminals, but we have a duty to society and to potential victims to release people from prison less likely to commit more crime. By paying attention and respecting the humanity of the men who come here, that is what we do.

It would be worth while reflecting on and considering this. Too often, we see criminal jus-

tice policy purely through the lens of punishment and, perhaps, revenge. However, we work smarter and not harder and provide for a better future for all of us if we try to look at offenders as people who need to be rehabilitated and at our prison system in terms of whether it works when it comes to rehabilitating people or whether our approach is merely the product of a reflex action that is not properly reflected upon. I wonder whether we could learn more from other countries, particularly EU countries, in order to reduce our prison population. For example, young people between 18 and 21 in Germany and The Netherlands may be treated either as juveniles or as adults, depending on the seriousness of the crime, the circumstances in which the crime was committed and the personality of the defendant. In Scandinavian countries, sentence lengths are systematically reduced for young adults.

We are all well aware of the issues surrounding St. Patrick's institution. We have a situation where, of the 193 prisoners held on 23-hour lock-up, 44 are aged under 21. Should this not be an impetus to follow the lead of other EU countries and change the way we deal with young offenders as part of a plan to reduce prison numbers? Will the Minister of State comment on the recent findings from the UK, where the UK Parliament's select justice committee concluded that prison remained an "expensive and ineffective" way of dealing with many female offenders who do not pose a significant risk to public safety? They called for a redesign of the female custodial estate and a significant increase in the use of residential alternatives to custody. Will the Minister of State comment on whether she agrees we face the same problem here when it comes to imprisoning too many people, particularly women, who do not pose a risk to the public? Is this not the point? Is risk to the public not the key issue to be considered? Why do we not do more to provide alternatives to custodial sentencing where people are not violent or do not pose a risk to the public? I accept there must be a punitive dimension to sentencing, but we should look more at restorative justice and other more imaginative measures designed to make people more solid citizens. In this regard, should the Oireachtas not have an in-depth appraisal of our current prison system before we embark on constructing any new prisons?

The UK also plans a change in the law so that for the first time prisoners will receive at least 12 months tailored - called "through the gate" - supervision on release. We should consider this example. Perhaps we should also implement community service rather than think in terms of long prison sentences. The well respected policy think tank, the Howard League for Penal Reform has conducted research which demonstrates that community sentences can reduce reoffending by up to 22%, compared with short custodial sentences of up to 12 months. Community service provides a situation where things get done that probably would not have been done and provides offenders with a routine of work, builds their self esteem and leads to them being able to change their lives for the better, instead of a situation where they are simply locked up at enormous cost to the taxpayer in a school of resentment, revenge and future crime.

In the UK, community service is now officially referred to as a more straightforward "compulsory, unpaid work". Perhaps we should call a spade a spade. I would be interested to hear the Minister of State's view of this. In Britain, citizens can nominate or vote for a project they wish to see benefit from unpaid labour. This is an interesting aspect of the situation worth considering. The Scottish Cabinet Secretary for Justice, Kenny MacAskill, was cited on the issue of community payback as saying that punishment should be tough and that people wanted to see low-level offenders out making improvements in local communities as payback for the damage they have done. Perhaps the Minister should consider the idea of projects such as community payback as carried out in the United Kingdom and perhaps he could liaise with British counterparts on this possibility. In The Netherlands, the community service order has been replaced

by the so-called "task penalty", which requires a combination of work and training of up to 480 hours to be completed within a year. When imposing a task penalty, the court must state the period of detention to be served in the event of non-compliance. The Dutch example is worth consideration in this regard.

So far, I have focused on the issue of reducing the number of people in prison. Finally, should criminals who have made massive profits from their crimes be treated differently and is there potential within our constitutional and legal architecture to deal with that? In Britain, a recent law means that criminals will have longer prison sentences if they do not pay back the proceeds of crime. One drug dealer there had an extra four and a half years added to a 13 year sentence when he failed to pay back approximately £600,000. This is an example of the type of imaginative thinking we need to use. Obviously, we have a particular structure within which we must work, but we must be more imaginative in our approach.

Senator Ivana Bacik: I welcome the Minister of State, Deputy Lynch, to the House. I welcome this Bill and believe it is welcomed generally across the House and by NGOs. Everyone with an involvement in penal reform or prison work will be aware of the unfit, inhumane and sub-standard conditions currently pertaining in Cork prison and the urgent need to ensure those conditions are improved and the prison is rebuilt. There is general welcome for the Bill from all, including the Penal Reform Trust and the Jesuit Centre of Faith and Justice.

The current conditions at Cork prison have been widely condemned, both internationally by the European committee for the prevention of torture and by our inspector of prisons. Therefore, this is a long overdue piece of legislation to enable the rebuilding of the prison. I listened to Senator O'Donovan and sympathise with the idea that we should not rush the Bill. In that regard, I spoke with our Leader, Senator Cummins, about changing the Order of Business, but he reminded me we passed the Order of Business this morning. Also, there was a full debate on this motion some weeks ago at the Oireachtas Committee on Justice, Defence and Equality. We are having a good debate on the Bill and its content, there are no amendments put forward on it and it is a matter of urgency.

This Bill is part of ongoing penal reform and we have seen a number of welcome and important initiatives taken in this regard by the Government. There is more of an emphasis on penal reform under the current Government than previously. The rebuilding programme is in progress in Mountjoy and we have seen a commitment to ending slopping-out there. Like myself, members of the Oireachtas Committee on Justice, Defence and Equality will have seen at first hand the great and welcome physical improvement taking place in Mountjoy. We have seen initiatives like community return and the unlocking community alternatives scheme, UCAS, and have seen important decisions being taken, for example, the closure, at last, of St. Patrick's Institution and an end to the appalling practice of keeping minors detained there. We have also seen initiatives such as the introduction of integrated sentence management, better planning for end of sentence release and an end to slopping-out nationally. These are all welcome.

Two issues raised by colleagues do not actually relate to the Bill, which simply facilitates the rebuilding of the prison, but to the detail of the plan for rebuilding. The first concerns single cell occupancy and this was addressed in the Minister's speech. It is regrettable that in the plan for the new Cork prison, only 30 cells will be for single occupancy and that we see an increased use of double occupancy cells. We need to ensure, as mentioned by the Jesuit Centre of Faith and Justice, that as a minimum we conform to the standard set by the inspector of prisons. I am sure many colleagues are aware of the work of Dr. Kevin Warner in this area, who has stated

that the inspector's standards fall below those of the European prison rules, rule No. 18.5 of which requires single cell occupancy. The European rule states that prisons should normally be accommodated during the night in individual cells, except where it is preferable for them to share sleeping accommodation. The Minister said there are situations where prisoners may want to share, for example family members and friends, and this might be beneficial. This should be possible, but single cell occupancy is the norm and it is regrettable we do not seem to be aiming for that.

The second concern was raised by both the Jesuit Centre of Faith and Justice and the Irish Penal Reform Trust. It relates to a bigger issue, one we addressed recently in the report on penal reform I authored for the Oireachtas Committee on Justice, Defence and Equality and which was adopted unanimously by the committee. In that report we called for a decarceration strategy to be adopted by the Minister. This would result in a reduction in the use of imprisonment be seeking, in particular, to commute sentences of imprisonment for non-violent offenders where they receive very short sentences of less than six months. As the Minister of State, Deputy Lynch, and the Minister, Deputy Shatter, are aware, a huge number of prisoners are being processed through the system and being given very short periods in prison without being able to avail of any serious rehabilitation, integration or sentence management, and are simply shuffled out again at the other end. This is not conducive to a good rehabilitative penal system.

I am glad our report was adopted and I am seeking to further it with the Minister and his advisers at present. I know it will feed into the strategic review of penal reform that the Minister has embarked upon, which is very welcome. It is the first time since the Whitaker committee reported in the mid-1980s that we are going to see this sort of strategic review of the penal system. I hope this Bill does not herald the sort of penal expansionism we have seen in the past under previous Ministers, where new prisons were simply built without any real regard to whether they were needed. I am glad that under this Government we have abandoned the Thornton Hall scheme, which was a particularly extreme example of penal expansionism. It is entirely appropriate that we are seeking to rebuild Cork Prison; there is no doubt about that. I know we will see greatly improved conditions within the prison, including in-cell sanitation as a given, and we will see at least some cells designated as single-cell occupancy. I believe all of us would like to see more cells in the prison designated as single-cell occupancy, at least enough to enable long-term prisoners to be housed in those spaces, as required by the Inspector of Prisons. Even if we cannot attain the proper standards as set out under the European prison rules, I believe we could do somewhat better.

Having said all that, like others, I very much welcome the Bill. I greatly appreciate the urgent need to ensure better conditions for those who are currently incarcerated in Cork Prison.

Senator Sean D. Barrett: I welcome the Minister of State, Deputy Kathleen Lynch. Many good points have already been made, particularly regarding community service and attachment of earnings. I believe many people are in prison as a result of relatively small debts and it is hugely expensive to keep them there. I did not hear mention of tagging, which is a feature of other justice systems. In addition, are we going to use restorative justice programmes?

I am disappointed with the question of doubling up, and I share the concerns expressed by the Jesuit Centre for Faith and Justice that doubling up leads to drug abuse, violence and intimidation, and, as in the Gary Douch case, to death. The distinguished former Senator T.K. Whitaker recommended single cells, ready access to toilet facilities, which is being provided, and 12 hours out of the cell, although the Minister of State said only six hours out of the cell is

proposed, if I heard her correctly. When we talk of keeping national rules, I believe we should refer to European rules because I fear some of the national rules in such areas are too lax. We must aim for higher standards.

The cost of the project is not stated, but we need to know the cost per place. There must be concerns about cost consciousness in this area, given the experience with Thornton Hall, which proved to be one of the most massively costly acquisitions of a piece of farmland in the history of farmland. It would help if more of that data was included, because all Departments must be conscious of costs these days, including the Department of Justice and Equality.

It is important that we consider alternatives and aim for the decarceration of society, as Senator Bacik mentioned. Was consideration given to the large number of other premises we are selling off, such as the barracks in Clonmel and Mullingar? How did this project get to be at the top of the list? I know there was a prison there before, but the economics of this require scrutiny. How do our costs per prisoner compare with those in other jurisdictions?

Senator Trevor Ó Clochartaigh: Cuirim fáilte roimh an Aire Stáit. Tá cuid mhaith de na pointí a bhí le déanamh déanta cheana féin. Tacaím le cuid mhaith den mhéid atá ráite. Is maith an rud é go bhfuilimid ag smaoineamh an bealach céanna.

It is unfortunate that we are taking all stages of the Bill tonight. When so much forward planning has gone into a project such as this, it is a shame we did not plan to break up the different sections, although I will not dwell on that.

I was at a meeting of the Galway city joint policing committee yesterday. A couple of the statistics outlined were quite staggering. For example, there has been a 50% increase in domestic violence in the last six months and also an increase in assault and rape. A stunning statement from the chief superintendent there was that he linked certain increases in crime with the austerity that is happening at the moment, so the wider political perspective has to be taken into consideration. We need to look at who is in prison, why they are in prison and what we can do to counteract that.

The economic scenario is a huge factor in what happens. We see that people who commit certain crimes tend to come from certain socioeconomic backgrounds, which has to be considered. I note it is often said in this and the other House that there are certain people in this State who should be in prison but who are not in prison yet for crimes of an economic nature. It would be nice to see some of those people behind bars.

There is also the issue of recidivism. We have seen in a number of reports on serious recent crimes that the people involved are repeat offenders who were recently allowed out. The question is whether the justice system and the penal system are working. Do we just see prison as a mechanism for locking people up and shutting them away from the general public? Are we really tackling the basic issues of crime that are inherent in our society? I contend we are not doing that as well as we should be.

I share the concerns that have been raised by those such as the Irish Penal Reform Trust and the Jesuit Centre for Faith and Justice. While I will not repeat what has already been put on the record by Senator O'Donovan and others, it is useful to make a number of other points from the backup information we have been given. For example, while the daily average number of people in prison in 2012 showed a welcome decline on the figure for 2011, the reality is that, prior to 2012, prison numbers had been rising almost continuously for several decades and had

more than doubled since 1990. Between 2007 and 2012, the daily average number of people in prison rose by over 30% and the number of committals to prison rose by 43%, so we obviously have a serious problem.

Doubling up has become normal practice in Irish prisons. On 28 May 2013, over half of the prison population were in multiple-occupancy cells. In Cork prison, less than 20% of prisoners were held in single-occupancy rooms.

The practice whereby large numbers of prisoners are required to slop out continues. This practice has been severely criticised by the European Committee for the Prevention of Torture. Four prisons within the Irish prison estate do not have in-cell sanitation in every cell, which means 565 prisoners are required to slop out. Of these, 233 are held in Cork prison and 205 are held in the male prison in Mountjoy.

On the broader scenario, the European prison rules on allocation and accommodation from 2006 recommend the following:

> 18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.
>
> 18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.
>
> 18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

The Minister of State noted that this was debated by the justice committee. However, my understanding is that there has been a subsequent report from the Inspector of Prisons which also examined the proposed plan for Cork, which is for 275 prisoners, with a maximum capacity of 310. There will be 170 cells, 30 of which will be single cells. However, in an answer to a parliamentary question, the Minister indicated that there were 39 prisoners serving a sentence of five years or more on 30 June 2013, which is 39 of approximately 232 prisoners. Conservatively, when the new prison is up and running, there will be 47 long-term prisoners. Therefore, planning for 30 single cells is not enough. Furthermore, the inspector in his assessment notes that if those on restricted regimes are locked up for extend periods of time in double cells, this could amount to overcrowding. As of 26 March, 59 prisoners in Cork were on protection, of whom 15 were on a restricted regime - that is, locked in a cell for more than 20 hours per day.

The Jesuit centre advocates for one person, one cell.

9 o'clock

At least those prisoners on long-term sentences or restricted regimes should, if they so wish, be given single-cell accommodation to achieve this principle and also that of reducing prison numbers to a minimum. There is an urgent need to cap the prison population size at its current figure of 235 for the new prison, with 47 single cells and a maximum of 94 double cells. Genuine concerns have been expressed that where people are to be in prison they should be imprisoned in suitable circumstances. I hope the Minister of State will take these points into consideration.

Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch): In response to the last speaker, I very much take on board and accept fully that all points raised

tonight by the few Members who have chosen to contribute are genuine. In my experience over the years, prisoner welfare has never been a popular issue. The majority of people in this country would say we waste money on prisoners, but I do not take that view. In my opinion it is true that too long a sacrifice makes a stone of the heart. We must be careful how we treat people, especially first-time offenders. We must consider whether the latter should be put into a juvenile liaison scheme or a programme of community employment. The last resort should be a prison sentence.

Anybody who has visited Cork Prison, as I take it some Members present have, will say it is a horrendous place. It is so not only for those incarcerated but also for those who work there. I am always struck and fascinated by the fact there have not been more disturbances in the prison given the level of tension that exists naturally in such tightly confined quarters, especially in weather such as we are having. I live quite close to the prison. People are looking for some air and a little space, but these do not exist. Throughout the years any piece of open space within the prison has been built on in order to accommodate an office block or release more space for prisoner accommodation. Of course the perfect solution would be to have single cells throughout, but the site is very tight. The original proposal was for Kilworth. Many of my neighbours have made submissions in regard to the plan for Cork Prison and their preference would have been for Kilworth. Just as with Thornton Hall, however, how would people get there to visit? Kilworth is not just out the road. I take on board what Senator Barrett noted. It is important that people in prison stay very much connected to their families if they are to have any chance when they are released. Kilworth would have offered more space, but this is the site we have. It suits people coming from Limerick or Bantry. I assume everywhere in the country there are people who break the law from time to time and find themselves incarcerated. Given that it is a transport hub, Cork city offers people a better chance of visiting. Ultimately, there is better access.

I hold the view that only people who are a danger, not only to society but to other individuals, should be imprisoned. We may all agree with that principle but, as of now, our system tells us there are other areas where people commit crime and the law says they should receive a custodial sentence. We are working very much towards a broader system of punishment whereby people can repay their debts to society. The release programmes we are putting in place are hugely positive. Throughout my life I have known people who have been imprisoned. As Senator Burke said, rightly, when the door opens, whether it is eight o'clock at night or in the morning, they are left to the ways of the world and they usually fall back into the pattern that brought them into prison in the first place. We need to reinforce plans and structures. It is amazing that people who get long sentences usually do very well in terms of education within the prison system but people who get very short sentences - those we imagine have the best chance of rehabilitation - do not buy into that at all.

Colm O'Herlihy's project was exceptional and worked very well, but he was an exceptional person who really believed in the concept of rehabilitation. With better facilities and a better area to work in, I believe we can develop such programmes. It is okay for us to say this. I would prefer if all cells were single and I understand why it is necessary. However, there are people locked into cells tonight in Cork Prison who are completely overcrowded. Air conditioning does not exist and in this hot weather we cannot leave people to suffer any longer in those conditions. Money moves. As Neil Diamond says, "Money talks, but it don't sing and dance and it don't walk." It may not sing and dance, but it moves - take my word for it. If we do not move on this-----

Senator Rónán Mullen: The Minister of State should be quoting Bruce Springsteen these

days.

Deputy Kathleen Lynch: I am waiting for him to come to Cork. He will be there tomorrow night.

Money does walk and does move. We must ensure that this project is put in place, not only for this prison but for Limerick Prison, Mountjoy and the Dóchas centre. Upgrading our prison facilities is hugely important. I am glad to see that Members present - although it is not a full house by any means - have considered views on how we should treat prisoners. God knows, prison is often a very lonely place. In the current circumstances, we need to move ahead with this. I commend the Bill to the House.

Question put and agreed to.

Acting Chairman (Senator Susan O'Keeffe): When is it proposed to take Committee Stage?

Senator Ivana Bacik: Now.

Prison Development (Confirmation of Resolutions) Bill 2013: Committee and Remaining Stages

Sections 1 and 2 agreed to.

Title agreed to.

Bill reported without amendment, received for final consideration and passed.

Acting Chairman (Senator Susan O'Keeffe): When is it proposed to sit again?

Senator Ivana Bacik: Maidin amárach, ag 10.30 a.m.

Adjournment Matters

Noxious Weeds

Senator Paschal Mooney: It is appropriate that the Minister is taking this matter as I bring it before the House following a letter that appeared in *The Irish Times* recently from a constituent of his, a Ms Jane Jackson. Based on the information she provided, I felt it a matter appropriate to the Adjournment. Japanese knotweed grows vigorously and it out-competes all other plants beneath it. It is spread in Ireland not by seed, as only the female plant is present in the country, as far as we know, but by crown, stem and underground root. Any cut pieces are capable of regenerating into new plants, and it is imperative that councils around the country are made aware of this, as crews cutting hedgerows are the main cause of the spread at present.

This is evident as one drives along our roads, and such an exponential spread could otherwise only happen with seeds. The current practices of local authorities are unwittingly leading to the proliferation of this noxious weed.

Along river banks, the knotweed quickly spreads as pieces are broken and drift downstream. In winter, as foliage dies back, there is no undergrowth to protect river banks and therefore erosion readily takes place, with pieces of the root further infecting banks. It is quite alarming how fast this particular weed has taken over not just hedgerows but entire fields and gardens, and something must be put in place to deal with the safe disposal of the plant. The longer this is ignored, the more expensive this problem will become, and in the UK there is an environmental code of conduct applying to the abolition of knotweed. That is absent in this country so I would be grateful for the Minister's observations as to whether he recognises and acknowledges the problem and if he could outline attempts to have it eliminated from our countryside.

Minister for Arts, Heritage and the Gaeltacht (Deputy Jimmy Deenihan): I thank Senator Mooney for raising the matter this evening.

The species referred to by the Senator was first introduced to Ireland over 100 years ago. It forms dense thickets along roadsides, waste grounds and waterways, reproduces by vegetative means and is difficult to kill off once it becomes established. This plant is included in the list of the 100 most invasive alien species of the world. It forms dense cover causing native plant species to die off. It also grows to heights of 2 m to 3 m and reduces visibility along roadsides while also making access to sites difficult for walkers and anglers. In some instances its roots can damage paths and walls.

The National Parks and Wildlife Service of my Department has been working with the Northern Ireland Environment Agency to fund and manage the Invasive Species Ireland project since 2006. This initiative provides advice and guidance on the management of a range of invasive species, including the species referred to, which can negatively impact on the environment and on property on the island of Ireland. Best practice management guidelines for the species in question have been published and can be accessed on the project website. These guidelines provide practical advice to persons and organisations, including local authorities, on the removal and disposal of Japanese knotweed. A central requirement when dealing with Japanese Knotweed is to ensure that any viable rhizomes, the main means by which the plant spreads, are not given the chance to escape into the wider environment. It is recommended to spray the plant with a systemic herbicide prior to transport, to ensure no material is lost en route, and finally that the material is deeply buried in a properly managed landfill with an effective pest control management system which can deal with any regrowth.

I should also point out that the National Roads Authority has produced guidelines which can assist local authorities on the management of noxious weeds and non-native invasive plant species on national roads, which includes a section on the treatment of Japanese knotweed. The European Communities (Birds and Natural Habitats) Regulations 2011 includes provisions relating to controlling the possession and dispersal of ecologically harmful and invasive species of animals and plants, including Japanese knotweed. Regulation 50 of these regulations, which include provisions relating to the banning for sale of invasive species listed in the schedule to the regulations, is not yet in effect. It is necessary for my Department to carry out risk assessments on those invasive species subject to trade before I can bring this element of the regulations into force.

My Department is keeping abreast of initiatives currently under way in Britain using a specific insect to control Japanese knotweed. It is possible that such controls could be applied to Irish conditions without risk to native or economically important plants here.

Senator Paschal Mooney: I am grateful for the comprehensive reply and I am particularly encouraged that the regulation referred to is currently being evaluated. I hope it will not be too long before it is put in place. As the Department is keeping abreast of initiatives under way in Britain, is it within the Minister's remit to encourage local authorities, through his Department, to address the issue and become more aware of the guidelines? The Minister has indicated the guidelines exist but it seems that local authorities are not aware of the manner in which this weed proliferates and that they must be careful about the manner in which they disassemble, transport it and bury it. Does the Minister have any role in that regard?

Deputy Jimmy Deenihan: We can certainly send a communiqué to local authorities, which we do on a regular basis, advising about the proliferation of the knotweed around the country. It is more prevalent in some areas than others and, for example, it grows on river banks etc. It is presenting as a major nuisance and I have seen how it can adversely affect paths and river ecosystems. I will advise my officials to deliver the message to various local authorities through county managers, and particularly how it can come to terms with the proliferation of Japanese knotweed. I will take the Senator's advice.

Senator Paschal Mooney: I thank the Minister.

Medical Card Eligibility

Senator Marie Moloney: I thank the Minister of State for taking this matter. A medical card has been issued to the patient in question since I submitted the matter but it is only right to allow this debate continue because the lady in question is representative of many people who have had a medical card withdrawn, particularly patients suffering with cancer. I have all the figures so I know nearly 2 million people qualify for the general medical services scheme and the Department must prioritise its scarce funding. I appreciate that and we all know that funding is currently scarce. There were changes introduced nonetheless, such as income assessment and elimination of travel expenses.

The withdrawal of a discretionary medical card from a cancer sufferer is wrong. The lady I am talking about was terminally ill and had her card withdrawn. The Minister of State will know that a person diagnosed with cancer will be worried, anxious, frightened and vulnerable. He or she should not have the added worry of wondering whether he or she can afford medical care. The lady's family went to collect her medication because she was unable to do so but were informed they could not have it because the card had been cancelled. It was harsh and cruel to do that to somebody at that stage of her illness. It was despicable.

I hope the Minister of State will tell me tonight that cancer patients will be looked after. I do not want him to say that if a person is terminally ill he or she will get a card. As someone else said last week, receipt of a medical card is like a death certificate because it confirms that one is terminally ill. I want to hear his response and will comment further at that stage.

Minister of State at the Department of Health (Deputy Alex White): I thank the Senator for raising the matter. As the Senator and the House will be aware, under the provisions

of the Health Act 1970, assessment for a medical card is determined primarily by reference to the means, including the income and expenditure, of the applicant and his or her partner and dependants.

While people with specific illnesses such as cancer are not automatically entitled to medical cards, the legislation provides for discretion by the HSE to grant a medical card where a person's income exceeds the income guidelines. The HSE takes a person's social and medical issues into account when determining whether there is "undue hardship", the phrase used in the Act, for a person in providing a health service for himself, herself or his or her dependants.

The HSE has an effective system in place for the provision of emergency medical cards for patients who are terminally ill, or who are seriously ill and in urgent need of medical care that they cannot afford. For persons with a terminal illness, no means test applies. Emergency medical cards are issued within 24 hours of receipt of the required patient details and the letter of confirmation of the condition from a doctor or a medical consultant. Once the terminal illness is verified, patients are given an emergency medical card for six months. Given the nature and urgency of the issue, the HSE has appropriate escalation routes to ensure such people get their cards as quickly as possible.

With the exception of terminally ill patients, the HSE issues all emergency cards on the basis that the patient is eligible for a medical card arising from their means or undue hardship, and that the applicant will follow up with a full application within a number of weeks of receiving the emergency card. As a result, currently emergency medical cards are issued to a named individual with a limited eligibility period of six months. The HSE ensures that the system responds to the variety of circumstances and complexities faced by individuals in these circumstances.

The person referred to by the Senator was issued an emergency medical card in July 2012 for a period of one year. In March 2013 she was issued a renewal notice as she then became eligible for the over-70s scheme. Based on her declared income she qualified for a GP visit card, but her application was referred to the medical officer for consideration on medical discretionary grounds. The medical officer recommended that her full medical card be retained and remain valid until 31 January 2014. I am informed that at no stage was the person without medical card cover during this process.

Acting Chairman (Senator Michael Mullins): Does Senator Moloney have a final question for the Minister of State?

Senator Marie Moloney: Yes. I thank the Minister of State. Whoever composed his reply did not give him the correct information. The woman was without medical cover last week and her medication could not be accessed by her family at the chemist. The reply is incorrect.

The Minister of State said: "While people with specific illnesses such as cancer are not automatically entitled to medical cards..." Anyone that I have ever dealt with in my area has always received a medical card the moment they commenced active treatment for cancer, as the Minister of State knows, and they were assessed through the system. They have always been given the discretionary medical card. This is the first time I have heard of a cancer patient being refused a medical card. It is a harsh decision. The withdrawal of medical cards from cancer patients is an all-time low. It is unacceptable. How can one say to a cancer patient who is terminally ill that he or she must apply for a medical card? Most people diagnosed with cancer want to fight the disease. They want to fight it hard so will not admit even to themselves that

they are terminally ill. Often, doctors do not tell a patient his or her diagnosis is terminal until after every course of treatment has been tried first. A doctor will not tell a patient straight out that he or she is terminally ill unless the cancer is extremely aggressive. A doctor will fight to save the life of a patient even though the end result may be the same. I find it harsh that we have resorted to removing medical cards from cancer patients.

Acting Chairman (Senator Michael Mullins): I will allow the Minister of State a final word.

Deputy Alex White: It has never been the case that people with cancer were automatically entitled to a medical card. That has not ever been the case and that is the position.

Senator Marie Moloney: Perhaps people in the Kerry area were very generous.

Deputy Alex White: That is the position. I know this is a sensitive matter. I agree with the Senator that people who receive a diagnosis of cancer will be in a distressed state and the last thing they should be dealing with is the question of entitlements, etc. Without taking at all from that statement, people are diagnosed with other catastrophic illnesses and conditions that are not cancer and we should consider them in the context that the Senator has raised. When I say it is not just cancer, I am not trying to diminish the awfulness of a diagnosis of cancer.

The Government, the HSE and I must have a system - I shall not repeat the figures because the Senator appealed to me not to - that is credible and transparent so that everybody knows where they stand and what the score is. I do not mean to trivialise the matter by using the term "knows what the score is". I mean that there should be clarity in regard to the matter. We have introduced clarity in that respect and there is also an appeals system. For example, if a person receives a letter asking about their means in order to review a medical card, and co-operates, which is the case in most situations, he or she does not lose the medical card. It has been suggested that people are having cards whipped from them, but that is not fair. Where there is engagement with the system, the card is not taken from the individual.

Acting Chairman (Senator Michael Mullins): I thank the Minister of State and Senator Moloney.

Missing Persons

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

Senator Colm Burke: I welcome the Minister of State to the House and thank the Acting Chairman. My Adjournment matter is on missing persons. Last February I published a Private Members' Bill on the matter and I am anxious to proceed. The Bill follows on from the report of the Law Reform Commission that was published in January. The 160-page report clearly sets out very good proposals to deal with the issue and recommends making specific provisions in law to deal with two categories of missing person: first, where the circumstances of the disappearance indicate that death is virtually certain; and second, where the circumstances and length of the disappearance indicate that it is highly probable that the missing person has died and will not return - for example, if the disappearance occurred in dangerous circumstances. There are other circumstances in which loss of life may be presumed, such as a person going overboard

while at sea, or there is a clear indication that a person has died.

I have approached the matter from a legal point of view. The problem is that nothing can be done with the estate of a missing person. The Law Reform Commission, and my Bill as published, recommended that we set up a structure to allow for an application to be made to the County Registrar or the Circuit Court for a presumption of death order. The order would allow for a management system to be put in place to manage the missing person's affairs. The Bill is detailed and sets out how the issue can be dealt with. It means we are keeping it within the courts system as regards setting up a proper procedure and one that is properly supervised. At present people are in limbo. We had the recent sad case in Tipperary where a man who had been missing for two years was found in a slurry tank. In that case issues relating to the estate have had to stand still for a period. It is important that proper structures are put in place here as has been done in the UK and Northern Ireland, given that the Law Reform Commission has seriously researched the issue and has made definitive proposals as to how we should manage it within the legal system. As I have published a Private Members' Bill in this area, the home-work is done and it is case of trying to move on it. I am concerned that when the Law Reform Commission publishes reports we have a tendency to put them on the shelf for a period. That was the reason I published the Bill in February and the reason I am raising the issue again. I am anxious that we move it on and that it is not parked for three or four years before dealing with it.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry): On behalf of the Minister for Justice and Equality, who is unable to be here, I thank the Senator for raising this topic on the Adjournment. The Minister is aware of the Senator's keen interest in this area as evidenced by the fact that he has previously brought forward a Private Members' Bill on the subject and I am pleased to be given the opportunity to respond to the intervention which he has just made.

This is a very sensitive topic which, fortunately, only impinges upon a very small number of people. However, for those who experience the pain which is attendant upon a loved one going missing in inexplicable circumstances, there is significant emotional turmoil and distress which is often compounded by the many practical difficulties which have to be faced in the aftermath of that person's disappearance.

The law may not be able to do much to ease the emotional pain but it can ensure that the practical difficulties are mitigated to the greatest possible extent. The backdrop to our discussion is the Law Reform Commission Report on Civil Law Aspects of Missing Persons which was published in January of this year and which was preceded by an in-depth consultation paper published in December 2011.

As the commission points out, at common law, where a person is missing for seven years, and has not contacted those likely to have heard from him or her, and reasonable efforts have been made to locate the missing person, the High Court may make an order that the person be presumed dead. As the common law presumption is rebuttable, it is not always necessary to wait seven years to make such an application so that the court may make a declaration of presumed death before seven years has passed. This declaration of presumed death is usually made for probate purposes and does not result in the registering of the death of the missing person in the register of deaths under the Civil Registration Act 2004, and therefore does not result in the issuing of a death certificate. Neither does it affect or alter the civil law status of the missing person, notably their marriage or civil partnership.

Obviously, it is eminently desirable that the maximum possible amount of legal certainty is brought to bear on the very distressing circumstances in which the immediate family and relatives find themselves where a person goes missing, often where death is presumed. The Commission recognises in its analysis that, in so far as is practicable, the law should be responsive to the complexity of the consequences that arise in these situations and is of the view that the current law does not meet the requisite standard. The Law Reform Commission's report is at present being examined within the Department of Justice and Equality. Its proposals would provide a clear legal definition of a missing person which would encompass a number of elements. Those proposals also envisage a statutory framework which would provide for the making of a presumption of death order in respect of two categories of missing persons. The first category would arise where the circumstances of the disappearance indicate that death is virtually certain. The second would arise where both the circumstances and length of the disappearance indicate that it is highly probable that the missing person has died and will not return.

Stringent proofs would be required under a range of specified headings where a person seeks a presumption of death order from a court and the court would also have to take account of additional circumstances including, where relevant, the abandonment of valuable property and the presence or absence of a motive for the missing person to remain alive but disappear.

In situations where death is virtually certain, the recommendation is that there be no minimum waiting period before an application can be made to obtain a declaration of death and that such a declaration could be made by a coroner and would be identical to a standard declaration of death. In situations where death is highly probable, the recommendation is that an application be made to the Circuit Court for a declaration of presumed death. While, in this instance, there would be a seven-year reference period this would not constitute a mandatory minimum waiting period and an application could be made at any time where it is established on the balance of probabilities that death may be presumed. The declaration of presumed death would allow a certificate to be issued which would have all the effects of a standard death certificate.

The Commission also recommends legislative provision for the limited management of the property of a missing person, in particular in circumstances in which it could not be established that a presumption of death order could be made. This recognises that, when a person disappears, those who are left behind find themselves, along with their distress at the disappearance, with very immediate basic difficulties such as accessing a missing person's bank accounts and discharging his or her financial obligations such as the payment of a mortgage and other bills. Of course, in addition to financial matters, there are also legal issues concerning the spouses or civil partners of those who have disappeared and the need for certainty in relation to the continued existence or otherwise of the legal relationships in either case. Furthermore, any legislation would also have to deal with the legal consequences attendant upon the very difficult and highly unusual circumstances in which a person who is presumed to be dead actually turns out to be alive.

While the Minister is very sympathetic to the view that it is important that legislation be advanced in this area, he has asked me to emphasise that time must be taken to examine the Law Reform Commission's recommendations more closely than has been possible in the past six months and to consult properly on them. There are a number of Departments and State agencies potentially involved, not least in relation to the issue of the registration of deaths. Also, within the Department of Justice and Equality, the recommendations raise issues in relation to a range of areas. In family law there are issues arising as regards marriage and civil partnership. In the area of succession there are matters relating to the distribution of the estate of a person

presumed dead. Matters relating to court jurisdiction and the powers of coroners also have to be considered.

Once again the Minister has asked me to express his gratitude to the Senator for raising the issue and the Law Reform Commission for its very extensive work on both its consultation document and its 2013 report on this area. The House can be assured that its recommendations, together with the views of Senator Burke, will receive very close attention in the Department of Justice and Equality.

Senator Colm Burke: I thank the Minister of State for a very comprehensive report. I fully understand that in the past six months all Departments have had to deal with the EU Presidency and that this matter would not have been given the priority. Given that we have the Bill and the report and the fact that there is consultation with other Departments - while accepting what he said about the family law issues which, I think, have been dealt with comprehensively in the Law Reform Commission report - it is a matter on which we could move forward fairly fast at this stage. As the groundwork is done, let us not lose the opportunity.

Deputy John Perry: On behalf of the Minister for Justice and Equality, I thank the Senator once again for his considered intervention. He has raised issues which are of genuine human concern and where legislative intervention can play some role, however small, in addressing the difficulties faced by those whose loved ones have disappeared.

While not strictly relevant to the need for legislative intervention, I would like to record the fact that the Department of Justice and Equality has provided funding, since 2008, through the Commission for the Support for the Victims of Crime, for Missing in Ireland Support Services, a non-profit organisation that provides support to families and friends of missing persons. The Department also provides accommodation for that organisation.

In so far as the legislative role of the Department is concerned, there are some areas of the law which fall under its remit where it will be necessary to look more closely at the Law Reform Commission's recommendations. One of these areas concerns coronial law and the role which coroners should have in the provision of death certificates.

Another area relates to the effect of a declaration of presumed death on a subsisting marriage - notably, that on the reappearance of a person presumed dead, the marriage does not remain valid. This will have to be examined carefully in respect of the constitutional implications. The declaration of presumed death may allow for the distribution of an estate under a will or under intestacy provisions. It is logical and appropriate that closely related provisions under the Family Law Acts and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act allow a spouse, a civil partner or a cohabitant to apply to the court in respect of the estate of the deceased person.

I thank the Senator who will be aware of the extensive legislative programme undertaken by the Department of Justice and Equality. The Department has been working on, and has brought forward, a number of priority Bills, including the so-called troika measures, including the personal insolvency legislation, the Land and Conveyancing Law Reform Bill and the Legal Services Regulation Bill. Ireland completed a very successful programme up to the end of June but this has inevitably meant this was not possible.

Senator Lorraine Higgins: I thank the Minister of State, Deputy John Perry, for taking this matter which is the very serious situation in which Portumna, County Galway, finds itself as a consequence of a number of different factors. As the Minister of State will know, rural Ireland, County Galway and, in particular, Portumna have been hit very hard during this recession with the closure of various businesses and other facilities cherished by the local community.

In recent times, Portumna has had to contend with AIB leaving the town, the health centre being closed due to rat infestation and its one and only hotel burning down, with the loss of 60 jobs. Quite clearly, this has had a detrimental spin-off locally in that many small businesses have closed as a result of the loss of the hotel, in particular. Many of these businesses were dependent on the hotel for ancillary business relating to weddings, concerts, events and conferences.

Many Government economic policies aimed at enterprise and employment do not have enough rural focus. Rural employment and enterprise need to be further up on the policy agenda in the Department. It is clear we need to bring together many of the key stakeholders in Galway east, in particular, with a view to creating jobs and promoting economic development in the area. Any jobs which can be created in Galway East are welcome in light of the high levels of unemployment it is experiencing currently.

We must manage and address the unemployment crisis in the county. Currently, the rate of unemployment in County Galway stands at more than 22,000, with 1,457 people unemployed in Gort, 2,396 in Loughrea and 3,296 in Tuam. I am sure the Minister of State will agree that this is unacceptable and it is quite dangerous to have this high level of unemployment in small rural towns.

The county and Portumna, in particular, need a coherent long-term strategy which will align all the relevant stakeholders and agencies which will address the needs of the area and the region, in general. There is no point creating a talking shop in the county for the sake of it, although I am not suggesting the Minister of State would do so. Any task force which may be suggested must contemplate the needs of the area and the people of the area must take advantage of the area's key strengths. Those strengths are tourism, the arts, culture, agribusiness, food production, technology, engineering and the green economy sector. The crucial ingredients are the enterprise agencies which must play a leading role and need to have teeth in addressing this problem. We must join up national policy with local and regional policy and ensure those with responsibility for delivering economic development and job creation specifically deliver for the county in real terms.

As part of a task force, if one is created, targeted assistance should be allocated for small businesses, in particular, and job activation measures. With this method of economic development, we could then provide a new vision for rural Ireland which would be most welcome in these recessionary times in Ireland. I look forward to the Minister of State's reply on the matter.

Deputy John Perry: I thank Senator Lorraine Higgins for raising this very important issue. From the time of taking office, the ultimate goal and top priority of this Government has been to get Ireland back to work. Job creation is this Government's top priority. However, there is no big bang solution to the jobs crisis built up through years of poor policy choices. It will take a period of hard work by businesses, Government and people across the country to rebuild the economy brick by brick, reform by reform, and to get back to sustainable enterprise-led growth where more businesses can start-up, expand and create new jobs.

The recent announcement to pay employers €10,000 for taking on people who have been unemployed for two years and €6,500 for people who have been unemployed for one year is a very good start. Yesterday, I had the opportunity to go to the Intreo office in Sligo with the Taoiseach. It provides a great opportunity to match employers and people who are unemployed. The opportunity for employers to avail of that €10,000 direct payment will be a big benefit. This is just coming on stream and I strongly encourage the Senator to talk to business people about it. There are great opportunities to employ people who have been unemployed.

The Government put together an Action Plan for Jobs, the objective of which is to get 100,000 people back to work by 2016. We are now 18 months into the Action Plan for Jobs process. The approach is new and innovative, designed to mobilise all Government Departments to work towards the objective of supporting job creation. The progress reports, which are published every three months, on the attainment or non-attainment of the quarterly targets set for each action provide a level of transparency which underpins the process. As the Senator will no doubt be aware, more than 90% of all actions were delivered as scheduled in 2012.

All of these individual measures are important. However, it is important to stand back from the detail to consider the impact the Action Plan for Jobs is having on the ground. The litmus test for the Action Plan for Jobs is the impact it will have on employment numbers. I agree entirely with the Senator that small businesses are the backbone of Portumna and that whole region.

The last two quarterly national household surveys have shown signs of a stabilisation in the labour market. There was an annual increase in employment of 1,200 persons in the year to the fourth quarter of 2012, the first annual increase in employment recorded since 2008. This was followed by an annual increase in employment of 1.1%, or 20,500 people net of public sector reductions, in the first quarter of 2013. When one considers that 250,000 jobs were lost before 2011, we are certainly going in the right direction. The unemployment rate decreased from 14.1% to 13.7% in the first quarter of 2013, the first time the unemployment rate has fallen below 14% in some years.

In 2012, the IDA and Enterprise Ireland created almost 10,000 net jobs. While there is no doubt that the south east action plan is proving successful, it is not considered that the establishment of a similar task force in respect of Portumna would be an effective use of the State's enterprise development resources. Rather, it would be more beneficial if the State agencies and bodies continue their ongoing work on job creation without the additional requirement of having to service additional groups and committees. Their expertise can be better deployed by focussing on their existing strategies. The south east action plan has to be seen as a one-off action taking account of the TalkTalk site closure, the need for swift action and the fact that a large amount of analysis on the region has been undertaken in the past.

There are 59 IDA client companies in Galway city and county employing almost 13,000 people in full-time and part-time employment. The primary opportunity for regional locations is in respect of the existing client base and potential further investment opportunities from that client base. Approximately, 70% of all foreign direct investments won by IDA is from the existing client base. Some 281 Enterprise Ireland client companies employ 6,063 people in Galway.

Since 2011, Enterprise Ireland has approved more than €9 million to its client companies in Galway to help them accelerate their growth and make sales overseas thus creating and retaining employment. In addition, Galway County Enterprise Board has supported 14 projects so

far this year in the form of priming business expansion-feasibility study grant-aid. The total amount of money approved for these 14 projects is €393,802 and this will create 41 full-time jobs.

In October 2012, as part of SME week, Galway CEB organised a Big Business Idea Roadshow. Five towns across Galway were visited, one of which was Portumna and 47 people attended the event in there. If the Senator believes it would be advantageous, I would be happy to bring the agencies together for a meeting in Portumna in September or October. I had an event in Cork quite recently where I brought all the State agencies together. The roadshows are very important. If the Senator contacts my office, I would be delighted to arrange this for September.

As I have said, job creation is this Government's top priority but jobs cannot be created by Government alone.

This is all about the role of the community, social enterprise, the voluntary sector and business people. The Government's purpose is to create the environment for sustainable, enterprise-led growth in which more businesses can start up, expand and create new jobs. While by no means complacent, my colleague, the Minister for Jobs, Enterprise and Employment, Deputy Richard Bruton, and the Government generally are satisfied with progress on the Action Plan for Jobs and the efforts of the enterprise development agencies in delivering new jobs and investment.

I am very impressed by Enterprise Ireland, the enterprise boards and the newly rolled out local enterprise office services. The new service will be a great catalyst as a one-stop shop for business. While statistics are encouraging, there is much to be achieved to reach the action plan's objective of getting 100,000 people back to work by 2016. The Government is conscious that 62% of all unemployed people have been out of work for 12 months or more. That is the reason the Minister for Social Protection announced a direct cash grant of €10,000 for employers. Of 15 to 24 year olds in the labour market, 27% are without a job. That is why we continue to make every effort through the Action Plan for Jobs to create an environment in which business can operate more effectively and create jobs.

Senator Lorraine Higgins: I thank the Minister of State for a very detailed response. I acknowledge fully the mess the Government inherited from the last Fianna Fáil-led Government which has seen tens of thousands lose their jobs. It is not a mess that was of our making, but we are here to clean it up. I accept that the Government has made significant efforts in this regard. It is great to have the Minister of State, Deputy John Perry, in the Department to steer policy, given his vast experience in the SME sector.

It is regrettable for the people of Portumna that they will not benefit from a task force. I commend the Minister of State for offering to bring agencies to Portumna to assist in directing people towards job creation possibilities and to help businesses. The ancillary matter of rates is a massive issue nationally for business owners. Something must be done in the forthcoming budget, if possible, but certainly by the succeeding budget. Many businesses are closing. In my home town of Athenry 35 commercial units are empty, which scenario is replicated nationally. I ask the Department to do something constructive in the budget negotiations on rates for the SME sector.

Deputy John Perry: A major consultation process is under way with representative bodies on the budget. The question of rates and valuation involves great discretion on the part of lo-

cal authorities. Many local authorities have exercised their discretion to encourage enterprise in town centres. I visited Youghal recently to meet enterprise agencies, tourism bodies and State officials, which visit was very worthwhile. While we have very effective agencies on the ground, I am happy to facilitate a visit to Portumna to look at the potential there. I do not know if there is a community economic enterprise in Portumna, but several in the region have been very successful at creating economic renewal and regeneration. Social enterprise, business partnerships and State agencies work together.

I understand a meeting is arranged for September and I will be very happy to bring the State agencies. I will meet all concerned bodies to discuss the issues raised and establish what action plan can be formulated to mobilise the resources that are available. Equally important are the roll-out of the one-stop shop for business and significant local government reform, which is fundamental. By next June Galway County Council will have significant autonomy. I am very happy to support the plan and mobilisation in any way I can.

Acting Chairman (Senator Michael Mullins): We might swing that roadshow into Ballinasloe also.

Senator Lorraine Higgins: The Chair is supposed to be impartial.

The Seanad adjourned at 9.55 p.m. until 10.30 a.m. on Wednesday, 17 July 2013.